

CRIMINAL PRACTICE

1864-1937

Containing rulings of all High Courts and Judicial Commissioners from
1864 to 1937 under the Penal Code, Cr. P. C., Evidence Act
and all other Criminal Acts with extracts from
Medical Jurisprudence, etc.

BY

DAULAT RAM PREM, B.A., LL.B.,

Advocate, Lahore High Court,

Author of All India, Punjab, U. P., Bengal, Madras, C. P., Bombay,

Bihar & Orissa Criminal Acts, Extradition Manual,

Motor Vehicles Manual, Punjab

Court of Wards Manual.

WITH A FOREWORD BY

HON'BLE MR. JUSTICE JAI LAL, R.B., B.A.,

Judge, High Court, Lahore.

"A competent knowledge of the laws of that society in which we live is the
proper accomplishment of every gentleman and scholar"—*Blackstone.*

SECOND EDITION.

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With kind Permission
This humble work is dedicated to
Sir Douglas Young, Chief Justice,
Lahore High Court,
in token of His Lordship's erudition and profound
knowledge of Law.

PREFACE TO THE SECOND EDITION.

The first edition of this book was published in May 1933 and was exhausted within a couple of years. Owing to limited time at my disposal I could not bring out the second edition earlier, although there was a pressing demand for the same. I beg to take the opportunity of expressing my sincere gratitude to the members of the Bench and the Bar and the Police Officers all over British India and Native States for their warm appreciation of the humble work.

When I published the first edition, it was my desire that, should a second edition of the work be ever called for, I should present it in a much more comprehensive form.

The warm reception accorded to the first edition and hundreds of unsolicited testimonials received by me, encouraged me to make the book as complete an Encyclopædia of Criminal Law as possible.

The chief difficulty of how to find the law in an *easy* manner was solved in the first edition. The arrangement of the book has been extolled by our generous readers, and the book has been described by some as "Veritable Teacher."

The Case Law has now been brought up-to-date.

The chief characteristic of the present edition is the addition of numerous headings pertaining to Medical Jurisprudence. Copious references from Medical Jurisprudence by Taylor, Modi, Ryan, Lyon, etc., under the headings of age, hanging, identification, suffocation, rape, unnatural offence, putrefaction, poison, strangulation, wound, etc., have been given. Extracts from Will's Circumstantial Evidence, Criminal Investigation by Dr. Hans Gross (The father of Criminology) and Law of Evidence by Best, Wigmore, Taylor, Phipson, Woodroffe, Monir, etc., have been given *in extenso* under appropriate headings and sub-headings.

The books have been thoroughly revised and recast.

If any one of my numerous readers will be kind enough to point out any omission or will make any definite suggestion for improvement, the criticism or the suggestion shall be thankfully received and carefully considered.

I must take this opportunity of most respectfully expressing my sense of immense gratitude to the Hon'ble Mr. Justice Jai Lal for his kindly writing foreword to the work and to Hon'ble Sir Douglas Young, Chief Justice, Lahore High Court, for his kind permission to dedicate this humble work to His Lordship.

My thanks are also due to Messrs. Harbans Lal Chopra, M.A., LL.B., Member, Lahore and M. L. Puri for having kindly assisted me in going through the proofs.

PREFACE TO THE FIRST EDITION.

The author of this humble work conceived the idea some twelve years back of presenting the legal profession a Ready Referencer and a consolidated and complete law on every point.

The work of this nature, on the ambitious lines proposed by the author, made an extremely heavy demand on his limited spare time.

The present work has been cast on lines different from its several predecessors available in the market and it has been endeavoured to present it in a manner as to elucidate the law in its various aspects and to make it more easily intelligible. It would be no exaggeration to say that it is an Encyclopaedia of Criminal law.

The subject and sub-headings given in the book would constitute an unerring guide to find the required reference in a breath of time. With bare Act and this work in hand, a lawyer can be master of Criminal law. The sectional index is given at the end to offer greater facility to the readers to find out the required law point.

The Courts would find this work an excellent compendium in which all knotty and intricate questions, which frequently crop up during the course of Criminal trial have been solved with great lucidity and clearness. A layman can also supplement his knowledge of law on each and every point by reference to this book. I hope, the book will be found very useful and indispensable to the members of the Bench and the Bar, the Police and the public.

FEROZEPORE CITY :
31st March 1933.

D. R. PREM,
Advocate.

Criminal Practice

The Hon'ble Sir C. C. Ghose, Kt., Acting Chief Justice of Bengal.

I have had occasion to use your book "*Criminal Practice*" within the last few days and I am able to say that in my opinion you have turned out a most conscientious piece of work. Your industry and ability in preparing a work of this description deserve the widest recognition and I trust that your book will have a large and a ready sale. You have collected under appropriate heads the various points which strike the busy practitioner engaged in Criminal work. Your notes are concise and to the point and I further observe that many points have been noted by you which are not to be found in the standard Editions of the Criminal Procedure Code.

I wish you all success.

**The Hon'ble Sir S. M. Sulaiman, Kt., M.A., LL.D.,
Chief Justice, Allahabad High Court.**

Your book "*Criminal Practice*" is an exhaustive treatise on the Criminal case law. The various subjects and their sub-heads have been so carefully arranged that they furnish an easy reference to any point of law requiring consideration. The work must have involved a considerable amount of labour and time of yours and I am sure it will be found useful to the legal profession.

The Hon'ble Mr. Justice Jai Lal, R. B., B.A., Judge, High Court, Lahore.

"The book is bound to be useful to the Bench and the Bar."

The Hon'ble Mr. Justice S. S. Patkar, Judge, High Court, Bombay.

"*Criminal Practice*" is a digest of Criminal law and presents in a compendious form the law on all the important questions arising in Criminal cases. The alphabetical arrangement of the different topics is likely to facilitate ready reference. The book will be found useful to the judiciary and the legal profession in dealing with Criminal cases.

The Hon'ble Mr. Justice Oma Shankar Bajpai, Judge, High Court, Allahabad.

I have gone through portions of Prem's Criminal Practice and I found the book quite useful. The author has departed from the orthodox method of grouping cases section-wise and has followed better method of grouping cases subject-wise. The digest is fairly exhaustive and accurate and in my opinion Mr. Daulat Ram Prem has supplied a long-felt want for an exclusive Criminal digest which is handy and yet so serviceable. I am sure the book will be found useful both by the Bar and the Bench.

R. S. Topan Ram, P. C. S. (Retd.), Chief Judge, Jodhpur.

It contains copious references on all the necessary topics of the Criminal Law and Procedure. He seems to have taken great and careful pains in preparing the book. It is very useful and handy and should be in the hands of the presiding officers of Criminal Courts, members of the Bar and the Police.

B. R. Puri, Esq., M.L.A., Advocate, High Court, Lahore.

Allow me to congratulate you on the excellent publication which you have brought out. It is an exhaustive work which shows a great deal of labour. For a criminal lawyer the book appears to me to be almost indispensable. The printing and the get up of the book is all that is desired.

I wish the publication every success which I have no doubt it amply deserves.

Sir Tej Bahadur Sapru, K.C.S.I., Advocate, Allahabad.

I have been much impressed with the pains you have taken over collecting and arranging the material. In my opinion it should prove to be very useful to a busy practitioner who wants to find out easily the relevant authorities on any particular subject.

Judicial Member, Council of Administration, Faridkot State.

Your Criminal Practice is a very useful publication and has proved a great help to me.

Review by Criminal Law Journal and Indian Cases.

Mr. D. R. Prem's *Criminal Practice* is an exhaustive Compendium of the Criminal Law and procedure of India on all important questions arising in criminal cases. Nearly

a thousand closely printed pages with *exhaustive* references speak eloquently to the intelligent industry and perseverance of the compiler. And there is the testimony of the Hon'ble Mr. Justice Jai Lal of the Lahore High Court as to the generally copious and correct nature of the references. The arrangement of headings and sub-headings is satisfactory. The author has arranged the heading and the sub-headings according to the subject dealt with thus affording increased facility to the busy lawyer. The sectional index is given at the end.

Review by All India Reporter.

The book has been written *after great pains*. The references are copious and the book would be of much use both to the Bench and the Bar. The headings and sub-headings would facilitate the work of lawyers to trace any decision on the particular subject in a very short time. The sectional index at the end would be of much use to find out the heading under which the case is digested from the subject. The book would be welcomed by the legal profession.

The Hon'ble Sir B. B. Ghose, Kt., Law Member, Government of India.

Your treatment of the book has been entirely different from those of other similar books. It shows your industry and thoughtfulness to make the book useful to the profession. Your references are full and they seem to have been carefully analysed and classified. I am sure the book will receive recognition which is undoubtedly due to it.

Review by Indian Criminal Reports.

The headings and sub-headings are well chosen and suggestive and cross references are exhaustive. References to the relevant sections of the Statute given in the bracket are very useful. The *radio decidendi* is stated briefly and to the point. The printing and get up are good. A nice, helpful and magnificent work for the good of the profession.

Dayaram K. Ajwani, B.A., LL.B., Khairpur.

"Criminal Practice" has been of great help to me and I am now of opinion that the book is indispensable to a criminal pleader.

Dewan Harish Chandra Gupta, B.A., LL. B., Pleader, Rawalpindi.

I am using "Mr. Daulat Ram Prem's Criminal Practice" as a book of reference for over a year. I have always found it to be a never failing and time saving guide. The learned author has arranged the rulings in a simple and lucid style, under most appropriate headings. The book is bound to be very useful both to the Bench and the Bar. The author is to be congratulated on his successful efforts. The paper, print, binding and the general get up of the book are also very superior. Every criminal lawyer should have this book under his pillow.

"Justice", Lahore.

There is no exaggeration if we say that by compiling the book under review, the author has presented the legal profession with an encyclopædia of Criminal Law. It is the first book of its kind and is a standard work on the subject. It is a departure from the old system of grouping case law under sections of the Acts. It can be used as a legal dictionary on account of its excellent alphabetical arrangement. The author has turned out a conscientious piece of work. He has collected under appropriate heads and sub-heads the various points which facilitate the work of a busy lawyer to trace case law on the particular subject in a very short time. The sectional index at the end is of much use. The work is a clear proof of author's industry and his honest desire to make the Criminal Law and presents in a compendious form the law on almost all the important questions that arise in a criminal trial. The book seems to be indispensable for criminal lawyers.

The Malayan Law Journal, Singapore.

There is no doubt that the Criminal Practice and Extradition Manual occupy an important place among the standard publications on Criminal Law. In our opinion these works will find a ready sale.

M. Noor-ul-Hoda, Advocate, Arrah.

I have used Prem's Criminal Practice for some time now and I consider that it is quite useful and a distinct improvement on the Criminal digests we have in the market.

Criminal Practice (1864-1937)

CONTENTS.

Subject Heading.	Page	Subject Heading	Page
Abandonment of case	... 17	Advocate	... 77
Abandonment of child	... 17	Advocate-General	... 77
Abatement	... 17	Affairs of State	... 77
Abduction	... 18	Affidavit	... 77
Abetment	... 26	Affirmation	... 79
Ab initio	... 36	Affray	... 79
Abortion	... 36	Age	... 79
Abrasion	... 40	Agent	... 84
Abrogation	... 40	Agent provocateur	... 84
Absconding	... 40	Agitated state of mind	... 84
Absconding to avoid service	... 42	Aggrieved party	... 84
Absence of accused	... 43	Agreement	... 84
Absence of complainant	... 43	Aid	... 84
Absence of legal advice	... 47	Aid to Police Officer or Magistrate	... 84
Abuse	... 47	Alcohol	... 85
Abuse of process	... 47	Alibi	... 86
Accepting unstamped instruments	... 47	Allegations	... 87
Accessory after the fact	... 47	Alleged eye witness	... 87
Accessory before the fact	... 47	Allurement	... 87
Accessible place	... 47	Alteration	... 87
Accident	... 47	Altercation between Judge and Counsel	... 87
Accomplice	... 47	Alternative charge	... 87
Account	... 54	Alternative finding	... 87
Accountant	... 54	Alternative sentence	... 87
Accusation	... 54	Amendment of charge	... 87
Accused	... 54	Ammunition	... 87
Aconite	... 56	Animal	... 87
Abrasions	... 56	Anonymous letter	... 87
Anonymous letter	... 57	Antedating document	... 87
Advertising by counsel	... 57	Anticipating defence	... 87
Admonition	... 57	Apology	... 87
Animals	... 57	Apostasy	... 87
Acquaintance	... 57	Appeal	... 88
Acquittal	... 57	Appearance through counsel	... 103
Aet	... 60	Appellate Court	... 103
Acts done in furtherance of common intention	... 60	Appreciation of evidence	... 103
Acts done in prosecution of common object	... 65	Apprehended danger	... 103
Additional District Magistrate	... 65	Apprehension of impartiality	... 103
Additional evidence	... 65	Approval	... 104
Additional Sessions Judge	... 66	Approver	... 104
Adjournment	... 66	Arbitration	... 105
Admissibility	... 69	Arguments	... 106
Admission	... 71	Arms Act	... 107
Adulteration	... 74	Army Act	... 112
Adultery	... 74	Arrest	... 112
Advertisement	... 77	Arsenic	... 116
Advice	... 77	Arson	... 116
		Assailant, position of	... 117

Subject Heading.	Page.	Subject Heading.	Page.
Assault ...	117	Blandishment ...	150
Assault on provocation ...	118	Blank signed paper ...	150
Assault on public servant ...	118	Blood poisoning ...	151
Assault on woman ...	122	Blood ...	151
Assembling for committing dacoity ...	123	Bona fide claim ...	153
Assembly ...	123	Bona fide purchaser of stolen property ...	153
Assessor ...	123	Bond—forfeiture of ...	153
Assignment of bond ...	125	Books ...	153
Assistant Sessions Judge ...	125	Books of accounts ...	153
Assisting in concealment of stolen property ...	125	Boundaries ...	153
Associates ...	126	Boycot ...	153
Association with accused ...	126	Branches of tree—cutting off ...	153
Atropine ...	126	Breach of peace ...	153
Atmosphere ...	126	Breach of trust ...	159
Atmosphere of Court ...	126	Breach of lock ...	177
Attachment ...	126	Breast development ...	177
Attachment of property before judgment ...	126	Bribe ...	177
Attack on religion or its founder ...	127	Bridge—injury to ...	182
Attempt ...	127	Brief—non-acceptance of ...	182
Attempt to commit culpable homicide ...	128	British India ...	182
Attempt to murder ...	128	Broker ...	183
Attendance of witnesses ...	132	Bruises ...	183
Attestation—false ...	132	Buggery ...	183
Attorney ...	132	Building ...	183
Attributed remarks ...	132	Building likely to fall ...	183
Auctioneer ...	133	Bull ...	183
Authority ...	133	Bund—fight over ...	184
Authorship ...	133	Burden of proof ...	184
Autrefois acquit ...	133	Burglar ...	185
Autrefois convict ...	133	Burial place ...	185
Autopsy ...	133	Butcher ...	185
Avoiding service ...	133	Butcher shop ...	185
Bad character ...	133	Buying and selling minor ...	185
Bad livelihood ...	134	Buying wife ...	185
Bad manners ...	134	Byelaw ...	185
Bad repute ...	134	Bystanders ...	185
Bail ...	134	Canal water—fight over ...	186
Bail bond ...	140	Cantonment Act (II of 1924) ...	186
Balance sheet ...	142	Capital sentence ...	186
Bandh cutting ...	143	Carbon copies of statement ...	186
Banns of marriage ...	143	Carrier ...	186
Bank Manager ...	143	Cash ...	186
Bank—money in—	143	Cashier ...	186
Bank notes ...	143	Caste ...	186
Banker ...	143	Caste people ...	187
Barrister ...	143	Castor oil ...	187
Beard pulling ...	143	Cattle-pen ...	187
Beating—death by ...	143	Cattle Trespass ...	187
Behaviour ...	143	Cattle Trespass Act (I of 1871) ...	187
Belonging to gang of dacoits ...	143	Causing death by negligence ...	188
Belonging to gang of thieves ...	143	Causing miscarriage ...	188
Bench of Magistrates ...	143	Cereals and grain ...	188
Benefit of doubt ...	144	Certificate ...	189
Bestiality ...	145	Chalan ...	190
Betrothal ...	145	Chance witness ...	190
Bhunga ...	145	Changing grounds by prosecution ...	190
Bid by public servant ...	145	Character ...	190
Bigamy ...	145	Charge ...	190
Birth—concealment of ...	150	Charm ...	202
Biting by dog ...	150	Chawkidar ...	202
		Cheating ...	202
		Cheating by personation ...	216

Subject Heading	Page	Subject Heading.	Page.
Chemical Examiner ...	218	Confirmation of sentence ...	302
Cheque dishonoured ...	219	Confiscation of property ...	302
Chhavi ...	219	Connivance ...	302
Chief Justice ...	219	Consent ...	302
Child ...	219	Conspiracy ...	304
Child Marriage Restraint Act (1929) ...	219	Construction of statute ...	310
Chit-fund ...	219	Constructive liability ...	310
Cipher Code ...	219	Contempt of Court ...	310
Circumstantial evidence ...	219	Contempt of Courts Act (XII of 1925,) ...	315
Civil Court decree ...	221	Continuing offence ...	315
Civil dispute ...	221	Contradiction ...	315
Civil suit ...	221	Contradictory statement ...	315
Civil Surgeon ...	221	Contributory negligence ...	315
Civil trespass ...	221	Contused wound ...	315
Clearing obscurities ...	221	Convenience of parties ...	315
Closing evidence ...	221	Conviction ...	315
Clothes ...	221	Co-operative credit society ...	316
Co-accused ...	221	Copy ...	316
Cocaine ...	221	Copy-right Act (III of 1914,) ...	317
Cognizance of offences ...	221	Coroner's Act (IV of 1871) ...	317
Coin ...	227	Corporation ...	318
Collecting men to resist attack ...	227	Corroboration ...	318
Collection of crowd ...	227	Corpus delicti ...	318
Collective statement ...	227	Co-sharer ...	318
Colour blindness ...	227	Costs ...	318
Commission ...	227	Council of elders ...	318
Commitment ...	228	Counsel ...	318
Committing Magistrate ...	236	Counter or cross cases ...	319
Common gaming house ...	237	Counterfeiting coin ...	320
Common object ...	237	Counterfeiting currency notes ...	322
Communal feeling ...	237	Court and counsel ...	323
Communication ...	237	Court hours ...	324
Commutation of sentence ...	237	Court Inspector ...	324
Compensation ...	237	Court of Session ...	324
Compensation for injury from offence ...	242	Court's duty ...	324
Competition in trade ...	244	Court room ...	327
Complainant ...	244	Court witness ...	324
Complaint ...	244	Co-villager ...	330
Compounding of offences ...	254	Cow killing ...	330
Compromise ...	259	Cowries—whether instrument of ...	330
Compulsion ...	259	gaming ...	330
Concealing an abducted person ...	260	Credibility ...	330
Concealing an offender ...	260	Criminal breach of trust ...	330
Concealing designs to commit an offence ...	260	Criminal conspiracy ...	330
Concealing or dishonest removal of property ...	260	Criminal force ...	330
Concealment of birth ...		Criminal intimidation ...	330
Concealment of fact ...			
Concocted evidence ...			
Concussion ...			

Subject Heading	Page	Subject Heading	Page
Custom as defence	361	Disorderly house	432
Customer	364	Disposing unlawful assembly	432
Dacoits—(belonging to a gang of)	368	Disposal of property	432
Dacoity	368	Dispossession from immovable property	433
Dacoity with murder	373	Privity and restitution	433
Daily fine	373	Dispute concerning right of use of immovable property	440
Dais	373	Dispute as to easement	440
Dam	373	Dispute relating to immovable property	450
Damaging one's own property	373	Disqualification of Judge and Magistrate	443
Dang	373	State	443
Dark night	373	Debt money	441
Date of hearing	373	Disturbances	442
Day to day hearing	373	District Magistrate	444
Dead body	375	Disturbing religious assembly	445
Deadly weapon	376	Divorce	446
Deaf and dumb	376	Divorced wife	446
Death	376	Divah Gambling	446
Death by dragging by the neck	376	Dock	446
Death by negligence	376	Doctor's certificate	446
Debtor	380	Document	446
Deceased's property	380	Documentary evidence	448
Decree-holder—Trespass by—	380	Door—striking at	448
Decree of Civil Court	380	Doubt	449
Defamation	381	Dragging boy by neck	449
Default of appearance	384	Drainage of water	449
Defence	388	Drawing	449
Defence witnesses	388	Driving on wrong side	449
Defiling place of worship	404	Drowning	451
Delay	404	Drunken Brawl	451
Delegation	408	Drunkennes	452
Delivery	408	Duty of Court or Magistrate	452
Delusions	409	Duty of prosecution	454
Demolition of graves	409	Oying declaration	490
Demeanour	409	Dysentery—Death by	490
De novo trial	410	Easement—Disputes as to	493
Departmental inquiry	413	Echymosis	493
Depositor	414	Editor	493
Deserter	416	Election	494
Desperate and dangerous character	416	Electricity Act (IX of 1910)	494
Destruction	416	Elopement	494
Detention	416	Emasculation	494
Detention of Motor Car pending trial	418	Emergency order	495
Dhatura	418	Encroachment	495
Diary	418	Enforcement of maintenance order	495
Difference of opinion between High Court Judges	421	English Law	495
Difficult cases	421	Enhanced punishment	498
Diminution of Water Supply	421	Enhancement of sentence	503
Dipsomania	421	Enlargement of spleen	503
Director of Bank	421	Enmity	503
Directing prosecution	421	Entering a temple with boots on	503
Direction of assailant	429	Enticing or detaining a married woman	511
Disappearance of evidence	429	Entry to commit adultery	511
Discharge	432	Epidemic Diseases Act (III of 1897)	511
Discovery	435	Erroneous view of law	511
Discrepancy	443	Error	511
Discretion	444	Erysipelas—death by	511
Disease	445	Escape	511
Dishonestly or dishonesty	445	European British subject	513
Disobedience to order or summons	447	Event leading up to assault	513
Disobedience to order duly promulgated	449		

Subject Heading.	Page.	Subject Heading.	Page.
Evidence	513	False name	589
Evidence Act, 1872	525	False personation	589
Exaggerations in evidence	525	False personation in Court	589
Examination in-Chief	525	False return of income-tax	589
Examination of accused	525	False statement	589
Examination of approver	535	False statement to Police	589
Examination of complainant	535	False weights and measures	589
Examination of witnesses	537	Falsification of accounts	589
Excessive sexual intercourse	541	Falsus in uno falsus in omnibus	591
Exceptions in Penal Code—Proof of	541	Favour	591
Exchange of abuse	541	Fee	591
Exclamations by spectators	541	Fictitious name	591
Exclusion of evidence	541	Finder of article	591
Exclusive possession	541	Finding of fact	591
Excommunication	541	Fine	591
Execution of decree	542	Finger impressions	595
Executor	542	Fire	595
Exemption from personal attendance	542	Firearms—kinds of	595
Exemption from whipping	543	Fire works	595
Exhibit	543	Firing gun	595
Exhibition	543	First information report	595
Exhumation	543	First offender	603
Exorcising evil spirit	543	Fish	607
Expenses of witnesses	543	Food in stomach	607
Expert	545	Food stuff—poisoning by	607
Explanation by accused	549	Foot prints	607
Explosive	549	Forcible entry	613
Explosive Act (IV of 1884)	549	Foreign jurisdiction	613
Explosive Substances Act (VI of 1908)	549	Foreign Jurisdiction Act (1890)	613
Exposure of child	550	Foreigner's Act (III of 1864)	613
Exposure of person	550	Forest Act (XVI of 1927)	613
Expression of opinion	550	Forfeiture of bond	613
Expunging remarks	551	Forfeiture of newspapers, books, etc.	613
Extenuating circumstances	551	Forfeiture of seditious matter	614
Extorting confession	551	Forged document using as genuine	614
Extorting property	551	Forgery	618
Extortion	551	Former judgment	626
Extradition Act (XV of 1903)	553	Fouling water	626
Extra Judicial confession	554	Fracture of bones	626
Extra Judicial Information	554	Fracture of skull	626
Eye-witness	554	Fraudulently obtaining decree	626
Fabricating false evidence	555	Fraudulent concealment or claim of property	627
Factories Act (XII of 1911)	559	Fraudulent transfer	628
Facts	560	Free fight	628
Facts forming part of the same transaction	561	Fresh complaint	628
Facts inconsistent or improbable with fact in issue	563	Fresh trial	628
Failure of justice	564	Friendship	628
Failure to account	564	Frivolous complaint	628
Failure to prove a case	564	Frontier Crimes Regulations	628
Fair comment	564	Fugitive Offender's Act	629
Fall	564	Fulus in uno falsus in omnibus	629
False affidavit	564	Funeral ceremony	629
False charge	564	Further cross-examination	629
False claim in Court	571	Further inquiry	629
False defence	572	Gait—identification by	633
False document	572	Gambling	633
False evidence	572	Gang of dacoits	633
False information	584	Gang of thieves (belonging to)	634
False key	589	Gangrene—death by	636
		Gaps in prosecution	636

Subject Heading.	Page	Subject Heading.	Page.
Gesture	636	Illegal gratification	633
Gift to recover stolen property	636	Illegal omission	683
Gift to screen offender from punishment	637	Illegal seizure	683
Good behaviour	638	Illegalities	683
Good character	638	Illicit intercourse	683
Goods of common pattern	638	Illustrations	683
Good faith	638	Impeaching credit of witness	684
Government	639	Implicating innocent persons	685
Government notification	639	Implied consent	685
Government of India Act (1919)	639	Importing personal knowledge by Judge	685
Grievous hurt	639	Impotency	685
Grievous hurt by dangerous weapons	643	Imprisonment	686
Grounds of appeal	645	Improper admission or rejection of evidence	686
Guardian	645	Improper procedure	687
Gun shot wound	645	Imputations	687
Habeas corpus	645	Included	687
Hair	649	Incomplete chalan	687
Handcuffs	649	Inconsistent pleas	687
Handwriting	649	Incriminating circumstance	687
Handing over judicial file to witness	649	Incriminating questions	687
Hanging	651	Incriminating statements	688
Harbouring an offender	652	Indecent questions	689
Harming reputation	652	Indian Penal Code	689
Harrasment of accused	652	Inducement	689
Hasty trial	653	Infection (spreading of)	689
Headings of sections	653	Influence	689
Hearing counsel	653	Information	689
Hearsay evidence	654	Informers	689
Heir	654	Inherent powers of High Court	689
Hire purchase agreement	654	Inherent powers of Courts	691
Hirer	654	Injury	691
Hiring men for rioting	654	Inundation of public drainage	691
History sheet	654	Innocence	691
Holiday—trial on	654	Innocent persons—implicating of	691
Homicidal mania	654	Inquest	692
Honourable motive	654	Inquiry	693
Heroscope	654	Insane person—trial of	693
Hospital detention in for over 20 days	654	Insanity	697
Hospital register—entry in	654	Insinuation	697
Hospitality—accepting of by Magistrate	654	Inspection	697
Hostile witness	656	Instigation by approval	697
House breaking to commit offence	659	Instructions	697
House trespass			697

Subject Heading.	Page.	Subject Heading.	Page.
Investigating officer	707	Love potions—death by	777
Investigation	707	Low status of witness	777
Iron shod stick	710	Lunacy Act	777
Irregularities in	710	Lurking house trespass	778
Issue of process	715	Machinery—negligent conduct with	
Jail—trial in	715	regard to	779
Jandar	715	Magistrate	779
Jhatka meat	715	Maintenance	779
Jirga	715	Making faces	790
Joinder of charge	715	Malicious order by public servant	790
Joining Congress procession	715	Malicious prosecution	791
Joining unlawful assembly	715	Manager of a firm	791
Joint attack	715	Manipulation in evidence	791
Joint commitment	715	Maps and plans	791
Joint discovery	715	Marginal notes	791
Joint owner	715	Mark of injury	791
Joint trial	715	Marked coins	792
Joke	720	Marriage	792
Judge	720	Marriage register (forgery of)	792
Judgment	720	Marital law	792
Judgment of Civil Court	727	Master and servant	793
Judicial notice	727	Master of vessel	794
Judicial proceedings	729	Means	794
Jurisdiction	730	Medical Degrees Act, VII of 1916	794
Jury	737	Medical certificate	794
Juvenile offenders	754	Medical evidence	794
Kalma oath	755	Medical examination	794
Key	755	Medical opinion	794
Khatiks	755	Medical person	794
Kick	755	Medical treatment	794
Kidnapping	755	Melting stolen property	794
Killing under officer's order	762	Merchandise Marks Act, 1889	794
Kill	76	Mercy of Court	794
Knife—death by	762	Mercury—poisoning by	795
Knowledge of accused	762	Minor	795
Lacerated wound	762	Minor offence	795
Lahan	762	Mischief	795
Lambardar	762	Misconduct	801
Landholder	763	Misguiding people	801
Landlord	764	Misrepresentation	801
Land mark	764	Mistake of fact	802
Land owner	764	Mistress	802
Latrine in a private place	764	Mode of trial (irregular)	802
Lawful guardian	764	Moral conviction	802
Law report	764	Mortgagor—breach of trust by	803
Leading questions	764	Motive	803
Leave to appeal	764	Motor car	805
Legal advice	764	Motor Vehicles Act (VIII of 1914)	805
Legal Practitioners Act (XVIII of 1879)	765	Movable property	808
Letter	772	Murder	808
Limitation	772	Negligence	814
Liquidator	772	Negligent treatment of wound	814
List of stolen property	772	Newspaper	814
Loaded gun	772	Nicotine	814
Local inspection	772	Nitric acid	814
Local jurisdiction	774	Nolle prosequi	814
Local or Special Law	774	Non-appealing accused	815
Locus penitentiae	775	Non-production of witnesses	815
Lorry or motor car	775	Nose cutting	815
Lottery	775	Notes of speeches	815
Love letters	777	Notification	815
		Notorious facts	815

Subject Heading.	Page.	Subject Heading.	Page.
Noxious food	845	Playing cards	861
Nuisance	845	Plea of guilty	862
Number of witness	845	Pledge	865
Oath	845	Pneumonia—death by	865
Oath against oath	845	Pointing out	865
Oaths Act (X of 1873)	845	Poison	865
Obiter dicta	846	Police Act (V of 1861)	870
Objections by counsel	846	Police—assault on	873
Obscene acts and songs	847	Police—arrest by	873
Obscene books, paintings, etc.	847	Police—bail by	873
Obscurities	848	Police—complaints against	873
Obstructing public servant	848	Police constable	873
Occurrence	848	Police custody	874
Octroi	848	Police diary	874
Offence	848	Police—false information to	874
Offer of bribe	849	Police investigation	874
Offensive trade or occupation	849	Police man	874
Official communication	849	Police Officer	874
Official duty	849	Police report	874
Old man—attack on	849	Police—search by	875
Omission	849	Police station—officer in charge of	875
Omissions in evidence	849	Police statement	875
Omission to apprehend accused	849	Police surveillance	875
Omission to give information to public servant	849	Police torture	875
Omission to assist public servant S. 187, Cr. P. C.	850	Political agent	875
Omission to give nourishment to child	850	Politics	875
Onus pro bandi	850	Poor witness	875
Open court	850	Possession of wife, clerk or servant	875
Opinion	850	Post Office Act (VI of 1898)	876
Opium—poisoning by	850	Postal servant	876
Opium Act (I of 1878)	852	Post-mortem	877
Option of puberty	852	Power of attorney	877
Order of production of witnesses	855	Precedents	878
Ordering prosecution	855	Preliminary enquiry	878
Ordinance—repeal of	855	Preparation	883
Ornaments	855	Preparing cross-examination, oppor- tunity for	883
Ostensible means of subsistence	855	Presence at occurrence	883
Overhearing confession	855	Presentation of appeal	883
Owner	855	President, Municipal Committee	883
Palming evidence	855	President of a meeting	883
Painting	855	Press—liability of	883
Parcel agent	855	Press and Registration of Books Act (XXXV of 1867)	883
Parliamentary body	855	Presumption	883
Partner	855	Presumption of innocence	883
Parties as witnesses	855	Prevention of Cruelty to Animals Act (XI of 1890)	886
Parties	855	Prevention of Seditious Meetings Act (X of 1911)	886
Parties to a	855		
Parties with	855		

Subject Heading.	Page.	Subject Heading.	Page.
Privy Council ...	898	Realization of fine ...	959
Proceedings—copies of ...	*900	Receipt ...	959
Proceedings in Legislative Council ...	900	Receiving stolen property (S. 411, I. P. C.) ...	960
Proceedings—stay of ...	900	Receipt ...	969
Process fee ...	900	Receiving stolen property of a dacoity ...	969
Process—issue of ...	900	Record ...	969
Process of Court ...	900	Recording reasons ...	972
Procession ...	900	Recovery list ...	972
Procurement of minor girl ...	901	Rectum—thrusting stick in ...	973
Promoting enmity between classes ...	902	Reference ...	973
Proof of document filed by accused... 102	102	Reformatories—confinement of juvenile offenders in ...	977
Proof of fact ...	902	Reformatory Schools' Act (VIII of 1897) ...	977
Proof of innocence ...	903	Refreshing memory ...	978
Property ...	903	Refusal to answer question ...	979
Prosecution ...	903	Refusal to be medically examined ...	979
Prosecution of public servants ...	904	Refusal to refer to diary ...	979
Prosecutor ...	909	Refusal to sign statement ...	979
Prosecutor's wife—if person in authority ...	909	Refusal to take oath ...	979
Prostitute ...	909	Registration Act (XVI of 1908) ...	979
Prostitution—(buying or selling minor for) ...	911	Relationship ...	980
Prostitution by male ...	911	Release on probation ...	980
Protest ...	911	Relevancy of facts ...	980
Provocation ...	911	Religion ...	980
Proviso ...	911	Remand ...	981
Public documents ...	911	Remanding of case ...	983
Public Gambling Act (III of 1867)... 912	912	Remarks ...	983
Public good ...	916	Removing ladder (from a wall) ...	983
Public nuisance ...	926	Removing lateral support ...	983
Public place ...	926	Repetition ...	983
Public Prosecutor ...	927	Report ...	984
Public servant ...	937	Reputation—harming of ...	984
Public Servants Act (38 of 1850) ...	937	Res gestae ...	984
Public meeting ...	937	Res nullius ...	984
Public street—stopping use of ...	937	Reserved accommodation ...	984
Public way ...	937	Reserving cross-examination ...	984
Publication ...	937	Reserving defence ...	984
Publisher—of seditious matter ...	937	Resiling from previous statement ...	984
Puffing ...	937	Resistance to one's arrest ...	984
Punctured wound ...	937	Resolution ...	985
Punishment ...	937	Restoration ...	985
Pupil ...	937	Restoration of abducted female ...	985
Push—death by ...	937	Retrial ...	985
Putrefaction ...	940	Retrospective effect ...	987
Quantum of evidence ...	940	Review ...	987
Quashing proceedings ...	940	Revision ...	991
Queen's coins ...	940	Revival ...	1003
Questions ...	940	Right of private defence ...	1003
Questions by Court ...	940	Right of reply ...	1017
Questions by jury or assessors ...	940	Rigor mortis ...	1017
Railway Act (IX of 1890) ...	944	Ring game ...	1018
Railway passenger—cheating by ...	944	Ring leader ...	1018
Railway servant ...	944	Rioting ...	1018
Railway workshop ...	944	Robbery ...	1025
Raffle ...	944	Roof—entry on ...	1028
Rape ...	952	Ruling of High Court ...	1028
Rash and negligent act ...	954	Rumour ...	1028
Rash or negligent driving ...	956	Rupture of intestine ...	1028
Rash navigation ...	956	Rupture of liver ...	1028
Razor ...	956	Rupture of spleen ...	1023
Reading over statements ...	956		

CRIMINAL PRACTICE

(1864—1936.)

(1928 A. 263, 1927 L. 106, etc., refer to A. I. R.).

A

ABANDONMENT OF CASE.—*See* Legal Practitioners' Act, S. 13.

ABANDONMENT OF CHILD.—S. 317, Penal Code.

—1. Essentials and Evidence.

1. Concealing an illegitimate child in a bush is abandonment. 24 I. C. 837.
2. Abandoning an illegitimate new born child 200 yards from the village, which died, amounts to abandonment. 23 P. R. 1866, 24 M. 662, 1 Weir 332.
3. Abstaining from giving nourishment to child and keeping custody is not abandonment. 18 P. R. 1870.
4. Mere neglect or temporary abandonment is not sufficient. 55 I. C. 205.
5. Actual harm to the child is immaterial. 24 M. 662.
6. Exposure or leaving must be in any place. If the child is left with another wholly unable to take care of it, S. 317 does not apply. 18 A. 364, 24 M. 662 Dist.
7. Mother of an illegitimate child gave the new born child to her sister, who left it in the compartment of train. Both were guilty. 41 B. 152.
8. Where a mother of two children left her husband's house owing to ill-treatment, she is not guilty under S. 317. 4 P. R. 1879 Cr., 5 P. R. 1878 Cr.
9. Person having the care of the child for the time being and abandoning it is guilty. 37 I. C. 306.

—2. Intention.

1. Intention is the gist of the offence. 33 P. R. 1872, 5 P. R. 1878, 18 A. 364.
2. Exposing or leaving the child in any place must be with the intention of wholly abandoning it. 55 I. C. 205.
3. The only intention to complete the offence is of wholly abandoning the child. 1 Weir 332.

—3. Procedure.

If the abandoned child dies, conviction must be for murder 2 A. 340.

—4. Sentence.

A young girl of 18 put her illegitimate child naked in a hole in a brick kiln and which was found covered with ants. Held, S. 562, Cr. P. C., should not be applied and High Court sentenced her to 2 years' rigorous imprisonment. 1935 Pesh. 48 = 1935 Cr. C. 349.

ABATEMENT—*See* Death of Complainant, Absence of Complainant.

—1. of Appeal—S. 431, Cr. P. C.

1. An appeal abates on the death of appellant except one against fine. 16 P. R. 1878 Cr., 6 P. R. 1893 Cr., 2 B. 564, 19 B. 714. *See* 24 P. R. 1908; 8 P. R. 1919.
2. But High Court can examine the record of the case with a view to revision and rectification. 2 B. 564.
3. After the death of appellant, the question of refund of fine to the legal representative was referred by the High Court to the Local Government; for redress. 19 B. 714.

Abatement.—(concl'd.)**—2. of Prosecution.**

1. On the death of complainant criminal proceedings under S. 323, I. P. C., do not abate. 1924 A. 666 (2)=81 I. C. 719, 44 M. 417, 2 L. 27=1922 L. 227, 4 L. 7 26 P. R. 1917 and 25 P. R. 1919 overruled.
2. But a defamation case under S. 500, I. P. C. abates. 10 P. R. 1908 Cr.=7 Cr. L. J. 290=112 P. L. R. 1908.
3. In summons cases proceedings abate on the death of complainant. 51 M. 339. See 93 I. C. 891. 1932 Nag. 72=137 I. C. 91=33 Cr. L. J. 407=28 N. L. R. 49.
4. A son cannot be made party in place of deceased father. 21 C. 404.
5. In non-cognizable cases Magistrate can allow the complaint to continue by a proper complainant, if the original complainant dies. 93 I. C. 891=1926 B. 178, 28 Bom. L. R. 288=27 Cr. L. J. 491.
6. If a servant filed a complaint on behalf of his master another complainant can be substituted, if he dies. 1926 B. 178=93 I. C. 891=27 Cr. L. J. 491, 18 C. W. N. 1211.
7. Criminal proceedings under S. 498, I. P. C., do not abate on the death of the husband. S. 89 of the Probate and Administration Act does not apply to criminal prosecution. 4 L. 7=1924 L. 72=71 I. C. 77, 44 M. 417.
8. A personal action dies with the person. *Wharton's Law Lexicon*, P. 27.

—3. of Revision :—

1. Revision against an order under S. 250, Cr. P. C., does not abate on petitioner's death. 24 P. R. 1908 Cr. See 6 P. R. 1893 Cr.
2. Revision against a sentence of fine does not abate. 8 P. R. 1919 Cr. 1936 A. 313.
3. Revision against an order under S. 145, Cr. P. C., abates on the death of the petitioner. 23 P. R. 1919 Cr.

ABDUCTION :—Ss. 362-364-365-366-369, I. P. C.**—1. Abetment of.**

1. A woman cannot abet her own abduction. 40 P. R. 1866 Cr., 11 P. R. 1883 Cr., 6 P. R. 1871 Cr., 14 P. R. 1875 Cr., 5 P. R. 1871 Cr.
2. A person whose tonga is used for abducting a girl is only accessory after the fact and is not guilty unless a previous conspiracy is proved. 1930 L. 163=31 Cr. L. J. 131.
3. A young girl of 13 helping her brother should not be convicted of abetment. 13 P. R. 1916 Cr.
4. If persons who were present at the time of abduction did not do any overt act in furtherance of the act of kidnapping, they are not guilty. 1932 Oudh 771.
5. If a husband sells wife for immoral purpose to accused proof of charge of abduction of offence under S. 366 against accused is permissible if there was bargain before, in pursuance of which the girl was abducted. 28 Cr. L. J. 108=97 I. C. 236.

—2. Attempt at.

Accused came on the roof of a house and awakening a woman sleeping, asked her to accompany them. On her refusal they lifted her. She raised an alarm and accused dropping her ran away. Held it amounted to attempt to abduct. 1925 L. 512=86 I. C. 1007=26 Cr. L. J. 943=26 P. L. R. 119.

—3. Burden of Proof.

1. It is a justifiable presumption that when a woman is abducted or kidnapped, it is with one or other of the intents specified in S. 366. It is for the accused to explain away incriminating circumstances. 1930 L. 163=120 I. C. 605=31 Cr. L. J. 131, 123 I. C. 523. *Contra* 99 I. C. 121=1925 L. 184.
2. For a conviction under S. 366 it is not necessary to prove that woman was compelled to move from place to place. 1926 C. 320=27 Cr. L. J. 263.

Abduction.—(contd.)

3. Onus of proving age is on prosecution. 1931 L. 401=32 Cr. L. J. 1041.
4. If the accused pleads marriage, prosecution must prove that the woman was abducted with the intention of forcing or seducing her to illicit intercourse. 1934 Sind 119=151 I. C. 984.
- 4. **By Mother or Father or Guardian.** See Kidnapping—14.
A mother cannot have the custody of her minor children adversely to that of the father. If mother and accused take away minor from father in order to marry her against his wish, the accused is guilty. 1934 Oudh 89=35 Cr. L. J. 469=147 I. C. 670, 1925 C. 578=26 Cr. L. J. 290 and 8 C. 969 Rel. on, (1905) 1 Weir 348 Dist.
- 5. **Charge.**
 1. In case of a charge of abduction, notice of the charge of kidnapping is not a fair charge. When accused is charged with kidnapping only, the Judge should not leave the Jury to convict the accused of abduction. 1927 C. 200, 117 I. C. 862=30 Cr. L. J. 857.
 2. An appellate Court cannot alter a charge under S. 376, I. P. C., into one under S. 366, I. P. C. 8 Bom. L. R. 120=3 Cr. L. J. 240.
 3. Where the accused was charged with "kidnapping or abduction" the charge was defective. 1927 C. 644=104 I. C. 245=28 Cr. L. J. 805.
 4. Accused charged under S. 366 can be convicted of rape. 1932 A. 580=141 I. C. 127=34 Cr. L. J. 100.
 5. Accused should be charged separately for kidnapping and abduction. But the omission in splitting up the whole thing into two parts will not vitiate trial in the absence of prejudice to accused. 1934 C. 85=35 Cr. L. J. 487=147 I. C. 882, 57 C. 1074=1930 C. 909 and 1927 C. 644=28 Cr. L. J. 805 Rel. on. 1933 C. 194 Ref. 1933 C. 563, 1927 C. 200, 1934 Pat. 170.
- 6. **Concealing an abducted woman :—**S. 368, I. P. C. See concealing an abducted woman.
- 7. **Consent of abducted woman.**
 1. If a grown up girl of 19 submits herself to be carried away and raped and does not complain even when left alone there is a presumption of consent. 1931 L. 401=133 I. C. 560=32 Cr. L. J. 1041.
 2. Where a married woman of 25 years was dissatisfied with her husband and there were circumstances to show that it was a case of elopement, conviction under S. 366 is not justified. 2 L. L. J. 536.
 3. Consent obtained by misrepresentation is no consent. 17 P. R. 1916 Cr.
 4. Where it was not likely that the girl herself eloped with some of the accused and on missing her the parents got up the story against her paramours, conviction under S. 366 is improper. 1925 L. 274=6 L. L. J. 622.
 5. S. 366 does not cover a case of elopement or removal of the girl with her consent. 42 B. 391, 2 L. L. J. 536, 1925 L. 274.
 6. Where a widow was removed by force and soon gave up resistance and accompanied the accused—her paramour willingly, the accused was not guilty. 72 I. C. 533=24 Cr. L. J. 421=1924 L. 218.
 7. A conviction under S. 366 is not bad for the reason that accused had intercourse with the woman before abduction. 1930 M. 980=129 I. C. 463.
 8. Where the abducted woman has voluntarily lived with the accused for a couple of months before abduction as his wife and whom the accused intended to marry, he was not guilty. 1924 L. 218=72 I. C. 533=24 Cr. L. J. 421.
 9. Consent of a girl under 16 years is immaterial for a conviction under S. 366. 49 C. 905, 1930 C. 437=129 I. C. 834=51 C. L. J. 352.
 10. On a charge under Ss. 376-366, the age of the girl is very material. If a girl of less than 14 years was love smitten and wrote love letters, her consent is immaterial 1930 C. 437=51 C. L. J. 352=129 I. C. 834.

Abduction.—(contd.)

11. The "will" referred to in the first part of S. 366 means the will of the girl and not the will of her guardian. 1932 C. 442=33 Cr. L. J. 512.
12. If the grown up girl was carrying on intrigue up to the time of abduction, the accused taking her away to continue intrigue is not guilty. 1934 L. 227=151 I. C. 741. 1932 A. 409 Ref.
13. Where accused kidnapped a girl below 12 years to give her in marriage. Held that S. 90 I. P. C. does not apply to S. 366, I. P. C. 1933 Rang. 98=11 R. 213=34 Cr. L. J. 696.

—8. Continuing offence.

1. Abduction is a continuing offence. 50 C. 100+=1924 C. 389=25 Cr. L. J. 1082=81 I. C. 906, 22 I. C. 730.
2. Each fresh removal is an offence. 1925 Oudh 328=86 I. C. 71, 12 A. L. J. 91.
3. Where a woman is passed from man to man in the course of abduction, all such men are equally liable. 54 P. L. R. 1916.

—9. Deceitful means.

There must be clear evidence of deceitful conduct before a conviction under S. 366 can lie. 1930 L. 102+=32 P. L. R. 104=129 I. C. 197=32 Cr. L. J. 258=1930 Cr. C. 1185.

—10. Elopement:—See—7.

1. S. 366 does not cover a case of elopement or removal of girl with consent. 42 B. 391=2 L. L. J. 536.
2. Where it is not unlikely that the girl herself eloped with some of the accused and her parents got up the story against her paramour, conviction under S. 366 is improper. 1925 L. 274=6 L. L. J. 622.
3. Abducted woman was previously carrying on intrigue with the accused who eloped with her. Held that the necessary intention is not proved. A. L. R. 1933 L. 775.

—11. Essentials and Evidence.

1. Mere abduction without criminal intent is no offence. 99 I. C. 121, 1934 L. 227.
2. Abduction of married woman falls under S. 366. 45 C. 641, 1934 Pesh. 69.
3. Mere carrying the woman by force is insufficient. It should be with intent to marry against her will or force her to illicit intercourse. 193 P. L. R. 1911.
4. Although a girl has lost her chastity, she can be seduced under S. 366. 99 I. C. 98=1927 Sind 104=28 Cr. L. J. 66.
5. Seduction resulting in abduction need not be proved to be separate from that resulting in illicit intercourse. 1927 L. 370=101 I. C. 189=28 Cr. L. J. 413.
6. It is not necessary to prove under S. 366 that the woman was compelled to leave not only her house but was compelled to go from place to place. 1926 C. 320=92 I. C. 439.
7. The fact that the girl at the time of seduction intended to have intercourse is no defence under S. 366. 49 C. 905.
8. Where the abducted girl is not forthcoming and the principal witness is a boy of 10 who is brother of the husband of the girl and the eye-witnesses did not rescue her or inform her relatives immediately, the abduction was not proved. 100 I. C. 357=27 P. L. R. 747.
9. Where accused took a girl under 18 from place to place with the intention of seducing her to illicit intercourse and no force or fraud was used, he was guilty under S. 366-A. 88 I. C. 463=1925 Oudh 454=26 Cr. L. J. 1151.
10. There must be reliable or convincing evidence of deceitful conduct of the accused. 1930 L. 102+=129 I. C. 197=32 P. L. R. 104=32 Cr. L. J. 258.
11. The nearest paternal relations of the girl over 16, forcibly took her from her mother, who objected to her marriage with one of the accused, as she was not paid compensation for her upkeep. Held, that the accused were technically guilty. 5 L. L. J. 377=25 Cr. L. J. 430=1924 L. 110=77 I. C. 606.

Abduction.—(contd.)

12. Where a widow was removed by force but soon gave up resistance and accompanied the accused—her paramour—willingly. Held that accused was not guilty. 72 I. C. 533=23 Cr. L. J. 421=1924 L. 218.
13. 'Marry' in S. 366 means going through a form of marriage whether in fact it proves legal and valid or not. 45 C. 641=24 C. W. N. 695.
14. A girl was led by false representation by accused to his house that he was a constable and would take her to a Police Station. Held it amounted to abduction. 1923 L. 158=73 I. C. 510=24 Cr. L. J. 622
15. Where a Hindu mother-in-law forced her minor daughter-in-law to marry a person against her will, she was guilty. 30 P. L. R. 573=1929 L. 713=1929 Cr. C. 305.
16. A Muhammadan girl of 10 years was married to accused against her will and without the consent of the guardian for marriage; the person marrying her is guilty. 26 Cr. L. J. 290=1925 C. 578=84 I. C. 434.
17. Where accused by promise of marriage induced a woman to leave her house but does not marry her, he is guilty. 4 A. L. J. 482=6 Cr. L. J. 9.
18. The most important witness in abduction case is the abducted woman herself and where she is not forthcoming and the other witnesses are not of a reliable type the prosecution evidence must be carefully scrutinized. 28 Cr. L. J. 277.
19. Where two girls under 16 years of age ran away from their house and a woman sheltered them with a view to prostitute themselves, she was guilty under S. 366. 34 A. 340=9 A. L. J. 307.
20. Abduction of woman with intent to compel her to marry another is an offence under S. 366. 45 C. 641, 2 O. W. N. 17.
21. A woman was caught hold of by accused who dragged her a short distance and was rescued by people. Held that in the absence of evidence of intention, the accused was not guilty under S. 366 but under S. 354 only. 109 I. C. 127=29 P. L. R. 444.
22. The inducement to leave must have for its object seduction by another person and not by the person who himself induces the person to leave. 1930 A. 497=125 I. C. 577.
23. A brother and sister under 14 years of age abducted a minor girl, whom the brother raped. The brother is guilty under S. 366 but the sister is innocent as she was only employed as a decoy duck and could not possess the intent specified. 13 P. R. 1916 Cr.
24. Seduction applies to first act of illicit intercourse. The act of seduction must be subsequent to kidnapping. 1932 A. 409=33 Cr. L. J. 669=54 All. 756.
25. Where a person was found at the door of a house and did no overt act, while the accused caught hold of woman's hand and kidnapped her, he is not guilty. 1933 Oudh 62=34 Cr. L. J. 377.
26. A girl abducted from Moradabad was found at Delhi. A constable on suspicion took her and her companion to Thana and made a report. Sub-Inspector of Delhi recorded her statement. The statement is inadmissible in evidence, as the Delhi Sub-Inspector had jurisdiction by virtue of Ss. 156 (1) and 181 (4) Cr. P. C. It fell under S. 162, Cr. P. C. 1933 A. 665
27. "Seduction" means persuading to have sexual intercourse. Mere fact of girl's previous unlawful intercourse is immaterial as she may have resumed purity at the time. 1933 C. 718. 1929 A. 270=30 Cr. L. J. 529. 9 Pat. 647=1929 Pat. 651, 57 C. 1074=1930 C. 209. Rel. on 54 A. 756 and 2 Cr. L. J. 476 not foll.
28. Abduction or seduction is not limited to loss of chastity for the first time. 1930 M. 980=129 I. C. 463.
29. If a girl of 14 years was taken away by deceitful means and kept in a house as a prisoner, accused is guilty under Ss. 366-376 although she was a passive resister when she was raped for the first time. A. L. R. 1932 L. 440=1932 P. C. L. 440 Cr.
30. Where it was doubtful whether a married woman of 25 was forcibly carried away or went of her own accord, conviction is bad. 2 L. L. J. 536.

Abduction.—(contd.)

31. A mother-in-law deceitfully inducing the widowed daughter-in-law to go out of the house to compel her to marry against her will is guilty. 1929 L. 713.
32. Accused taking away a fatherless Muhammadan girl of 11 years with her mother's consent and marrying against the wishes of her brother who was guardian for marriage is guilty under S. 366. 1925 C. 578=25 Cr. L. J. 290=84 I. C. 434.
33. A Muhammadan girl after the age of 15 years ceases to be under the guardianship of her mother. 21 P. R. 1906.
34. It is not necessary that 'Marriage' may prove legal or valid. 45 C. 641.
35. As presumption of knowledge or intention cannot be imputed to a girl of 13 or 14, she is not guilty under S. 366 if she helped to deceive the abducted girl. 13 P. R. 1916 Cr.=17 Cr. L. J. 283.
36. The forcible or fraudulent taking away a woman is abduction. Wharton's Law Lexicon (1902) Ed. P. 11.

—12. Force or fraud in—See—11.

1. Where no force or fraud is practised on the person abducted, a conviction under S. 366 cannot stand. (1865) 2 Weir 7 (Cr.)
2. Where a procuress induced a married woman to become a prostitute and she made a deliberate choice and went to Calcutta with her, she was not guilty under S. 366 but under S. 498. (1864) 1 Weir 45 (Cr.)
3. Where accused attacked a person and dragged and carried his wife in broad daylight, he was guilty under S. 325 only. 27 P. L. R. 867.
4. There must be clear evidence of deceit. 1930 L. 1024.

—13. Illicit intercourse.

1. Illicit intercourse means merely sexual intercourse between a man and woman who are not husband and wife. 1907 A. W. N. 199=6 Cr. L. J. 9. 1932 L. 555=138 I. C. 597=33 P. L. R. 727=33 Cr. L. J. 673=1932 Cr. C. 719.
2. Where a man and woman had been cohabiting for a long time law presumes lawful marriage. 1934 Sind 119=151 I. C. 984.

—14. Intention for—

1. Abduction in itself without criminal intent is no offence. 99 I. C. 121. 1934 L. 227=151 I. C. 741. 1924 L. 218, 13 P. R. 1904 Cr. Ref. 1934 Pesh. 69, 12 P. W. R. 1911 Cr., 6 C. W. N. 208.
2. Intent specified in S. 366 may be inferred from circumstances and subsequent conduct of the accused. 1921 L. 323=67 I. C. 731, 110 I. C. 99.
3. A girl of 14 years was forcibly abducted by accused. Held that no inference except of the intention as is mentioned in S. 366 is possible. 1930 L. 52=31 Cr. L. J. 529.
4. The intention of the girl to have intercourse at the time of seduction is no defence under S. 366. 49 C. 905=1922 C. 508.
5. Accused party opposed every match for the girl and after abducting one of them married her. Held that the intent to marry against her will is proved. 1922 L. 410=77 I. C. 997=4 L. J. 322.
6. Where the abducted woman lived with accused for 2 months before abduction as his wife, the intent under S. 366 is absent. 1924 L. 218=24 Cr. L. J. 421.
7. If the intention of accused is to give the girl under 16 years in marriage, the conviction under S. 366 is right. 93 I. C. 248.
8. Actual marriage or intercourse is not necessary to complete the crime, but there should be evidence to show the intent or raise the presumption that illicit intercourse was likely to result from abduction. 23 P. R. 1868, 193 P. L. R. 1911.
9. A recruiter enticing a girl to an Emigration officer for recruitment is not guilty under S. 366 if she is forced or seduced to illicit intercourse there. 15 Cr. L. J. 154.
10. Where the accused is not shown to have knowledge or intention that the girl might be or was likely to be forced to illicit intercourse, the offence under S. 366 is not committed. 1927 L. 727=102 I. C. 552=28 P. L. R. 260=28 Cr. L. J. 584.

Abduction.—(contd.)

11. It is practically impossible for the prosecution to establish affirmatively the intention with which a woman is abducted or kidnapped. The presumption is that when any woman is abducted or kidnapped it is with one or other of the intents specified in S. 366 and it is for the accused to explain away the incriminating circumstances. 1930 L. 163=120 I. C. 606=31 Cr. L. J. 131, *contra* 1926 L. 184.
12. A person trying to sell a girl must be presumed to have intention or knowledge that she would be subjected to illicit intercourse. 1930 L. 463=1930 Cr. C. 531.
13. Deceitful marriage of girl with the intention of prostituting her amounts to abduction. 7 P. R. 1881 Cr.
14. The question of intent is a question of fact only. 14 A. 25.
15. The intent under S. 366 cannot be presumed in the case of a young girl of 13 years. 13 P. R. 1916 Cr.
16. It is contrary to the well-known rule of construction of Penal Statute to say that an intention to illicit intercourse can be presumed when the girl has already consented to intercourse. 11 B. L. R. 326.
17. If the object of the accused is to bring pressure on the husband of woman to withdraw certain complaint, the intention specified in S. 366 is not proved and therefore S. 366 is not applicable. 1935 A. 665=36 Cr. L. J. 826=155 I. C. 662.
18. Where intention or knowledge of likelihood of compulsion to marry or sexual intercourse is not proved, accused cannot be convicted although his conduct is reprehensible. 1933 Oudh 45=34 Cr. L. J. 220.
19. Intention to give child in marriage in contravention of Act 19 of 1929 is unlawful purpose, and the accused is guilty under S. 366. 1933 Rang. 98=34 Cr. L. J. 696=11 Rang. 213.
20. Mere carrying a woman by force is not offence under S. 366. 12 P. W. R. 1911 Cr.
21. Inference of intention may be made from circumstances. 31 Cr. L. J. 529=1930 L. 52, 29 Cr. L. J. 643, 1921 L. 323=67 I. C. 731.
22. Where accused opposed every match for the girl and abducted her and went through Nikkah form, intention under S. 366 is proved. 1922 L. 410=25 Cr. L. J. 633.

—15. **Joint trial**—under Ss. 366-368, I. P. C.

1. The offence of abduction may be tried in a court within whose jurisdiction the person abducted was abducted, conveyed or concealed. 1893 A. W. N. 164.
2. Joint trial of accused charged with abduction alone and accused charged with both abduction and kidnapping is irregular. 1933 C. 563=34 Cr. L. J. 682

—16. **Jurisdiction.**

- A and B abducted a girl and took her to the house of C. A joint trial of A and B under S. 366 and of C. under S. 368 was valid. 29 Cr. L. J. 496=1923 L. 751.

—17. **Of a child to take property from the person.**—S. 369, I. P. C.

1. The offence of kidnapping a child with the intention of stealing ornaments from the person of the child falls under S. 369. The consent of the child is immaterial (1867) 8 W. R. 35 (Cr.)
2. This being a serious offence the Magistrate should always commit the accused to the Court of Sessions. (1866) 6 W. R. 2 (Cr.)
3. Accused convicted under S. 369, cannot also be punished for theft. 7 M. H. C. R. 375.
4. Conviction under S. 302 can be altered to one under S. 369-109. 1933 Pat. 9=34 Cr. L. J. 266.

—18. **Of minor**—See Kidnapping.

—19. **Procedure.**

1. Accused cannot be convicted both under S. 363 and S. 366. (1867) 7 W. R. 36 Cr.
2. An appellate court cannot alter a charge under S. 370 into one under S. 366. 2. Bom. L. R. 120.

Abduction.—(concl'd.)

under S. 452. Held, that conviction under S. 452 was no bar to their S. 365, I. P. C. 26 A. W. N. 32.

6. Taking away a girl, at the instance of husband, from her father's house, concealing her in another house is an offence under S. 365, 1930 163 I. C. 301.
7. Husband cannot use force to compel wife to leave her parent's house 1936 A. 360=163 I. C. 301.

ABETMENT.—Ss. 107 to 116, Penal Code.**—1. Abetment.—(Scope of).**

- ✓ 1. Abetment is a separate and distinct offence, provided the thing abetted is 33 M. L. T. 263.
- ✓ 2. Abetment does not in itself involve the actual commission of the crime: is a crime apart. 52 C. 197=29 C. W. N. 181=1925 P. C. 1. 27 Bom
3. As a general rule a charge of abetment fails if the substantive of established against the principal. 52 C. 112=1924 C. 1031=26 Cr. 28 C. W. N. 1046, 61 I. C. 800, 1930 Oudh 505, 71 P. R. 1866.
4. Assistance in the preparation of an offence which ultimately was not a crime no offence under S. 109 or S. 511, I. P. C. 1925 Oudh 158=81 I. C. L. J. 1162=11 Oudh L. J. 640.
5. For a conviction of abetment it is not only necessary to prove that a part in those steps of the transaction which are innocent but it is absolutely necessary to connect him with those steps of the transaction which are 10 C. L. R. 4.
6. An act done after an offence is complete which might help the offence amount to abetment. 22 Cr. L. J. 452.
7. Mere subsequent knowledge of the offence is not abetment. (1865) 2 W.
8. An offence can be abetted though the means intended to be employed are, if it is physically impossible that the effect requisite to constitute an offence caused by them, e.g., by charm. 20 P. R. 1885 Cr.
9. Abetment is possible though offence abetted is not committed. 34 B. 394, 4 C. 366. See 81 I. C. 986.
10. A person unknowingly assisting is not guilty of crime or of aiding an 1935 A 346 (2)=153 I. C. 999.
11. Whether there can be abetment of a negligent act. See 36 C. 302.

—2. Abetment—when offence abetted is committed. S. 109, I. P. C.

1. Assistance in the preparation of an offence which leads to nothing is: 1925 Oudh 158=81 I. C. 986=25 Cr. L. J. 1162=11 Oudh L. J. 640.
2. Offering gratification as a reward or motive to withdraw a case under Vehicles Act, which had already been dismissed, was held not to amount to abetment of bribery. 33 C. L. J. 379.
3. A person marrying his married daughter again in the lifetime of her husband is guilty under S. 109. 14 M. 364, 26 M. 463.
4. A person taking active part in the preparation of a document, but no forgery of the name of the executant, is not guilty of forgery but of abet 20 C. 203, 21 C. 217, 22 C. 217, 23 C. 217, 24 C. 217, 25 C. 217, 26 C. 217, 27 C. 217, 28 C. 217, 29 C. 217, 30 C. 217, 31 C. 217, 32 C. 217, 33 C. 217, 34 C. 217, 35 C. 217, 36 C. 217, 37 C. 217, 38 C. 217, 39 C. 217, 40 C. 217, 41 C. 217, 42 C. 217, 43 C. 217, 44 C. 217, 45 C. 217, 46 C. 217, 47 C. 217, 48 C. 217, 49 C. 217, 50 C. 217, 51 C. 217, 52 C. 217, 53 C. 217, 54 C. 217, 55 C. 217, 56 C. 217, 57 C. 217, 58 C. 217, 59 C. 217, 60 C. 217, 61 C. 217, 62 C. 217, 63 C. 217, 64 C. 217, 65 C. 217, 66 C. 217, 67 C. 217, 68 C. 217, 69 C. 217, 70 C. 217, 71 C. 217, 72 C. 217, 73 C. 217, 74 C. 217, 75 C. 217, 76 C. 217, 77 C. 217, 78 C. 217, 79 C. 217, 80 C. 217, 81 C. 217, 82 C. 217, 83 C. 217, 84 C. 217, 85 C. 217, 86 C. 217, 87 C. 217, 88 C. 217, 89 C. 217, 90 C. 217, 91 C. 217, 92 C. 217, 93 C. 217, 94 C. 217, 95 C. 217, 96 C. 217, 97 C. 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931 C. 217, 932 C. 217, 933 C. 217, 934 C. 217, 935 C. 217, 936 C. 217, 937 C. 217, 938 C. 217, 939 C. 217, 940 C. 217, 941 C. 217, 942 C. 217, 943 C. 217, 944 C. 217, 945 C. 217, 946 C. 217, 947 C. 217, 948 C. 217, 949 C. 217, 950 C. 217, 951 C. 217, 952 C. 217, 953 C. 217, 954 C. 217, 955 C. 217, 956 C. 217, 957 C. 217, 958 C. 217, 959 C. 217, 960 C. 217, 961 C. 217, 962 C. 217, 963 C. 217, 964 C. 217, 965 C. 217, 966 C. 217, 967 C. 217, 968 C. 217, 969 C. 217, 970 C. 217, 971 C. 217, 972 C. 217, 973 C. 217, 974 C. 217, 975 C. 217, 976 C. 217, 977 C. 217, 978 C. 217, 979 C. 217, 980 C. 217, 981 C. 217, 982 C. 217, 983 C. 217, 984 C. 217, 985 C. 217, 986 C. 217, 987 C. 217, 988 C. 217, 989 C. 217, 990 C. 217, 991 C. 217, 992 C. 217, 993 C. 217, 994 C. 217, 995 C. 217, 996 C. 217, 997 C. 217, 998 C. 217, 999 C. 217, 1000 C. 217, 1001 C. 217, 1002 C. 217, 1003 C. 217, 1004 C. 217, 1005 C. 217, 1006 C. 217, 1007 C. 217, 1008 C. 217, 1009 C. 217, 1010 C. 217, 1011 C. 217, 1012 C. 217, 1013 C. 217, 1014 C. 217, 1015 C. 217, 1016 C. 217, 1017 C. 217, 1018 C. 217, 1019 C. 217, 1020 C. 217, 1021 C. 217, 1022 C. 217, 1023 C. 217, 10

Abetment.—(contd.)

7. A married woman is not an abettor under S. 498, I. P. C. 6 P. R. 1871 Cr., 11 P. R. 1883 Cr. *Contra* 17 P. R. 1868.
8. A person giving food to dacoits before dacoity is guilty. 1934 Rang. 30.
9. Active abetment at the time of committing offence is covered by S. 109 whereas S. 114 applies when a criminal first abets an offence and is subsequently present at its commission. 1933 B. 162=57 B. 329. 27 C. 566, 42 C. 422 and 1925 P. C. 1 Ref.
10. S. 109 has no application if the offence is not committed. 1933 R. 297.
11. Owner is not guilty of abetment if his car is used for committing an offence A. L. R. 1933 R. 326 (327).
12. Where two persons are determined to do a particular act and one uses the fire arm the other is guilty of abetment. 51 I. C. 449=20 Cr. L. J. 465.

—3. Abetment—when offence abetted is not committed. S. 116 I. P. C.

1. A vakil writing letter to other vakils to send cases and the fee will be shared between them, is an incitement under S. 116, I. P. C. 17 A. 498.
2. Accused offering a bribe to a civil surgeon cannot be awarded enhanced punishment under the latter part of S. 116, I. P. C., as it is not his "duty to prevent the commission of such an offence." 3 Pat. 647=1925 Pat. 48=83 I. C. 679=26 Cr. L. J. 119.
3. Abetment under S. 115 need not be of offence by particular person against particular person. 1933 C. 47=60 C. 427.
4. When people who gather together in a meeting were instigated to commit an offence of murder the case comes under S. 115 and S. 117 as well. 60 C. 427.
5. An abetment may be complete though effect contemplated was not caused. 1932 C. 760=140 I. C. 787.
6. The offence of kidnapping not being a continuing offence, there can be no abetment after the minor is completely taken out of lawful custody. 13 P. R. 1904 Cr. See 1 M. 173.
7. First part of S. 116 applies to a person accused of abetment of bribing a police officer 1928 L. 840.
8. Offer of bribe to doctor to retain a patient longer, who had been ordered to be discharged is an offence under S. 116. 1930 M. 671=126 I. C. 603.
9. A person abetting a bigamous marriage to which the woman does not consent, is guilty under S. 116 as offence of bigamy is not complete. 18 Cr. L. J. 478=39 I. C. 318.

—4. Abettor and Principal.

1. Agent selling *Atta* (flour) unfit for food is guilty as principal and not abettor. 15 P. R. 1873 Cr.
2. A principal who has been convicted of an offence as principal cannot also be punished for abetting it. 2(1865) 4 W. R. (Cr.) 23.
3. Conviction of abettor is in no way dependant on the conviction of the principal 20 P. R. 1885, 1 B. 15, (1872) 18 W. R. (Cr.) 32, 1924 C. 1031=52 C. 112.
4. Abettor is an instigator, or settor or, or one who procures a crime to be committed *Wharton's Law Lexicon*, P. 12.

—5. Accessory after the fact.

1. Accessory after the fact is not punishable. 26 A. 197. 61 I. C. 836=22 Cr. L. J. 452, 11 P. R. 1869 Cr. 27 C. 10+1, 5 Pat. 536, 1923 L. 345.
2. An act done after the commission of offence which might help the offender is not abetment. 22 Cr. L. J. 452.
3. A person whose tonga is used for abducting a girl is an accessory after the fact and is not guilty. 1930 L. 163=120 I. C. 606=31 Cr. L. J. 131=1930 Cr. C. 171

Abetment.—(contd.)

4. A Hindu woman left her husband's house with her infant daughter and went to the house of A. She married the daughter to A's brother the same day without the consent of her father. A is guilty of abetment of kidnapping. 8 C. 969, 1 M. 173, 19 A. 109, *contra* 8 P. R. 1694 Cr. 13 P. R. 1893 Cr.
5. If there is conspiracy before the abduction of a girl between the principal and accessory, the latter is liable. 23 A. W. N. 233.
6. Evidence of accessory after the fact cannot be accepted without corroboration. 1936 O. 413.
- 6. Advice if—
Advice *per se* is not necessarily abetment, unless it is meant actively to suggest or stimulate the commission of an offence. 54 I. C. 997=21 Cr. L. J. 213.
- 7. Approval—See—14.
- 8. Attempt at—
Attempt to abet an offence is possible. 49 P. R. 1874 Cr., 24 P. R. 1882 Cr.
- 9. By advice—See—6.
- 10. By aiding—
 1. Supplying food to a person known to be engaged in a crime is not *per se* criminal. But if it was supplied to enable him to go on a journey to the intended scene of crime, it is abetment. 2 M. 137, 1 B. L. R. 351.
 2. A wants to shoot B. A goes to the house of C and induces him to call B. B arrives and is murdered. C is not guilty of abetment, as it was not his intention that crime should be committed. 47 A. 268=1925 A. 230, 29 Cr. L. J. 561.
 3. A zamindar, who lent a house to the police officer who tortured some persons at the investigation, is guilty of abetment. 16 A. W. N. 194.
 4. A person who purchases a railway ticket for a person suffering from cholera and travels with him in the train is guilty of abetment of an offence under S. 269, 1 P. C. 7 M. 276.
 5. A person giving orders to assault a particular person is guilty of abetment. 7 W. R. 61 (1867), 31 C. 710.
 6. Giving of a weapon to hurt another is abetment. (1869) 12 W. R. (Cr.) 62.
 7. If a person who lends his support does not know or has no reason to believe that the act which he is aiding or supporting was itself a criminal act, it is not abetment. 47 A. 268=1925 A. 230, 1928 Nag. 257=109 I. C. 497=29 Cr. L. J. 561.
 8. Acceptance of unstamped receipt is not aiding. 8 A. 18, 7 B. 82, 7 C. P. L. R. 21, 23 P. R. 1876.
 9. Accepting unstamped pronote is not abetment. 20 A. 440, 7 M. 71.
 10. Attestation or writing of document whereby a child is sold for prostitution is not abetment. (1884) Weir 47.
 11. A guardian of a Muhammadan married female aged six years who caused a marriage ceremony to be gone through in her name with another person, during the life time of her husband, in the absence of the girl, was held not guilty of abetment. 4 C. 10. See 6 C. W. N. 343.
 12. Assistance in the preparation of an offence which ultimately was not committed cannot amount to abetment. 81 I. C. 986=25 Cr. L. J. 1162=1925 Oudh 158.
 13. Supplying *Dhatura* to one's mistress to be administered to her husband is abetment. 38 I. C. 1003.
 14. Doctor supplying medicine to poison a person is guilty of abetment. 24 P. R. 1882 Cr., 109 P. R. 1866 Cr.
 15. Aiding in the preparation of an offence is not abetment unless that offence is committed. 1925 Oudh 158=25 Cr. L. J. 1162.
- 11. By being present at the commission of crime. See—39.
 1. Mere presence at the commission of a crime cannot amount to intentional aid, unless the person present holds position of rank or influence such that his presence may be

Abetment.—(contd.)

- held to be a direct encouragement, or unless some specific duty of prevention rests on him. 32 C. W. N. 783, 19 Cr. L. J. 63, 8 Rang. 603=1931 Rang. 1, 43 I. C. 93.
2. Persons present at the celebration of a bigamous marriage are not guilty of abetment, although the priest who officiates at it is guilty. 6 B. 126.
 3. Husband looking on while wife is beating daughter-in-law, husband is not guilty of abetment. 1925 A. 126=85 I. C. 150=26 Cr. L. J. 470.
 4. Mere presence of a constable at the beating of a prisoner by another constable to extort confession is abetment. 20 B. 394.
 5. Omission to raise alarm when offence is being committed is not abetment. 25 I. C. 625=15 Cr. L. J. 617.
 6. An offence of abetment by presence falls through if the principal offence is not substantiated. 32 Cr. L. J. 478=1931 Pat. 52=130 I. C. 269=1931 Cr. C. 148.
 7. Abettor need not be present at the scene of occurrence. Presence makes him liable as principal. 1924 C. 257=81 I. C. 353, 39 A. W. N. 1883.
 8. Mere knowledge or standing while a theft is being committed by others is not covered by the definition of abetment. 1929 Sind 9=111 I. C. 732=29 Cr. L. J. 924.
 9. If the accused came to the spot armed with lathi, even if he did not injure any one, he at any rate aided the infliction of injuries and is therefore guilty under Ss. 325—109 I. P. C. 132 I. C. 529=32 Cr. L. J. 905=1931 Oudh 274.
 10. Mere presence of a person near the scene of murder without having any weapon with him is not sufficient, by itself for conviction for abetment. 33 I. C. 655=17 Cr. L. J. 175.

—12. By conspiracy.—See Conspiracy.

1. It is sufficient if the accused engages himself in the conspiracy in pursuance of which the offence is committed. 28 C. 797, 21 W. R. 35.
2. Where parties concert together and have a common object, the act of one of the conspirators in furtherance of common object is the act of whole. (1871) 17 W. R. 15.
3. A conviction* for conspiracy cannot stand when the charge against other conspirators has failed. 9 C. L. J. 663.
4. Where riot is committed by some persons for the benefit of their masters, the latter cannot be convicted of abetment of the riot. 1925 Nag. 372=88 I. C. 13=26 Cr. L. J. 1069.
5. Where a woman prepared herself to commit suicide by becoming *suttee* and accused followed her to the pyre and one of them told her to say "Ram Ram" and then she would become *suttee*, held that accused were guilty of abetment. 3 N. W. P. 316.
6. It is no defence that accused were expecting a miracle when offering a woman to become *suttee*. 8 Pat. 74=1928 Pat. 497=9 Pat. L. T. 683=29 Cr. L. J. 1035=112 I. C. 363.
7. A woman who believes herself to be with child, but not being with child, conspires with other persons to administer drugs to herself for abortion is liable for abetment of abortion. 24 Q. B. D. 20.
8. If one person makes a false report in pursuance of the conspiracy and another accompanies him and says nothing the person who tells the story is guilty under S. 182 and the other of abetment. 3 O. W. N. 96.
9. Under the Penal Code, conspiracy, except in cases provided for by Ss. 311, 400, 401, 402 and 121, I. P. C., is a mere specie of abetment when an act or omission takes place in pursuance of conspiracy. 24 M. 523.
10. Abetment by conspiracy presupposes deliberate previous act on the part of abettor. 1935 Oudh 468=36 Cr. L. J. 1151.

Abetment.—(contd.)

11. Accused and approver in pursuance of conspiracy to commit theft conspired to kill H. Held, they were guilty under Ss. 302-307 in the absence of direct evidence as to who dealt the fatal blow. 1930 Pat. 164=127 I. C. 555.
12. It is not necessary that the act abetted should be committed nor that the abettor should concert the offence with the person who commits it. 23 C. 797.

—13. By illegal omission.

1. Omission to raise alarm or to interfere when offence is being committed is not abetment. 25 I. C. 623=15 Cr. L. J. 617.
2. Abetment by omission would be punishable if the omission were an illegal omission. 9 Bom. L. R. 159, 30 P. R. 1865 Cr., 1923 Nag. 257=109 I. C. 497, 1925 A. 126.
3. To prove abetment by "illegal omission" it is necessary to show that the accused intentionally aided the commission of the offence by his non-interference. (1873) 24 W. R. 26 (Cr.)
4. The omission must involve a breach of legal obligation. 9 Bom. L. R. 159, 29 Cr. L. J. 561=1928 Nag. 257=109 I. C. 497.
5. If the police officer omits to arrest a person who attacks a person in his custody, he is guilty of abetment. 20 B. 394.
6. A village Magistrate who was present at the time when some constables were extorting confession and did not interfere is guilty of abetment. 1 Weir, 52 (1899).
7. A servant drove a car on the road over which traffic was prohibited, the master is not guilty of abetment where he omitted to inform him. 9 Bom. L. R. 159, 5 Cr. L. J. 173.
8. A wrote a letter to C saying that B was X, and C on the faith of this assurance identified B as X at the treasury who withdrew the amount. Held, that failure to inform the treasury officer that he was identifying on the assurance of a letter is not an illegal omission, and therefore C was not guilty of abetment. 10 P. L. T. 657=1929 Pat. 157=116 I. C. 753=30 Cr. L. J. 642=13 A. I. Cr. R. 133.
9. There should be intentional aid by some act or illegal omission. 1 Bom. L. R. 331.
10. In a case of revolutionary songs, the president of a meeting is not liable for abetment. 1932 C. 549=138 I. 763=36 C. W. N. 191=33 Cr. L. J. 699.
11. Accused was President of public meeting and bugle was sounded in spite of the orders of Police. He refused to disclose the name of bugler. Held, he was not guilty of abetment as he was elected President just before the meeting and he had no knowledge that bugle was to be sounded. 1933 C. 36=34 Cr. L. J. 36 1932 C. 549.
12. "Illegal omission" has reference to an intention of "aiding the doing of a thing." 1933 C. 36=34 Cr. L. J. 36, 1932 C. 549 Rel. on.
13. Omission of A to interfere where B beats C is not abetment and is not punishable 1925 A. 126=26 Cr. L. J. 470=85 I. C. 150.
14. Where a head constable who knew that certain persons were to be tortured for extorting confession, purposely kept away, he was held guilty of abetment. 2 W. R. Cr. 11.
15. Omission to give information of a crime does not amount to abetment, unless there is a legal obligation. 4 B. L. R. 7.

—14. By instigation or inducement.

1. A master ordering or facilitating the commission of a crime by servant is guilty of abetment. 1928 C. 752=116 I. C. 372, (1872) 18 W. R. 8, (1869) 12 W. R. 52, 29 Cr. L. J. 239.
2. If the riot is committed by servants for the benefit of the master, the latter can not be convicted of abetment of riot. 1925 Nag. 372=88 I. C. 13=26 Cr. L. J. 1069

Abetment.—(contd.)

3. Placing of temptation is not instigation but actively stimulating one is instigation. 42 I. C. 989.
4. Informing husband against intriguing wife and lover being murdered, the informant is not guilty of abetment. 30 P. R. 1872 Cr. 49 P. R. 1887.
5. Instigation may be of an unknown person. 12 Bom. L. R. 105.
6. Expressing approval of accused in beating the tenants, when more blows were given to them, the accused is guilty of abetment. 25 A. L. J. 149=1927 A. 730=100 I. C. 537=28 Cr. L. J. 313.
7. The offence is complete as soon as the abettor has incited another to commit a crime, whether the latter consents or not, or whether, having consented, he commits the crime or not. 12 Burma L. R. 70.
8. Asking a witness to suppress certain facts in giving evidence amounts to abetment. 2 M. H. C. R. 438.
9. Where persons of influence being aware of the objects of the unlawful assembly deliberately absented themselves from the locality when such assembly was formed, it is not instigation. 4 C. W. N. 500.
10. Where the act instigated was only thrashing (the words used were 'Maro Sale Ko') but stabbing was done resulting in murder. Held, stabbing cannot be deemed to be probable consequence of instigation to thrash, the accused was guilty under S. 352 read with Ss. 109 and 114 and was sentenced to 3 months. 1935 A. 346 (2)=153 I. C. 999. 6 A 491 Rel on.
11. Where A ordered B and C to forcibly take D and he was so beaten to death. Held, A was guilty at least under Ss. 326-107. 7 W. R. 97.
12. Statement to Public Servant—"A wished to pay you Rs. 5,000" may with reference to context constitute instigation to receive a bribe 1923 B. 44=23, Cr. L. J. 466.
13. Where one person instigates another by letter sent through post, the offence of abetment by instigation is completed as soon as the contents of the letter become known to the addressee, is received 16 A. 389.
14. Mere finding of approval or connivance is not sufficient. 1921 Pat. 304.
15. The word "instigate" literally means to goad or urge forward or to provoke, incite urge or encourage to do an act. A person may not instigate but may co-operate with him and his co-operation may consist of counsel or conjoint action. In either case there is abetment. 1932 C 760.
16. Advice *per se* is not instigation, unless it is meant actively to suggest or stimulate the commission of an offence. The conviction resting on the finding that accused must have advised, etc., is wrong. 54 I. C. 997=21 Cr. L. J. 213.
17. A person who instigates a raider or a leader of the raid in which murder is committed is guilty of abetment of murder 1934 C 221=35 Cr. L. J. 334.
18. M induced Z to personate C and to purchase a four anna stamp paper in the name of C. The purchase was so made. M procured false endorsement for using it under C in Judicial proceeding. M was guilty under Ss. 193-107. 2 A 103.
19. If there is no definite evidence of actual words used by accused in abetment, conviction is improper 1936 P. 608.

—15. By letter

The offence of abetment by instigation is completed as soon as the contents of the letter containing incitement to commit an offence become known to the addressee. 16 A. 389

—16. By master or servant

1. A servant drove a car on a road over which traffic was prohibited, the omission to inform him by the master is not abetment. 41 Bom. L. R. 15=5 Cr. L. J. 173.
2. Where act is committed for the benefit of master, he is not liable. 25 I. C. 13.
3. If a servant commits an offence at master's instigation, it is a mitigating circumstance. 1935 A. 346 (2)=153 I. C. 999 (2).

Abetment.—(contd.)

4. A master is guilty of abetment of murder which is caused by beating of servants under his directions. 1923 C. 750=30 Cr. L. J. 621.

—17. By suppressing evidence.

Where the accused asked a witness to suppress certain facts in giving his evidence, it was an abetment of giving false evidence. 2 M. H. C. R. 438.

—18. Charge of.

1. It is not open to court to find a man guilty of abetment of an offence on a charge of the offence itself. 40 A. 120, 11 B. H. C. R. 240.
2. A person charged under S. 379 cannot be convicted under S. 109 for abetment of theft, if he is not charged with abetment. 33 M. 264, 60 I. C. 999.
3. In the absence of a definite charge of abetment being framed against an accused which he had no opportunity to meet, his conviction for abetment of murder under S. 302 read with S. 114, Penal Code, is wholly illegal. 118 I. C. 473=30 Cr. L. J. 944=1929 Nag. 325.
4. Accused charged under Ss. 302/34 cannot be convicted under Ss. 302/114 I. P. C. 74 I. C. 267=1923 C. 453.
5. Where a conspirator is to be made responsible for an offence at the commission of which he is present, he should be specifically charged with such offence as read with S. 114. 52 C. 253=1925 C. 341=29 C. W. N. 173.

—19. Complaint of.

S. 196-A. Cr. P. C., applies only to prosecution for conspiracy punishable under S. 120-B. and not for abetment of conspiracy punishable under S. 109. 49 C. 573=1922 C. 107=26, C. W. N. 680=23 Cr. L. J. 657, 3 Rang. 95.

—20. Conviction for.

1. Conviction for abetment is not dependent on the guilt of principal. 55 P. R. 1905 Cr. 45 P. R. 1911.
2. Conviction for abetment is possible, though offence abetted is not committed. 34 B. 394, 46 C. 607, 4 C. 366, 1922 B. 284=75 I. C. 299. 71 P. R. 1866 Cr.
3. Appellate court cannot convert a conviction for substantive offence into one of abetment. 33 M. 264, 71 P. R. 1866 Cr.
4. An abettor may be convicted even if principal is not arrested. 19 B. 105.
5. Accused charged under S. 379 cannot be convicted under S. 109 for abetment of theft, if he is not charged with abetment. 60 I. C. 999=22 Cr. L. J. 311, 33 M. 264.
6. It is irregular to convict and punish a person for abetment of theft and at the same time for receiving stolen property. 3 A. 181.
7. There can be no conviction for abetment of murder without proof of murder. W. R. Sp. 12.
8. A person cannot be convicted of abetment solely on the confession of accused implicating him in the offence. 5 C. W. N. 294.
9. A person who commits an offence and afterwards conceals the evidence of it cannot be convicted of the abetment of such an offence. 8 B. H. C. R. 126.
10. One can abet an offence through the means intended to be employed are physically incapable of causing the requisite effect. 20 P. R. 1885.
11. A person can be guilty of abetment, although the principal offender is incapable in law to commit the offence. A Hindu father marrying his 8 years' old married daughter is guilty of abetment of bigamy. 6 C. W. N. 343.

—21. Instigating by approval—See—14.

—22. Joint trial of abettor and principal.—See Joint trial—5.

—23. Jurisdiction.

1. A person sending letter to another inviting him to commit an offence is guilty of abetment, as soon as the letter is read by the addressee and is triable at the place where received. 16 A. 389.

Abetment.—(contd.)

2. The abetment of an offence in British India by foreign subject residing in foreign territory is not triable in British India. 20 P. R. 1878 Cr.
3. An offence under S. 366-A is a continuing offence. Where the offence and its abetment is committed in different places, the accused may be jointly tried at the place where the offence was first committed. 1930 A. L. J. 1485=1931 A. 55=131 I. C. 246=32 Cr. L. J. 690=53 All. 140.
4. Where accused at C caused a telegram to be despatched at T to one J, the T court had jurisdiction to try offence under Ss. 420/511. 99 I. C. 127=1927 M. 77=28 Cr. L. J. 95=51 M. L. J. 635.
5. If a British subject abets an offence committed in Native State, he can be tried under S. 108-A, I. P. C. 24 B. 287. 19 B. 105 Diss.

—24. Liability of abettor when act is different from that abetted.—S. 111, I. P. C.

1. If a man instigates another to commit a particular crime and that other commits another crime in furtherance of that crime, the instigator is liable for the other crime as well. 6 A. 491 (494)=1884 A. W. N. 251.
2. It is necessary that the consequence would have been within the contemplation of a reasonable man. 6 A. 491.
3. Act must have been committed in pursuance of a conspiracy. 11 M. L. T. 1.
4. Where several persons turned out to beat a man and one of them killed him, others are liable for grievous hurt only. The killing was beyond the common purpose and was not the probable consequence of abetment. (1866) 7 W. R. (Cr.) 61 (97).
5. B and C instigated A to rob the deceased on his return home. A killed the deceased. A is guilty of murder but others are guilty under Ss. 109-392, I. P. C. 6 A. 491=1884 A. W. N. 251.
6. The word 'act' in S. 111 means criminal act. 1931 Pat. 52=32 Cr. L. J. 478.
7. S. 111 applies only when the act done is probable consequence of abetment. 1935 Oudh 473. 6 A. 491 Foll.
8. When the actual injury caused is greater and is not the probable consequence of abetment, S. 110 and not S. 111 applies. 1935 Oudh 473.
9. When in pursuance of conspiracy to obtain a girl by show of force and on her mother's refusal, one of the two accused fired a gun. Held, that the other accused is not guilty of abetting the death of mother. 43 I. C. 827=19 Cr. L. J. 235.

—25. Liability of abettor when effect caused is different—S. 113, I. P. C.

1. A joined B in beating C with a heavy stick and in consequence C died of fractured skull. Held, both were guilty of murder. 1921 Nag. 78=23 Cr. L. J. 54.
2. Four persons beat the deceased and two of them gave fatal blows, others are liable. 41 P. W. R. 1914 Cr., 43 P. W. R. 1914 Cr., 26 I. C. 667=1005.

—26. Of abetment—S. 108 (Expl. 4) I. P. C.

1. For abetment of abetment of an offence the offence need not be actually committed. 4 C. 366.
2. Asking a doctor to supply medicine for poisoning a person is abetment of abetment. 24 P. R. 1882 Cr.
3. When abetment of an offence is punishable under S. 109 or S. 116, the abetment of said abetment is also an offence. 46 C. 607.
4. A sought the help of B with the intention of committing a theft of the property of B's master. B with the consent of his master and for the purpose of procuring A's punishment aided A in carrying out the object. Held that A is liable for abetment of theft, although theft was not committed. 4 C. 366.
5. Abetment of abetment is punishable. 1934 Pesh. 110.

—27. Of attempt.—See Attempt to murder.

Supplying arsenic to accused with knowledge of the object is abetment of attempt to murder by poison. 103 P. R. 106 Cr., 38 I. C. 1003.

Abetment.—(contd.)**—28. Of breach of by-law.**

1. The abetment of a breach of the by-laws framed by a District Council under the authority of the Burma Rural Self-Government Act is not punishable under S. 109, I. P. C. as it is not an abetment of an offence within the meaning of that section. 115 I. C. 664=6 Rang. 791, 23 P. R. 1894 Cr.
2. S. 107 does not punish the abetment of breach of by-laws framed under local law. 1929 Rang. 75, 7 B. H. C. 89, *see* 24 C. W. N. 196.

—29. Of breach of license.

1. If there is no guilty knowledge of vendor there is no abetment of breach of license under the Excise Act. 55 P. R. 1905 Cr.=3 Cr. L. J. 135.
2. Where a motor driver allows an unlicensed person to drive the motor car who injures passengers by upsetting the car and thereby is convicted for an offence under S. 337, the motor driver cannot be convicted as an abettor under S. 107 as it cannot be said that he intended the car should be driven rashly and negligently. 119 I. C. 536=1930 Sind 64=30 Cr. L. J. 1077=1930 Cr. C. 121.

—30. Of offence by public or by more than ten persons.—S. 117, I. P. C.

1. The mere fact that accused presided at a public meeting in which revolutionary songs inciting to murder were sung, is not sufficient to charge him of abetment. 36 C. W. N. 191=1932 C. 549=138 I. C. 763=33 Cr. L. J. 699.
2. Exhorting Sikhs to form Shahidi Jathas for going to a certain place and collecting funds is an offence under S. 17, Criminal Law Amendment Act as well as under S. 117, I. P. C., as Jathas would be unlawful associations. 1926 L. 115=25 Cr. L. J. 1374.
3. Instigating the formation of unlawful associations and contributing towards it is an offence under S. 117, I. P. C. 5 L. 1=1924 L. 440.
4. Abetment of an offence under the Salt Act is not punishable under S. 117, I. P. C. 7 O. W. N. 895, 1930 Oudh 497. *Contra* 134 I. C. 187=32 Cr. L. J. 1131, 55 B. 233, 1931 A. L. J. 986, 1931 B. 140=55 B. 353.
5. An offence under S. 117, I. P. C. and S. 17 (1) of the Criminal Law Amendment Act can be tried as summons case. 131 I. C. 472=1931 B. 199=32 Cr. L. J. 718.
6. Where accused abetted 12 coolies in breaking their contracts, although it was separate offence under S. 492 by each coolie, the abetment was not punishable under S. 117. 3 W. R. 24 Cr.
7. Revolutionary songs were sung in a meeting. President not forbidding the same is not guilty of abetment. 1932 C. 549=33 Cr. L. J. 699.
8. Instigating railway workers to lie on line in the event of strike is offence under S. 117. 1933 M. 279 (1)=34 Cr. L. J. 524.
9. Speech inciting audience to murder falls under Ss. 302-117. 1933 L. 660.
10. To constitute an offence under S. 117, the public should have read the leaflets in question or they should have been exposed to public gaze. 1932 C. 760=36 C. W. N. 782.

—31. Offences committed in Native States.—S. 108-A., I. P. C.

If a British subject in India abets an offence committed outside British India, he can be tried in British India. 24 B. 287.

—32. Of offences, e. g., abduction, bribery, cheating, etc.—See under these offences.**—33. Of offences under Registration Act.**

In case of false recital as to purchase money in deed of sale to defeat pre-emptors, the vendee is not guilty of abetment. 23 P. R. 1869 Cr.

—34. Of offences under Salt Act.

1. The punishment under S. 177, I. P. C. for abetment of an act which is an offence under the Salt Act is illegal as S. 9-A, Salt Act, provides for such a case. 1930 Oudh 497=1930 Cr. C. 1161.

Abetment.—(contd.)

2. S. 109 does not apply to the abetment of a breach of by-law framed under a local law. 1929 Rang. 75.

—35. Of offence under Stamp Act.

Accepting of unstamped receipt or pronote is not an abetment. 18 P. R. 1895, Cr. 20 A. 440. 7 M. 71, 8 A. 18. Distinguishing 5 C. W. N. 30.

—36. Of offence punishable with death or transportation.—S. 115, I. P. C.

1. S. 115 applies when abetment is not punishable under another provision of the code. 1933 L. 660=34 Cr. L. J. 1207.
2. "Express Provisions" refer to sections in which abetment of offences punishable with death or transportations are dealt with. 37 C. W. N. 91.

—37. Of offences under Special or Local Law.

1. The offence of abetment can be committed in respect of offences under Penal Code and not under Local or Special Law. 1929 Rang. 75=30 Cr. L. J. 509, 7 B. H. C. R. 89.
2. S. 109 does not apply to abetment of breach of by-law under a local Act. 1929 Rang. 75. See 24 C. W. N. 196.

—38. Out of British India.

1. A foreign subject, resident in foreign territory, instigating the commission of an offence which, in consequence, was committed in British territory, is not amenable to the jurisdiction of British Courts. 10 B. H. C. R. (Cr. C.) 356, 20 P. R. 1878.
2. S. 188 Cr. P. C. has no application when offence of abetment has been committed outside British India. 19 B. 105. See 24 B. 287.

—39. Presence of abettor.—S. 114 I. P. C. See—11.

1. To come within S. 114 I. P. C., the abetment must be complete apart from the presence of the abettor at the scene of offence. 105 I. C. 584=1927 M. 1115=29 Cr. L. J. 72, 42 C. 422, 1925 M. 364. 1932 L. 483=138 I. C. 191, 51 M. 263, 1933 Rang. 236, 1934 L. 813, 27 C. 566.
2. Where a person who abets the commission of an offence is present and helps in it, he is guilty of the offence and not merely of abetment except in a few cases like rape or bigamy where the person committing the offence alone can be guilty of the offence. 1927 M. 97=97 I. C. 958=27 Cr. L. J. 1198. 7 Rang. 329=118 I. C. 637, 1933 M. 123=34 Cr. L. J. 90.
3. S. 114 is evidentiary and not punitive. It applies to a case where a person abets the commission of an offence some time before and is again present at the time when offence is committed. 1925 P. C. 1=52 C. 197=85 I. C. 47, 97 I. C. 958=1927 M. 97, 1925 M. 364=82 I. C. 262.
4. The words of S. 397, I. P. C., are not such as to exclude the operation of Ss. 114 and 34 of the Code. 82 I. C. 45=25 Cr. L. J. 1181=1925 Nag. 136.
5. One accused not joining in attack with the same intention as the others. S. 114 cannot be applied. 1923 L. 170=5 L. L. J. 414.
6. Where a woman was at the time of murder sitting on a charpoy at a distance of eight yards and was urging the assailants to kill her victim, she is guilty under S. 302 read with S. 114. 27 P. L. R. 716=28 Cr. L. J. 85.
7. Decoying deceased into the clutches of murderers is abetment of murder. 68 I. C. 17=23 Cr. L. J. 481=1922 Oudh 202, 6 A. 509.
8. S. 114 resembles S. 34 in this, that it rather regulates procedure and punishment than creates an offence. 81 I. C. 353=1924 C. 257=25 Cr. L. J. 817.
9. Persons assisting an accused to commit murder whether by themselves assaulting the deceased or by preventing his friends from helping him are guilty of the same offence as the accused. If they merely go to the spot with some innocent intention and the accused suddenly commits a murder without their assistance and possibly contrary to their wishes, they can be guilty of the offence, if any, which they themselves commit. 104 I. C. 242=1927 Oudh 321=26 Cr. L. J. 802.

Abetment.—(concl'd.)

10. A conspirator who stood outside of a house while his friends entered inside and looted it and watched out in pursuance of the common design, was guilty under S. 114. 1 Bom. L. R. 351.
11. R gave orders to beat and the deceased was struck with a heavy stick. Conviction of R under Ss. 302/114 is improper. 42 C. 422. See 8 L. L. J. 509.
12. Persons who incite others to commit criminal trespass although they do not commit it themselves are guilty as principals. 28 Bom. L. R. 1029=1926 Bom. 512=27 Cr. L. J. 1153.
13. Abettor present at the scene of occurrence is deemed to be a principal in the second degree. 7 Rang. 329 (338)=1929 Rang. 293=30 Cr. L. J. 961.
14. If an abettor, on account of his presence, is to be charged under S. 114, on principal, his abetment must continue down to the time of the commission of the offence. If he distinctly withdraws at any moment before the final act is done, the offence is not committed with his continuing abetment. 10 B. H. C. R. (Cr. C.) 497.
15. S. 109 deals generally with abetments, but S. 114 applies only where not only abettor is present at the time of the act but abetment is completed prior to and independent of his presence. 1933 Oudh 468=36 Cr. L. J. 1151=157 I. C. 370.
16. S. 114 applies only to those cases only in which the accused if absent would be liable as abettor. 1935 Oudh 473, 1925 Oudh 468 Foll.
17. Two persons armed with gun were retreating from a robbery and one of the pursuers was killed by a shot from one of them. Held that the other was guilty under S. 302 read with Ss. 34 and 114. 1934 C. 10=38 C. W. N. 108=61 C. 150.
18. S. 114 is different from S. 34 as the act of abetment falling under S. 34 is committed at the time the offence itself is committed. 29 C. 496, 5 Cr. L. J. 414.
19. S. 114 contemplates abetment as having taken place at some other place and time than the commission of the offence itself. 15 P. R. 1899.
20. S. 75 does not apply to offence under this section. 7 Cr. L. J. 32 (34).

—40. Sentence.

1. Out of the four accused under S. 302, two were sentenced to transportation for life and the other two were found guilty of abetment and were present at the occurrence and were sentenced to seven years' imprisonment. Held, the sentence is illegal. The latter were liable to capital sentence or transportation for life. 1930 L. 338, =32 Cr. L. J. 56=127 I. C. 855=12 L. L. J. 3, 1896 P. J. L. B. 269.
2. If a person is convicted of an offence read with S. 114, and if the offence under the particular section of the Code renders the offender liable to whipping, he is punishable for whipping as well. 118 I. C. 637=7 Rang. 329=1929 R. 293=30 Cr. L. J. 961.
3. A consignment of til-seed was loaded into nine buffalo carts. Two were driven by A and B, who left the road leading to their destination and went to a godown for abstracting the seed, where C was directing operations. C was tried separately for each cart. Held, that C was abetting an offence by each carter separately. 1923 C. 403=761 I. C. 651=25 Cr. L. J. 219.

AB INITIO.

A person who abuses the authority given him by law becomes a trespasser *ab initio*, i. e. is liable as a trespasser from the beginning. *Wharton's Law Lexicon* P. 12.

ABORTION.—

—1. Abetment of—

A person supplying drugs to the woman for the purpose of bringing about miscarriage is guilty of abetment, although miscarriage is not caused. 10 Cr. L. J. 19.

—2. Attempt. Ss. 312—316 I. P. C.

- 1 The expulsion of child brought about by artificial means would be premature labour upto the 6th month of pregnancy. A person employing criminal means may be convicted for an attempt. 19 W. R. 32 Cr.

Abortion.—(contd.)

2. Accused asked her mistress to take drug to procure miscarriage. She tasted the powder but spit it out. He wanted to put the liquid in her mouth when she cried out. Held accused was not guilty of attempt. 1933 C. 893=35 Cr. L.J. 97.
3. If the drugs employed are harmless and impossible to cause miscarriage, accused is not guilty. 37 C. W. N. 1151=A. L. R. 1934 C. 110.

—3. Causes of.

—A. Accidental or natural.

1. The natural causes are so frequent that according to Whitehead's observation, of 2,000 pregnancies one in seven terminated in abortion. *Taylor's Med. Jur. 1928 Vol. II, P. 143.*
2. Some of the well recognized natural causes are :—
 - (a) Specific fevers of all kinds. During an attack of fever the uterus may empty itself.
 - (b) Excessive Vomiting.
 - (c) Ghorea Gravidarum.
 - (d) Bright's disease—especially if advanced.
 - (e) Advanced heart, lung or liver disease.
 - (f) Syphilis.
 - (g) Uterine and ovarian disease.
 - (h) Disease of the placenta—syphilitic or other degenerative accidental separation, haemorrhage.
 - (i) Disease, and especially the death of foetus. *Taylor's Med. Jur. 1928, Vol. II, Pp. 143-144.*
3. Among the ordinary or accidental cause may be enumerated violent mental emotions, the impression of strong odours, the fright caused by thunder, noise of artillery, sights of frightful objects, errors in diet, stimulating food or drink, abuse of spirituous liquor, too much exercise, the agitation of carriage or vehicles, accidental falls, or blows on the abdomen, wounds, tight clothing, immoderate laughter, excessive venery, surgical operation of any kind, even the extraction of tooth, etc. Sometimes abortion is the result of syphilis, etc. The peculiar constitution of atmosphere also produces abortion sometimes, as an epidemic. *Ryan's Med. Jur. 1836, P. 270.*
4. Accidental or natural causes may be divided into Maternal and Foetal causes. See *Ryan's Med. Jur. 1935 Pp. 383-384.*

—B. Drugs—

1. There is no drug and no combination of drugs which will, when taken by mouth, cause a healthy uterus to empty itself, unless it be given in doses sufficiently large to seriously endanger, by poisoning, the life of the woman who takes it. *Taylor's Med. Jur. 1928, Vol. II, Pp. 155-159.*
2. Among direct emmenagogues the following drugs have been included from time to time ; aloes, cantharides, canthophyllin, borax, apiol, Potassium permanganate, manganese dioxide, myrrh, etc., etc.—*Ibid.*
3. Quinine definitely increases uterine contraction but there is no undisputed evidence that it will produce abortion even when pushed.—*Ibid., Ryan's Med. Jur. 1836, Pp. 270-271.*
4. The substances popularly believed to possess abortifacient properties are :—
 - (a) Ecbolics ;
 - (b) Reputed Emmenagogues ;
 - (c) Purgatives ;
 - (d) Irritants, and
 - (e) other substance like juice of bamboo leaves. *Lyon's Med. Jur. 1935, Pp. 388-390.*

—C. Local injection.

1. The injection of a fluid into the uterus for the purpose of procuring abortion is frequently carried out by the woman herself.

Absconding.—(concl'd.)

12. Prosecution must prove that absconder was present before the occurrence. 1934 Pesh. 70.
13. The maxim "*fatetur facinus qui iudicium fugitis*" is not to be applied to India. 1934 Pat. 533. 1915 L. 106=16 Cr. L. J. 155=27 I. C. 219.

—7. Restoration of absconder's property.—S. 89, Cr. P. C.

1. It is only when the applicant for restoration of property shows both that he had not absconded and that he had not proper notice, that the property can be restored. 1926 L. 662=27 P. L. R. 825=96 I. C. 977=27 Cr. L. J. 1025.
2. A civil suit for the setting aside of a sale under S. 88 is barred by the provisions of the Code. 10 L. 338=1928 L. 562=111 I. C. 508.
3. If the provisions of S. 87 have not been complied with, the attachment or other penal consequences are void. 19 M. 3, 22 A. 216.
4. S. 89 applies to a case where the validity of attachment proceedings is challenged. 39 P. R. 1917, 40 P. W. R. 1916; 22 A. 216, 27 A. 572 & 19 M. 3 Dist.
5. Not only the petition for restoration must be made but also the necessary facts should be proved within two years. 1926 L. 662=27 Cr. L. J. 1025.
6. If no application is made within 2 years, High Court has no jurisdiction under S. 561-A to order restoration. The proper remedy is an application to Government. 82 I. C. 365, 6 P. R. 1917 Cr.; 15 Bom. L. R. 175.
7. Accused need not apply himself for restoration of property, the application can be made by any one on his behalf. 15 Bom. L. R. 175=14 Cr. L. J. 237.
8. Where property is sold, the applicant for restoration can get only the net proceeds of the sale. 73 I. C. 269=24 Cr. L. J. 573.

—8. Revision.

1. An order under S. 88 is a proceeding within the meaning of S. 435 and can be revised by the High Court. 76 I. C. 18=1924 L. 617=25 Cr. L. J. 82.
2. When land is attached without warrant, the High Court can interfere under the inherent powers. 1926 L. 662=96 I. C. 977=27 Cr. L. J. 1025.

—9. To avoid service.—See absconding to avoid service.**ABSCONDING TO AVOID SERVICE.—S. 172. I. P. C.****—1. Absconds.—**

If a person having concealed himself before process issues, continues to do so after it has issued, he absconds. 4 M. 393 (397)=1 Weir 76.

—2. Applicability.

1. S. 172 does not apply to a person who absconds from a warrant of arrest, as it is not an order to the person but to police. 50 A. 666=1928 A. 232=30 Cr. L. J. 203, 28 P. R. 1890, 2 C. L. J. 625.
2. To avoid the service of process, which has not issued, is no offence under S. 172, I. P. C. 28 P. R. 1890, 5 W. R. 71 Cr.
3. S. 172 does not apply to warrant issued, by Civil Court. 1883 A. W. N. 222, 28 P. R. 1890. 1 Weir 75.

—3. Essentials and evidence.

1. A person cannot be said to abscond if he merely intended to get rid of the process-server, e.g. where he refused to accept service, abused the process-server and went inside the house. 10 O. A. L. R. 439.
2. An absconder cannot be convicted under S. 172, where summons issued to him did not mention place for his attendance. 4 M. 393.
3. Police reported that the trees of accused overhang another house. The Magistrate issued an order to accused to lop off branches or show cause. The police wanted accused to sign receipt of this order, which he refused. Held, the order and the request made for receipt were illegal. 1883 A. W. N. 222.

Absonding to avoid service—(concl.d.)

4. S. 172 applies to accused who was placed in charge of attached property and did not produce it for sale and avoided the notice to produce it. 16 A. L. J. 600.
5. S. 172 applies only if a summons or notice is to be served on accused and who absconds to evade service. 1936 A. 354=162 I. C. 755.
6. Absconding of the accused, when an order under S. 552, Cr. P. C. for the restoration of a woman is issued by District Magistrate, in order to avoid it, is no offence. 1936 A. 354=162 I. C. 755.

ABSENCE OF ACCUSED.—Ss. 512, 540-A, Cr. P. C. See absconding : exemption from personal attendance.

—1. Conviction in—

Convicting and sentencing an accused in his absence is illegal. 105 I. C. 683, 3 M. H., C. R. App. 34.

—2. Evidence taken in.—S. 512, Cr. P. C.

1. Evidence taken in the absence of accused cannot be admitted unless it was proved and found that he had absconded at the time. 38 A. 29, 21 P. R. 1883, 1890 A. W. N. 100.
2. The fact of absconding should be alleged, tried and established before the deposition of a witness is recorded. 10 C. 1097, 48 A. 376.
3. Mere omission to record a finding that there was no immediate prospect of arresting accused who had clearly absconded does not render evidence inadmissible. 41 A. 60, 6 L. 489=1926 L. 83=92 I. C. 423.
4. Evidence taken in the absence of accused under S. 512 cannot be treated as evidence if the witness is living and can be procured. 157 P. L. R. 1911=12 Cr. L. J. 214.
5. Convicting and sentencing absent accused is illegal. 1927 L. 870=105 I. C. 683=26 P. L. R. 239=28 Cr. L. J. 971.
6. A deposition recorded under S. 512 can be read only if deponent is dead or incapable of giving evidence. That he cannot remember the details is no sufficient ground. 1924 L. 605=76 I. C. 31=25 Cr. L. J. 95.
7. A pardon can be tendered to a co-accused even if the principal accused is absconding. In such a case his evidence can be recorded under S. 512. 46 B. 120=1922 B. 177.

—3. Medical Certificate for.

A certificate granted by a qualified doctor is sufficient evidence of accused's inability to attend, unless the certificate is to be disregarded for any reason. 1925 L. 101=81 I. C. 126=25 Cr. L. J. 638.

—4. Trial in.—S. 540-A, Cr. P. C.

1. Court cannot appoint pleader without the consent of the accused, when he is ill and cannot attend personally. 11 L. 220=1929 L. 705=1929 Cr. C. 351.
2. A Judge passed an order under S. 540-A dispensing with the presence of the accused, so that he may see his relatives. Held, that order was not correct because S. 540-A is applicable only if the accused is incapable of remaining before the Court. If the accused is capable of attending the trial, and the trial could be proceeded with, the order is illegal. 1930 L. 817=1930 A. L. J. 1076.
3. Order under S. 540-A can be passed in the absence of the accused. 1932 L. 103.
4. Absence of accused, as he wishes to go to some remote place is no ground for applying S. 540-A. 1932 A. 504.
5. S. 540-A does not authorise Magistrate to dispense with attendance of accused who is too ill to attend Court. 1936 Rang. 114=37 Cr. L. J. 436.

—5. When officer on tour.

When officer is in camp he should not dismiss an appeal in default. 11 P. R. 1905 Cr.

ABSENCE OF COMPLAINANT.—See Ss. 247, 259, Cr. P. C.

A.—In Summons cases, S. 247, Cr. P. C.

*Absence of Complainant.—(contd.)***—1. Absence.**

1. The acquittal of the accused under S. 247 on the day fixed for judgment on account of absence of the complainant is improper. 71 I. C. 669=1923 Nag. 158, 46 C. 867.
2. When case is adjourned for arguments, S. 247 applies. 39 M. 505, 18 C. W. N. 584=15 Cr. L. J. 163.
3. If the absence of the complainant is due to circumstances beyond his control, the complaint should not be dismissed. 42 C. 365, 38 M. 1028.
4. If the magistrate takes up the case on a day on which it is not fixed and dismisses it, the dismissal is not under S. 247, Cr. P. C. 1934 A. 1025.
5. If the accused is acquitted owing to absence of complainant on a date not fixed for the hearing, the order of acquittal is nullity. 42 C. 365, 1934 A. 1025.
6. Where the complainant had no notice of an adjourned date and was therefore necessarily absent, an order of acquittal is not valid. 1928 M. 1158=113 I. C. 625.
7. When the case is called for the purpose of fixing a new date, absence of complainant is no ground for taking action under S. 247. 1934 B. 130=35 Cr. L. J. 1139.
8. If the complainant is absent, magistrate has discretion to dismiss the case. 1932 M. 563, 2 Weir 307 Dist. 1930 A. 658.

—2. Appearance and its delay.

1. Appearance by pleader is insufficient unless specially allowed. 49 M. 883.
2. Magistrate is not bound to wait for the complainant till the close of the day. 7 M. 213, 49 M. 883=1926 M. 1009=96 I. C. 652.
3. Where a party summoned to appear at 11 A. M., appeared at that time but did not wait till 2 P. M. when the court commenced to sit, there is sufficient appearance, 1927 M. 393=99 I. C. 944.
4. If a complainant is present in another room of the court by mistake, the complaint should not be dismissed. 37 I. C. 312, 61 I. C. 59.
5. When particular place to appear is not specified, accused cannot be acquitted under S. 247, 1882 A. W. N. 229.
6. Complainant not appearing owing to non-service of notice and ignorance of the postponed date, cannot be said to be absent within the meaning of S. 247. 52 M. 695.
7. Non-appearance on a date that it was holiday is not a sound excuse and the magistrate must proceed under S. 247, 1923 M. 439=52 I. C. 885.

—3. Fresh trial. S. 403, Cr. P. C.

1. Acquittal under S. 247 for absence of complainant bars further trial. 1929 C. 189=116 I. C. 174, 34 M. 253, 1923 A. 360, 99 I. C. 855, 40 M. 976, 61 I. C. 59.
2. The Code does not make any distinction between acquittals after trial and acquittals under Ss. 247, 345, 494 Cr. P. C. at the initial stage of the case. 1921 Pat. 311=61 I. C. 59, 40 M. 976, 29 M. 126 Dist.
3. The word "tried" in S. 403 does not necessarily import a decision of any case on the merits. 99 I. C. 855, 1923 A. 360.
4. Accused cannot be tried for theft in case of acquittal under S. 247 for mischief under S. 425 on the same facts. 1923 C. 407=76 I. C. 293.
5. Where summons are issued to accused but the complainant does not appear even through summons have not been served, fresh complaint is barred under S. 403, Cr. P. C. 1935 C. 491=36 Cr. L. J. 1238.
6. Where the complainant is absent on a date not fixed for hearing 42 C. 365 or when he had notice of the adjourned date (1918 M. 1158) and being absent the accused was acquitted, the acquittal is nullity. But it must be set aside before the case can proceed. 1935 C. 491 (494)=36 Cr. L. J. 1238.
7. The fact that complainant mistook the date will not entitle him to bring fresh complaint if accused is acquitted under S. 247. 1934 L. 211 (2).

Absence of Complainant.—(contd.)**—4. Object.**

The object of S. 247 is to prevent the complainant from being dilatory in prosecution of the case and if he is not present when the case is called on for hearing, the accused is entitled to acquittal. 49 M. 883=1926 M. 1009=96 I. C. 652.

—5. Procedure.

1. If a warrant case is tried as a summons case, complaint cannot be dismissed for absence of complainant. 28 C. 652, 28 C. 211.
2. But if summons case is tried as warrant case, the acquittal of accused for absence of complainant is legal. 1923 M. 439=72 I. C. 885=24 Cr. L. J. 469.
3. If the same transaction gives rise to two offences—one summons case and the other warrant case, the procedure of warrant case shall apply. 41 M. 727, 11 C. 91, 39 M. 503, 63 I. C. 619, 22 B. 711 (713).
4. The right to an order of acquittal accrues to an accused upon two conditions and is dependant firstly on the absence of the complainant and secondly on the court not adjourning the case. 1926 C. 102=87 I. C. 970, 1923 C. 725=77 I. C. 892.
5. S. 247 authorizes the court to adjourn the case to enable the complainant to appear but cannot dispense with his presence except when he is a public servant. 1926 L. 628=96 I. C. 878=27 Cr. L. J. 1022.
6. If the case is not taken up, accused cannot claim to be acquitted. 1926 C. 102.
7. Accused is not acquitted automatically for absence of complainant. 1923 C. 725.
8. A court which has acted under S. 247 has no power *suo motu* to restore the case and cancel the acquittal. 1903 M. W. N. 190, 1927 M. 473=100 I. C. 238; 73 I. C. 240.
9. Dismissal of complaint has the effect of acquittal of an accused who is not summoned. 34 M. 253, 45 A. 58. *Cont.* 40 M. 976, 95 I. C. 388, 74 I. C. 1054.
10. It is immaterial whether summons was served on the accused or not. 4 Pat. L. T. 15.
11. Absence of accused is immaterial for applying S. 247. 53 B. 693, 34 M. 253.
12. When case is called on wrong date and complaint is dismissed for absence of complainant, the magistrate can proceed with the case on the date fixed. 18 C. W. N. 1188. 42 C. 365, 1927 C. 702.
13. Where complainant is absent, the magistrate may acquit accused or adjourn the case. 22 C. W. N. 199.
14. S. 247 does not apply to proceeding under S. 107, Cr. P. C. 101 I. C. 607.
15. The complaint cannot be revived after acquittal. 1924 C. 96, 99 I. C. 326.
16. Accused were summoned under S. 426, I. P. C. and acquitted for absence of complainant. The trial of the accused under S. 379 on the same facts, and reviving of the complaint by District Magistrate is illegal. 1923 C. 407=25 Cr. L. J. 149.

—6. Revision.

1. High Court only can set aside order under S. 247, if the order is improper. 1924 C. 96=73 I. C. 940, 1927 M. 172=99 I. C. 32, 52 M. 695.
2. District Magistrate cannot set aside order under S. 247, as it is one of acquittal. 77 I. C. 295=1925 Oudh 44=25 Cr. L. J. 359.
3. High Court will not interfere in revision, when there is no error of law on the face of record. 100 I. C. 238, 38 M. 1028, 1925 M. 1009, 1927 M. 473.
4. High Court will not ordinarily interfere in revision in the case of acquittals but this rule does not properly apply to one under S. 247. 1924 Oudh 64=25 Cr. L. J. 794

B. in Warrent case.—S. 259, Cr. P. C.**—1. After charge.**

1. After framing of charge in non-compoundable warrant case, the position of com-

Absence of Complainant.—(contd.)

plainant is reduced to that of a witness and he cannot be burdened with costs for adjournment. 1924 L. 627=76 I. C. 23=25 Cr. L. J. 87. §

2. There can be no discharge under S. 259 after a charge has been framed. 1925 Oudh 314=84 I. C. 944, 1925 Oudh 306=84 I. C. 323, 1930 A. 795=1930 Cr. C. 1017, 1933 Pesh. 78, 1933 C. 358.

2. Delay to appear.

Where a case was fixed at 7 A. M. after the prosecution has been closed and the pleader for the complainant was present but the complainant arrived late, held that the order of dismissing the complaint was improper. 1927 M. 139=98 I. C. 607=27 Cr. L. J. 1391.

—3. Fresh complaint.

1. A complaint dismissed under S. 259 can be revived on a fresh complaint as it is not an acquittal. 87 I. C. 928=1925 Nag. 432, 28 M. 310, 29 M. 126, 28 C. 652, 1929 B. 134, 29 C. 726.
2. In a case under Sec. 406-471, I. P. C., the Magistrate cannot discharge the accused under S. 259, Cr. P. C. as the offence under S. 471 is triable by Court of Sessions. Fresh complaint after the dismissal of the first is not competent. 1935 B. 76=154 I. C. 325=59 B. 171.
3. If accused is discharged on account of the absence of complaint, fresh complaint on same facts is not barred. 1934 Nag. 215, 23 C. 983, 24 C. 286, 22 A. 106, 23 C. 652, 29 C. 726, 28 M. 310, 29 M. 126.

—4. Presence of pleader.

When the pleader of the complainant is present, the complaint cannot be dismissed if the complainant is absent. 1923 C. 403.

—5. Procedure.

1. Where a person is prosecuted by police for a non-compoundable warrant case, the case should not be dismissed for want of prosecution. 1927 Oudh 352 (1)=104 I. C. 256=28 Cr. L. J. 816.
2. A magistrate must proceed with the trial of a non-compoundable case after framing of charge, regardless of the fact whether the complainant does or does not attend. 1924 L. 627=76 I. C. 23=25 Cr. L. J. 87.
3. In non-compoundable case it is only the Public Prosecutor who can withdraw the prosecution. 64 I. C. 273=22 Cr. L. J. 753.
4. If after discharge under S. 259, court takes up the complaint, the trial should be *de novo*. But if the court omitted to take down sworn statements and the accused is not prejudiced, the trial is not illegal. 1929 M. 260=115 I. C. 64=30 Cr. L. J. 403.
5. When a summons case and a warrant case are tried together, the procedure should be of warrant case and if the complainant is absent the order of discharge does not amount to acquittal even in respect of offence triable as summons case. 41 M. 727 following 22 B. 711.
6. When complainant is absent, a magistrate has no authority to strike off a case. The order of striking off is not tantamount to discharge under S. 259. 23 I. C. 182=15 Cr. L. J. 230.
7. Where complainant was prevented from appearing, the accused should not be discharged. The court in such a case should see whether the accused's absence raises a *prima facie* case against him. There is a presumption that he does not wish to proceed with the prosecution. 12 Cr. L. J. 184=9 I. C. 1007.

5. Revision.

If the magistrate refuses to dismiss a complaint under S. 259, the order cannot be interfered with in revision. 1933 Oudh 430=35 Cr. L. J. 121.

Absence of husband for seven years.—See Bigamy.

Absence of Legal Advice

ABSENCE OF LEGAL ADVICE.—See Transfer (Grounds).—1. Remand.
ABUSE.

—1. Prosecution of exchanging.

No prosecution should be lodged in cases of exchange of abuse in a public street. 1926 L. 412=94 I. C. 888.

—2. Provocation resulting in murder.—See Murder.—77.

—3. Provoking breach of peace.—S. 504, I. P. C. See Insult to provoke breach of peace.—1.

—4. When covered by S. 95, I. P. C.—See Slight harm.—1.

—5. When defamatory. See Defamation.—27.

ABUSE OF PROCESS.

When an adversary through malicious and unfounded use of some regular proceeding obtains advantage over his opponents, it is called abuse of process of court.

Wharton's Law Lexicon, P. 16

ACCEPTING UNSTAMPED INSTRUMENTS.

1. Accepting an unstamped receipt is no offence. 8 A. 18, 7 B. 82, 11 P. R. 1891.

2. Accepting an unstamped promissory note is no offence. 7 M. 71, 20 A. 440, 12 P. R. 1895.

ACCESSORY AFTER THE FACT.—See Abetment.—5.**ACCESSORY BEFORE THE FACT.**—

Accessory before the fact is one who being absent at the time of commission of the felony, yet procures counsels or commands another to commit the crime.

Wharton's Law Lexicon, P. 17.

ACCESSIBLE PLACE.—See Discovery.—1.**ACCIDENT.**—S. 80, I. P. C. See Motor Vehicles Act, 1914—Death by negligence.—1.

1. Accused must prove circumstances to bring an act within the purview of S. 80. 19 C. W. N. 1043=31 I. C. 164, 49 C. 732, 59 I. C. 49.

2. A person trying to hit another who was carrying a child, hit the child, cannot plead accident as he was not doing a lawful act. 1924 Oudh 228=24 Cr. L. J. 789.

3. A person who had gone to shoot pigs, missed the boar and the bullet hit his companion. Held, it was neither a rash nor negligent act but accident. 1927 L. 880=29 P. L. R. 45, 1931 L. 54=130 I. C. 654=32 Cr. L. J. 587.

4. The prisoner went out to shoot along with the deceased in the jungle. They agreed to take up certain position and lie in wait for game, which was done. After a while the accused heard a bustle and believing it was porcupine, he fired in that direction but hit the deceased. The accused was shooting with an uncensed gun but it was held that the case was one of pure accident. 3 Bom. L. R. 678, 25 B. 680, 1926 B. 134.

5. The word accident is not defined in Indian Motor Vehicles Act. Ordinarily it means an event which takes place without one's foresight or expectation, e. g. falling of motor car in the channel, bursting of tube or the puncture of tyre. But law does not recognize them. The accidents which come within the purview of the Act are those which result in some injury, annoyance or danger to public, 1928 M. 364=51 M. 504.

6. Voluntary intoxication short of a proved incapacity to form intent necessary to constitute the crime cannot be pleaded when the accused gave an iron shod *dang* below on the head of deceased. 1932 L. 283 (1)=33 Cr. L. J. 378.

7. Accident is an extraordinary incident, something not expected. *Wharton's Law Lexicon P. 18.*

—ACCOMPLICE.—Ss. 114 (b) 133, Evidence Act.—See Approver.

—1. Accomplice.—Who is.

1. Witnesses who had witnessed the crime and assisted in concealing evidence or connived at and gave no information to police or any other person are no better

Accomplice.—(contd.)

- than accomplice. 1929 L. 540=120 I. C. 190=31 Cr. L. J. 50.
2. Where a woman willingly accompanied her lover to a hut where he went in and murdered her husband and she returned to the village and gave no information to any one till next morning, held she is accomplice of the murderer. 6 L. 183=1925 L. 432=88 I. C. 854=26 Cr. L. J. 1238.
 3. Accomplice is a guilty associate in crime. 27 M. 271. *Wharton's Law Lexicon* P. 19.
 4. A person offering bribe to a police officer is an accomplice. 14 B. 331, 14 B. 115, 26 B. 193, 9 P. R. 1917, 114 I. C. 457=1929 N 215, 26 M. 1, 27 M. 271.
 5. Persons present at bribe giving transaction are not accomplices, if they did not take any part. 26 M. 1, 33 C. 649, 50 I. C. 1918, 27 C. 144.
 6. Persons supplying marked money for detection of crime are not accomplices but only detective or spy, 1936 N. 245, 19 B. 363, 27 M. 271, 38 C. 96, 15 B. 661, 35 B. 401, 44 A. 226, 1923 L. 366, 52 C. 721, 28 C. 709, 33 C. 1353, 135 P. L. R. 1904, 131 P. L. R. 1905.
 7. Persons bribing for obtaining release of wrongfully confined persons are not accomplices, specially when money was not given voluntarily. 27 C. 925.
 8. A person helping accused in disposing of dead body after murder is not accomplice. 1923 L. 345=73 I. C. 506=24 Cr. L. J. 618.
 9. A person who has knowledge of the commission of the offence but keeps quiet for some days is no better than accomplice. 96 I. C. 867=38 C. W. N. 816=27 Cr. L. J. 1011, 21 C. 328, 24 W. R. (Cr.) 55.
 10. Where a witness is found, from his own testimony, to be privy to the crime, his evidence is no better than that of an accomplice. 1925 L. 253=6 L. L. J. 529.
 11. A person who is aware of the intention of certain people to commit murder and does not disclose it to anybody is a consenting party to the crime and an accomplice. 20 P. R. 1919 Cr.=20 Cr. L. J. 191=49 I. C. 607.
 12. A person who by threats of death is induced to do an act in order to facilitate the commission of murder cannot be protected by S. 94, I. P. C., and is an accomplice. 19 I. C. 207=14 Cr. L. J. 207=1912 M. W. N. 1108.
 13. After the murder was committed, one of the inmates of the house removed the blood stains on the ground under compulsion and threat of murder. Held, she was not accomplice. 33 P. L. R. 269.
 14. Where a person came to know of the conspiracy to murder another but never told the latter and it was shown that he agreed to the proposal of the conspirators himself being actuated by the sordid motives, held, he was an accomplice. 8 O. W. N. 1240, 1932 Oudh 11=33 Cr. L. J. 287=136 I. C. 321=1932 Cr. C. 43.
 15. A person knowingly aiding in disposal of stolen property is accomplice 1934 M. 721.
 16. A person who is convicted and sentenced continues to be accomplice and his evidence from the witness box is governed by the same principle. 1933 B. 24=34 Cr. L. J. 136.
 17. If a person has knowledge that crime is to be committed he is not accomplice, unless he participates in the crime. 1936 C. 101=37 Cr. L. J. 445.
 18. A person who sees a murder committed but gives no information of the fact is no better than accomplice. 1923 L. 391=25 Cr. L. J. 264, *cont.* 1934 Oudh 315, 1935 Oudh 1. His evidence requires careful consideration. 1934 C. 678.
 19. If woman is cognizant of the intention of her paramour to kill her husband and does not disclose it to her husband, she is no better than an accomplice. 1936 L. 731=144 I. C. 700.

-2. Accomplice and informer or spy—Distinction.—See Spy.

1. If at the time when a witness joined the conspiracy, he had no intention of betraying his associates to law but his object was to partake in the commission

Accomplice—(contd.)

of crime, he is not an informer but an accomplice, although he later on carried information to police. But if his sole object was detection of crime, he is an informer. 1928 L. 647=110 I. C. 676=29 Cr. L. J. 740=29 P. L. R. 703, 1928 L. 193=29 Cr. L. J. 577.

2. A person was present when plans for dacoity were hatched and agreed to go to the place of meeting armed with revolver but remained at home for six hours and did not inform anybody. He then went to spot and was sent back to fetch food for offenders, when he disclosed the whole affair. Held he was accomplice. 9 L. 550=1928 L. 193=109 I. C. 593=29 Cr. L. J. 577.
3. Where certain persons associated with the accused without any criminal intention with the sole object of entrapping the accused in order to detect an offence, held, that they were mere spies or detectives. 1931 Oudh 172=132 I. C. 234=32 Cr. L. J. 860, 38 C. 95, 9 L. 550=1928 L. 193, 1928 L. 647, 19 B. 363.
4. The rule requiring corroboration does not apply to informers. 38 C. 96, 1931 Oudh 172, but see 19 B. 363, 1929 L. 436 and 1925 Oudh 158.

3. Conviction on uncorroborated testimony of.—

1. In law uncorroborated testimony of an accomplice is sufficient to uphold a conviction, provided there is reason to suppose that it is true. 1930 M. W. N. 169, 3 Rang. 11, 69 I. C. 257, 11 P. L. T. 545, 4 M. H. C. R. App. 7.
2. A conviction can be based upon the uncorroborated testimony of an accomplice but it is the usual practice of the Court to require corroboration. 107 I. C. 97=29 Cr. L. J. 209, 73 I. C. 963.
3. There is a consensus of opinion that a conviction on the uncorroborated evidence of an accomplice is rarely justified. 1930 Oudh 455, 1927 Oudh 369=106 I. C. 721, 1935 A. 477.
4. A conviction can be based on the uncorroborated testimony of an accomplice. 47 A. 39, 1922 L. 1, 1932 B. 286, 1933 Nag. 352=35 Cr. L. J. 213, 1932 Oudh 317, *cont.* 1933 L. 838, 1931 Rang. 235.
5. A conviction on the uncorroborated evidence of an accomplice is to be regarded as exception. 77 I. C. 429, 31 P. W. R. 1916 Cr.
6. If Jury is not warned of danger in accepting uncorroborated evidence of accomplice, the conviction based upon it must be set aside. 8 Pat. 235, 48 A. 409.
7. Judge may warn the Jury about the danger of convicting on uncorroborated testimony but should point out that it is within their legal province to convict upon such unconfirmed evidence. 51 C. 160=1924 C. 701=25 Cr. L. J. 1000.
8. Conviction on uncorroborated evidence, when approver is a scoundrel, is not warranted. 77 I. C. 429=25 Cr. L. J. 381.
9. A conviction based on uncorroborated testimony of any approver is illegal. 52 P. L. R. 1918=19 Cr. L. J. 439=9 P. W. R. 1918 Cr.
10. That there is some probability of truth in the statement of approver is not sufficient, unless the corroboratory evidence such as serves to identify each of the accused. 56 B. 172=1932 Bom. 286=137 I. C. 174=33 Cr. L. J. 396=34 B. L. R. 303.
11. Conviction on unconvincing and uncorroborated testimony of approver is not safe 1934 L. 21.
12. Where each of the accused exculpates himself and fastens guilt on another, the evidence of accessory must be corroborated. 1936 P. C. 242.
13. The statement of approver is always to be suspected and it needs corroboration not only of a general kind, but of a kind that will implicate the person accused in a crime. 1935 A. 132=154 I. C. 1015. *King v. Baskerville* (1916) 2 K. B. 658=115 L. T. 453 Rel. on.
14. Conviction based on uncorroborated testimony of approver is not absolutely illegal 17 P. R. 1915 Cr., 1927 L. 551=28 Cr. L. J. 625, 1929 L. 850=123 I. C. 518. 1932 L. 204=136 I. C. 19=33 Cr. L. J. 242 C. (Disting. in 1935 L. 125=15 L. 673=155 I. C. 197); 1935 C. 513=36 Cr. L. J. 1115=157 I. C. 357, 1931 Rang. 235=9 Rang 404 Fell, 1934 C. 678=35 Cr. L. J. 1357 Ref.

Accomplice—(contd.)

4. Corroboration—extent and nature.

1. Approver's story should be corroborated not only as regards the facts of the case but also as regards the identity of each accused. 1930 N. 97=120 I. C. 721=31 Cr. L. J. 153, 1928 L. 30=102 I. C. 500=28 Cr. L. J. 564, 1927 L. 10=98 I. C. 190, 67 I. C. 343, 1930 C. 430.
2. Corroboration may be of circumstantial evidence. 118 I. C. 423, 1930 Oudh 353, 106 I. C. 721, 1931 A. 31=55 A. 91=34 Cr. L. J. 489, 1935 A. 86=152 I. C. 934=36 Cr. L. J. 205, (1916) 2 K. B. 6. But must be independent. 1935 L. 125=15 L. 673. (*Case Law discussed.*)
3. It is very difficult to vary the standard of corroborative proof required in the case of various approvers. 102 I. C. 500=1928 L. 30=28 Cr. L. J. 564.
4. Corroboration is required with respect to each individual accused. 1928 Pat. 630=113 I. C. 329=30 Cr. L. J. 137, 1921 L. 215, 120 I. C. 721, 1923 L. 385=76 I. C. 716.
5. Corroborative evidence need not be sufficient in itself to base a conviction on. 1927 L. 581=103 I. C. 49=23 Cr. L. J. 625.
6. Amount of corroboration of an approver's evidence must depend upon the view which the Court takes of the approver's character or of his general demeanour in the witness box. 5 Pat 63=1926 Pat. 232=93 I. C. 884=27 Cr. L. J. 484.
7. Corroboration must be independent of the accomplice or of the co-confessing accused. 25 Cr. L. J. 1067=1925 Nag. 78, 1935 C. 513=36 Cr. L. J. 1115.
8. Direction to Jury that if the approver was corroborated on some points, they might believe him on other points on which he is not corroborated is not misdirection. 52 C. 595=1925 C. 872=26 Cr. L. J. 1037.
9. Defence being false is no corroboration of approver. 3 L. 144=23 Cr. L. J. 513.
10. Corroboration must be by independent evidence. 1930 Oudh 353.
11. It is not necessary that an accomplice should be corroborated in every material particular. 56 C. 160, 52 C. 595, 1926 A. 70=96 I. C. 127.
12. The extent of corroboration varies with circumstances of each case, including the character and antecedents of the approver or the degree of suspicion attached to his evidence. 1929 L. 850=1929 Cr. C. 626.
13. One accomplice's evidence is not corroboration of the testimony of another accomplice. 67 I. C. 343, 47 A. 39, 3 L. 144, 1927 Oudh 369 (2), 2 P. R. 1920, Cr. 20 P. R. 1919 Cr., 8 A. 306, 14 B. 331, 1923 L. 76=68 I. C. 821, 49 I. C. 607, 14 P. R. 1894 Cr., 1929 L. 850, 1936 P. C. 242. But see 1935 C. 513=36 Cr. L. J. 1115.
14. One approver can corroborate the other but the corroborative value will be diminished if they had ample opportunity of consultation. 1923 L. 666.
15. Where there is nothing outside the confession of the co-accused, the accused must be acquitted. 48 A. 409=1926 A. 377=95 I. C. 74=27 Cr. L. J. 746.
16. Where approver's story is not sufficiently corroborated by the evidence as to recovery of stolen property incapable of identification, the accused should not be convicted. 1925 L. 44=84 I. C. 1052=6 L. L. J. 280=26 Cr. L. J. 412.
17. The testimony of accomplices, who are victimised by police officer into offering them illegal gratification or have not willingly done so, require a much slighter degree of corroboration. 53 B. 479=1929 B. 296=31 Cr. L. J. 65.
18. Although confession of a co-accused may be taken into consideration against another under S. 30, Evidence Act, it would be unsafe, if not illegal, to rely on it without further corroboration. 1929 L. 338=115 I. C. 1, 1929 M. 295=118 I. C. 512.
19. Where material discrepancies occur between the statements of corroborating witnesses before the police and the Court, there is no corroboration. 36 P. W. R. 1910 Cr.

accomplice—(contd.)

20. Where the statement of deceased accomplice is not made in the presence of accused little weight is to be attached to it as corroborative evidence. 9 I. C. 978.
21. The evidence of corroboration must be independent testimony which connects the accused with the crime. The evidence may be circumstantial. 1935 A. 477=154 I. C. 812, 1933 A. 31=55 A. 91=34 Cr. L. J. 489, *Rex v. Baskerville* (1916) 2 K. B. 658=115 L. T. 453, 1935 A. 86=152 I. C. 934=36 Cr. L. J. 205, 1935 L. 125.
22. Corroboration need not be in the form of particulars, satisfying court of the facts connected with the crime is sufficient. It may be in the form of particulars connected with the crime =15 L. 673 =155 I. C. 197. (*Casè Law discussed*).
23. Even a slight corroboration is sufficient if the court is satisfied about the genuineness of the accomplice's story. 14 L. 111=1932 L. 621=33 Cr. L. J. 916.
24. Corroboration of approver's evidence is not material when there is independent evidence of conspiracy. 1935 C. 515=35 Cr. L. J. 1115=157 I. C. 387, 9 Rang. 404 Foll.
25. Accused pointed out spot where dead body was buried. Corroboration of approver's evidence was regarding motive only. The offence under S. 201 and not S. 302 is made out. 1934 L. 23 (2)=147 I. C. 215.
26. Evidence of accomplice cannot be corroborated by another accomplice. 1934 M. 248=35 Cr. L. J. 1040.
27. Corroboration regarding *corpus delicti* and identity of accused is necessary. 1933 A. 31=55 A. 91.

—5. Corroboration.—What is.

1. Production of stolen property by accused is a material corroboration of the evidence of an approver. 76 I. C. 698, 82 I. C. 707=1924 L. 727=25 Cr. L. J. 1347.
2. Where several persons make confession, the fact that particular person is named by more than one is not sufficient corroboration. 65 I. C. 622=23 Cr. L. J. 158.
3. That the accused had a very strong motive to murder is not a sufficient corroboration. 1921 Pat. 406, 48 A. 409=1926 A. 377.
4. Where an approver stated that there was a murderous conspiracy to which accused was a party and was supported by the evidence of his obtaining murderous weapons held, it is sufficient corroboration. 1924 L. 357=69 I. C. 462.
5. Identification by three persons and recovery of stolen property with the accused is sufficient corroboration. 25 Cr. L. J. 785=1924 Oudh 314.
6. Blood stains on the accused's shirt is not sufficient corroboration even if there is a motive to murder. 1925 L. 526=86 I. C. 811=26 Cr. L. J. 875.
7. Mere fact that accused were seen with the approver a few days before dacoity is not a material corroboration. 1924 L. 727=82 I. C. 707, 1925 L. 426, 2 P. W. R. 1916 Cr., 86 I. C. 69.
8. The evidence of a witness who supports approver is a corroboration even if the evidence was known to the police before the approver was examined by them. 1926 C. 374=88 I. C. 458.
9. Verification of approver's confession is a corroboration of his evidence in Court. 52 C. 595=1925 C. 872=87 I. C. 925=26 Cr. L. J. 1037=42 Cr. L. J. 501.
10. Corroboration may be of circumstantial evidence. 106 I. C. 721=1927 Oudh 369.
11. Where the corroborative evidence consisted of a witness who said he identified the dacoits but omitted to name them in the first information report, held, it is no corroboration. 114 I. C. 623, 8 A 306, 1925 Nag. 78. 1922 Nag. 172.
12. Where the evidence of approver was fully corroborated with regard to theft and it was proved that persons committing theft were the same who committed murder, held, it is sufficient corroboration even if he exculpates himself from murder. 1930 Pat. 164=127 I. C. 566=32 Cr. L. J. 5=1930 Cr. C. 260.
13. The evidence of an accused person's conduct may be used as corroboration of an approver's story. 10 L. 265=1923 L. 681=29 Cr. L. J. 851.

Accomplice—(contd.)

14. The production of stolen property by the accused even from a place which is not in his possession may be accepted as material corroboration. 111 I. C. 447, 1923 L. 389=76 I. C. 819.
 15. Where the only corroborative evidence is that of the approver's son who parrot-like repeats what he is tutored to say is not sufficient. 1929 L. 587=122 I. C. 91.
 16. Confession of an accused is no corroboration of approver's testimony. 1928 C. 745=116 I. C. 174=30 Cr. L. J. 586.
 17. Production of a spear from a field by the approver and blood stains on accused are not sufficient corroboration. 1927 L. 78=99 I. C. 929=88 Cr. L. J. 193.
 18. The evidence that accused was seen talking to the deceased on the evening on which he disappeared is not sufficient corroboration. 1925 L. 600=88 I. C. 453=7 L. L. J. 528.
 19. Stolen property being found in the possession of accused is a sufficient corroboration. 26 Cr. L. J. 693=1925 L. 426=86 I. C. 69, 26 P. W. R. 1915 Cr.
 20. Where some common things were found at the search of accused's house and some other things not mentioned in F. I. R. along with a gun or sword, held it was not sufficient corroboration. 1923 L. 385=76 I. C. 716=25 Cr. L. J. 252.
 21. Discovery of blood in convict's house and on his finger nails and his suspicious conduct on the day of murder furnish an adequate corroboration. 1921 L. 392=4 L. L. J. 405.
 22. The merits of the case, to decide which in favour of the bribe giver a Judge accepts are sufficient corroboration of the former, who is really an accomplice. 3 P. W. R. 1919 Cr.
 23. Being found in the company of the approver shortly after the offence is very strong indication of the fellowship of crime. 21 P. W. R. 1917 Cr.=18 Cr. L. J. 832=41 I. C. 820.
 24. Previous statement of an accomplice may mean corroboration. 2 P. R. 1917 Cr.=18 Cr. L. J. 29=36 I. C. 861, 35 M. 247, 26 B. 193. *Cont.* 35 M. 307 F. B.
 25. The confession of one of the prisoners cannot be used to corroborate the evidence of an accomplice against the others. 11 B. H. C. R. 196.
 26. The fact that accused tells lies is no corroboration of approver's story. 1935 A. 162=1935 Cr. L. J. 214.
 27. An identification of accused by witness may be sufficient corroboration of approver's evidence for convicting him, but if the identification is not satisfactory such corroboration is not sufficient. 1935 A. 162=1935 Cr. L. J. 214.
 28. Evidence of accomplice can be used for corroborating the approver. 1935 Rang. 491. 1931 Rang. 235 Rel. on.
 29. Recovery of ordinary clothes not bearing any special mark of identification is no corroboration. 1934 L. 525.
 30. Recovery of identifiable ornament is sufficient corroboration. 1934 L. 525.
6. **Discrepancy between evidence of approver and of witness.**
When there is a serious discrepancy between the evidence of approver and the witnesses it cannot be acted upon either as corroboration or by itself. 1935 A. 162.
7. **Evidence.—Value of—**
1. Accused sent up for trial as accomplice, cannot be examined as witness. 12 P. R. 1902 Cr., 21 P. R. 1904 Cr.
 2. A discharged accused is a competent witness. 16 B. 661.
 3. Evidence of accomplice is inadmissible against co-accused which is given as accused person. 38 P. R. 1867 Cr., 12 P. R. 1902.
 4. Evidence of an accomplice requires corroboration. 1930 A. 29=120 I. C. 257, 1930 A. 740, 1929 L. 850, 1921, P. 406, 1920 P. C. 15.
 5. Confession implicating co-accused requires corroboration if co-accused is to be convicted on it. 1933 Pat. 335=123 I. C. 333=31 Cr. L. J. 492, 33 C. 559, 15 B.

Accomplice—(contd.)

66, 38 B. 156. 1924 O. 65.

6. S. 114, ill. (b), provides that a Court may presume that the evidence of an accomplice is unworthy of credit unless corroborated. "May" is not "must" and no Court can make it must. 1929 C. 822=1929 Cr. C. 669.
7. The evidence of an accomplice must be received with suspicion, although he allows himself to be convicted on it. 1928 C. 233.
8. The rule of caution that an accomplice's testimony should be corroborated is now regarded as a rule of law. 1927 L. 581=23 Cr. L. J. 625.
9. Court should exercise judicial discretion in considering whether an accomplice is or is not worthy of credit. 8 Pat. 235=1928 Pat. 630=9 P. L. T. 672=113 I. C. 329.
10. The evidence of an approver is open to grave suspicion. 52 I. C. 49.
11. It is unsafe to act on the uncorroborated evidence of an accomplice even though he is a mere relative of the accused. 19 P. L. R. 1911.
12. Provisions of S. 133 and S. 114 (b) amount to a direction to all Judges and magistrates that a fact cannot be held proved within the meaning of S. 3 if the witness is unreliable. All accomplices are not unreliable. 14 Cr. L. J. 262=19 I. C. 534.
13. An approver is a man of the lowest character who wants to save his skin by throwing his friends and associates to wolves. His evidence must be received with caution. He can easily substitute an innocent person for the real offender. 1931 L. 408=132 I. C. 185=32 Cr. L. J. 818.
14. Where in the case of conspiracy to commit an offence under U. P. Excise Act, the accomplice was first put on trial and later on examined against the principal accused, held, that his statement is not inadmissible in evidence. 1932 A. 73=137 I. C. 73=33 Cr. L. J. 373.
15. Approver's statement is subject to suspicion but of great value in certain cases. 1935 A. 477.
16. If there is any fear in the mind of approver that failure to establish the case for prosecution will result in his own prosecution, it is not likely to lead to truthful evidence being given. 1935 C. 473=157 I. C. 840=36 Cr. L. J. 1248.
17. Wife was consenting party to her husband's murder. Her evidence is that of accomplice and requires corroboration. 1934 L. 171, 20 P. R. 1919 Rel. on.
18. If approver was examined last of all and the Counsel was unable to question corroborative witnesses properly, the opinion of assessor loses much value. 1934 L. 171.
19. If the approver is falsely implicating two persons and is adding accusation against others which he never made in his first statement, the effect of his testimony is weakened. 1933 A. 31=55 A. 91.
20. Accomplice is unworthy of credit
 - (a) because he is likely to swear falsely in order to shift the guilt from himself;
 - (b) because, as participator in the crime, he is an immoral person;
 - (c) because he gives his evidence under the promise of pardon or in expectation of implied pardon. This hope would lead him to favour the prosecution. 14 B. 115.
21. Confession of an accomplice to Police, doing before trial, incriminating himself and others is relevant under S. 32(3). 1926 L. 54=25 Cr. L. J. 130.

8. Not given pardon under S. 337, Cr. P. C.

An accomplice should be granted pardon or the case should be withdrawn against him under S. 494, Cr. P. C. Police have no right not to charge persons against whom there is evidence, because they require him as a witness. 1935 B. 140=37 Bom. L. R. 179.

9. Retracted confession.—See Confession—7.

1. A retracted confession is not alone sufficient to give a conviction of co-accused, although admissible in evidence against him. 114 I. C. 771=39 Cr. L. J. 360.

Accomplice—(contd.)

2. A retracted confession is not the testimony of an accomplice within the meaning of S. 133. Very fullest corroboration is necessary, far more than would be demanded for the sworn testimony of an accomplice. 1925 C. 405=84 I. C. 712=26 Cr. L. J. 360, 28 C. 689, 38 C. 559.
3. A retracted statement of an approver is admissible against an accused person. 61 I. C. 528=22 Cr. L. J. 400.
4. As a matter of prudence no conviction should be based upon a retracted confession. 22 Cr. L. J. 200.
5. If an accused is tendered pardon and it is subsequently withdrawn, such accused should not be jointly tried with other accused. 1935 Oudh 226=35 Cr. L. J. 889.

ACCOUNT. See Breach of Trust.—falsification of account.

ACCOUNTANT.—See Breach of trust—8.

ACCUSATION.

Accusation is the formal charging of a man with any crime. *Wharton's Law Lexicon*. P. 21.

ACCUSED.—

—1. Absence, absconding, admission, conduct, identification, etc. etc., of—
See under these Headings.

—2. Association with co-accused.

1. Mere association of an accused with his co-accused is not sufficient to have conviction, when it is found that he was not aware exactly about their activities, though his association raises a strong suspicion of his guilt. 99 I. C. 1009=27 P. L. R. 441=28 Cr. L. J. 209.
2. No inference of complicity in crime can be drawn from the fact of friendship between accused who are co-villagers. 1922 Pat. 88.
3. Where persons from long distances are found in the company of dacoits who were making preparations for dacoity and are unable to account for their presence, the inference that they belonged to the party is inevitable. 1933 Oudh 53=34 Cr. L. J. 101.
4. Casual association with burglars is no proof of association in burglary. 1934 Sind 159.

3. Definition of—S. 4, Cr. P. C.

1. A person over whom magistrate exercises jurisdiction is an accused. 23 C. 493, 16 B. 651, 15 P. R. 1900, 24 P. R. 1903, 21 P. R. 1904, 42 P. R. 1905=131 P. L. R. 1905.
2. A person proceeded against under S. 110, Cr. P. C. is not an accused within the meaning of S. 437, Cr. P. C. 27 C. 662, 15 133 *contra* 21 A. 107, 24 A. 148.
3. It includes persons required to furnish security for good behaviour. 24 P. R. 1903, 33 P. R. 1905. See 6 P. R. 1911, 5 P. R. 1914, 42 P. R. 1905.
4. A person charged with an infringement of the law for which he is liable to be punished is an accused. 41 C. L. J. 357, 41 C. L. J. 479.

Accused—(contd.)

5. Interview with. *See* Interview.

6. Liability of. *See* Explanation, S. 34, I. P. C.

Accused is not liable to account for his whereabouts at the time of occurrence 10 C. 970.

7. Marks of injuries on.—*See* Marks of injury.

8. Not taking part in the trial.

1. If accused is not taking part in the trial, he cannot say the court omitted to follow such and such procedure, unless he can produce clear evidence about such omission. 129 I. C. 165=1931 Oudh 73=32 Cr. L. J. 330=1931 Cr. C. 129.

2. If the accused who was not taking part in the proceeding afterwards asked court to recall witnesses for cross-examination but refused to cross-examine them as he could not get copies of statements and cited them as defence witnesses. The court cannot refuse to recall them. 1931 L. 186=134 I. C. 580=32 Cr. L. J. 1202.

9. Right of.

1. To be defended by pleader. S. 340 Cr. P. C., 15 P. R. 1900 Cr. 47 A. 147.

2. To be heard by counsel or agent in appeal. 31 P. R. 1870 Cr., 59 P. L. R. 1900.

3. To put forward any defence open to him, technical or otherwise and to have the court's judgment on it. 18 C. W. N. 498, 41 C. 350.

4. To have prosecution witnesses cross-examined after charge. 11 P. R. 1914 Cr. 72 I. C. 371. *See* Cross-examination.

5. To cross-examine prosecution witness called as defence witness. 28 C. 594, 65 I. C. 768, 47 A. 147, 1925 P. 696=92 I. C. 865.

6. To produce defence after charge in warrant case. 28 P. R. 1884 Cr., 15 P. R. 1887 Cr. *See* Defence witnesses.

7. To be acquitted in summons cases for absence of the complainant. S. 247, Cr. P. C. 7 M. 213, 49 M. 883. *See* Presence of complainant.

8. To have the benefit of doubt. 5 L. L. J. 317, 33 P. W. R. 1911 Cr., 1922 L. 28, 46 I. C. 145. *See* Benefit of doubt.

9. To have copies of statements of witnesses made before police. 54 C. 307, 30 M. 466. *See* Statement to police.

10. To cross-examine witnesses for the co-accused, making statements against him. 21 C. 401. *See* Cross-examination.

11. To have copies of all documents which he asks 101 I. C. 495=1927 M. 512=52 M. L. J. 601=25 M. L. W. 599=28 Cr. L. J. 463=101 I. C. 495=30 M. 466.

12. To have the case tried by another magistrate, if the magistrate takes cognizance of offence under S. 190 (1) (C). 92 I. C. 741, 1926 L. 627=96 I. C. 989.

13. Omission to inform the accused of his right under S. 191, Cr. P. C. invalidates the conviction. 13 P. R. 1898 Cr., 28 A. 212.

14. To demand a *de novo* trial on the transfer of magistrate. 3 P. R. 1903 Cr. 2 L. 115. *See* De novo trial.

15. To have the case stayed in order to apply for transfer. 29 C. 211, 35 M. 701.

16. The court cannot make an accused confess the guilt before any evidence is recorded. 2 C. W. N. 702, 45 C. 557, 45 M. 230, 35 M. 397, 4 Pat. 327, 20 P. R. 1905.

17. Accused cannot be cross-examined. 10 C. 140.

18. Accused not to be asked questions with the object of trapping him into some admission. 2 L. 130, 13 A. 35, 9 M. 224, 21 C. 642, 6 C. 99. 1925 C. 587, 51 J. C. 442. *See* Examination of accused.

19. Accused cannot be examined for filling up gaps in prosecution evidence. 26 C. 49, 27 M. 238, 10 M. 121, 10 M. 295, 91 I. C. 242, 61 I. C. 785, 1925 N. 403=91 I. C. 242, 36 M. 457. *See* Examination of accused.

20. Accused cannot be examined as witness. 12 P. R. 1902, 33 C. 1353, 25 M. 61,

Accused—(concl'd.)

- 45 C. 720, 1923 A. 91, 3 R. 11, 1926 N. 426=95 I. C. 471. Except when the prosecution is withdrawn under S. 494. Cr. P. C. 25 B. 422.
21. It is incumbent on the magistrate to examine the accused to explain away evidence against him. S. 342, Cr. P. C. 10 C. 140, 5 A. 253, 30 B. 421. 17 C. 930, 23 C. 252. See Examination of accused.
 22. When accused is undefended, magistrate should cross-examine the witnesses. 7 A. 160. See Cross-examination.
 23. No oath can be administered to accused. 45 C. 720, 10 B. 190.
 24. Accused is entitled to a copy of memorandum of local inspection free of cost. S. 539 (B) Cr. P. C. See Local inspection.
 25. Accused is entitled to adjournment if case is taken up after court hours. 1928 P. 277=107 I. C. 827=9 P. L. T. 344=29 Cr. L. J. 299.
 26. Accused has a right to legal advice even in police investigation and to interview his counsel. 12 L. 211=1932 L. 13. See Remand.
 27. Accused is entitled to the supply of food and clothing from his house during police investigation and trial. 12 L. 211=1932 L. 13=32 Cr. L. J. 1022.
 28. Accused has no right to argue a bail application in person, although under special circumstances the permission can be given. 1931 A. 356=32 Cr. L. J. 1271.
 29. It is the right of accused to insist that he should be tried by settled procedure. 1934 A. 908 (920).

10. Statement of. See Examination of accused—28.

1. Where the statement of accused are not recorded individually but collectively proceedings are vitiated. 6 L. 554=1926 L. 155. 1924 L. 84 Ref.
2. Accused need not speak the truth and cannot be pinned down to any statement. 1924 L. 733=81 I. C. 717=6 L. L. J. 575=25 Cr. L. J. 1005.
3. Contradictory statement of accused may be taken into consideration against him. 45 A. 166=1923 A. 90=71 I. C. 54=24 Cr. L. J. 6.
4. No inference of guilt can be necessarily drawn from the erroneous or a false statement made by the accused. 22 Cr. L. J. 595.
5. Evidence recorded after the statement of the accused without further explanation from him, cannot be taken into account. 1927 L. 916=29 Cr. L. J. 11.
6. Gaps in prosecution cannot be filled by the statement of accused. 9 Pat. 504=1930 Pat. 498=11 P. L. T. 706, 120 I. C. 95, 26 C. 49, 27 M. 238.
7. If accused makes a statement confessing his guilt, before any evidence is recorded, such a statement cannot be used against him. 45 C. 557, 45 M. 230, 35 M. 397, 4 Pat 536, 1928 L. 724=110 I. C. 329=29 Cr. L. J. 697.
8. If there is no convincing evidence, court cannot supplement the prosecution evidence by selecting some portions of his statement and rejecting the rest. 51 A. 313=1929 A. 1=26 A. L. J. 1334=113 I. C. 213=30 Cr. L. J. 101.
9. If after the examination of accused, further witnesses for the prosecution are examined, the omission to further examine the accused vitiates the trial. 50 B. 34, 7 L. 564, 49 C. 1075.

11. Taking writing from—for comparison.—S. 73 Evidence Act.

Presiding Judge can take writing from accused for the purpose of comparison. S. 73, Evidence Act, applies to accused person. 1935 C. 308=1932 B. 406=56 B. 304=33 Cr. L. J. 666 and 1924 Rang. 115=26 Cr. L. J. 108 Rel. on. 54 C. 237=1927 C. 17=99 I. C. 227 Ref.

12. Who is—

An accused person means a person over whom the magistrate or other court is exercising jurisdiction. 16 B. 661, 33 C. 1353, 1935 B. 186=37 D. L. R. 179.

ACONITE.—See Poison—1.

ABRASIONS.—See Wound—1—19.

ANONYMOUS LETTER.—See Criminal intimidation—1.

ADVERTISING BY COUNSEL.—See Legal Practitioners Act, S. 13.

ADMONITION.—See First offender.—1.

ANIMALS.—See Identification of animal. Mischief—24, biting by dog.

ACQUAINTANCE.—See Association.

1. With co-accused.

No inference of complicity in crime can be drawn from the fact that accused are friends, when they are co-villagers. 1922 Pat. 88.

—2. With Magistrate.—See Transfer (Grounds)—3.

ACQUITTAL :—

1 After withdrawal of case.—See Withdrawal.—1

2. Appeal against. S. 417, Cr. P. C.

1. High Court cannot entertain appeal against acquittal except at the instance of Local Government. 14 M. 363, 85 I. C. 356, 22 C. 164, 19 P. W. R. 55, 3 B. 150.
2. Right to appeal cannot be taken away from the Government. 43 P. R. 1917 Cr.
3. Power to appeal should be sparingly used. 21 B. L. R. 1054, 81 I. C. 306, 26 B. L. R. 113, 32 I. C. 683.
 - (a) When there has been miscarriage of justice. 22 C. 164, 1922 C. 539, 10 P. R. 1897 Cr., 10 P. R. 1911, 4 A. 148, 10 M. 127.
 - (b) Or gross error of judgment. 7 P. R. 1904, 25 P. R. 1918, 1927 L. 549=102 I. C. 492, 29 P. R. 1885, 21 A. 122, 29 P. W. R. 1918 Cr., 32 A. 451, 45 A. 250, 49 I. C. 604.
 - (c) Or when it is highly probable that the appeal will end in conviction. 12 P. W. R. 1919 Cr., 30 P. W. R. 1918, Cr. 29 P. R. 1885 Cr.
4. A private person cannot present an appeal against acquittal nor apply in revision. 42 M. 109, 7 C. 447, 14 M. 363, 4 R. 471 23 C. 975, 49 C. 612, *Cont.* 71 I. C. 602.
5. District Magistrate or Sessions Judge can refer such case to the High Court. 1932 L. 163=72 I. C. 593, 42 M. 109.
6. High Court will not interfere unless judgment is wrong or perverse and without jurisdiction and based on obvious errors in procedure. 67 I. C. 506=23 Cr. L. J. 410=1923 Pat. 119, 1927 L. 178=99 I. C. 87, 22 I. C. 736=18 C. W. N. 666.
7. Or where question is of public interest. 84 I. C. 641=1923 L. 601=6 L. J. 50.
8. Or if it is clearly wrong in evidence and unreasonable. 1927 L. 549=102 I. C. 492, 15 P. R. 1916, 26 P. W. R. 1913=328 P. L. R. 1913=14 Cr. L. J. 525.
9. There is no distinction in procedure governing an appeal from acquittal and an appeal from a conviction. 54 I. C. 161, 20 A. 459, 19 B. 51, 11 I. C. 617, 21 B. L. R. 1054, 26 B. L. R. 113, 12 P. R. 1913, 81 I. C. 305=1924 B. 335, 1927 B. 501, 32 I. C. 137, 1931 A. 712=32 Cr. L. J. 1073. See 1931 L. 465.
10. The onus is on the appellant, viz., Government. 47 A. 305=1925 A. 315=86 I. C. 52=26 Cr. L. J. 676=23 A. L. J. 25, 97 I. C. 44.
11. Appeal in petty cases is not proper. 15 P. R. 1895 Cr., 14 P. R. 1911, 1923 L. 339=96 I. C. 869, 1922 L. 52, 1925 L. 439=90 I. C. 292, 43 P. R. 1917.
12. Legal Remembrancer appointed by Govt. can file an appeal against acquittal. 46 C. 534. See 41 C. 425.
13. Private applicants or police can move District Magistrate for filing the appeal. 1923 L. 163=72 I. C. 593=24 Cr. L. J. 433.
14. Evidence should be too strong to be rejected before High Court will interfere. 12 P. W. R. 1919, 7 P. R. 1904 Cr., 25 P. R. 1918 Cr., 46 I. C. 294=30 P. W. R. 1918. It is immaterial that the appellate Court might have arrived at a different conclusion if it had tried the accused as a Court of original jurisdiction. 70 P. L. R. 1915=44, I. C. 179=19 P. W. R. 1915, 35 I. C. 522, 67 I. C. 506=1923 P. 119.

Acquittal—(contd.)

wrongfully arresting and detaining him on a false charge), the Code does not permit the court cancel the judgment of acquittal on proof of fraud and restore the case to the file. 38 M. 102

5. Discharge from custody on—

A prisoner is entitled to be discharged from custody immediately on judgment of acquittal being pronounced, and no formal warrant is necessary. His further detention illegal, if there is no charge pending against him. 5 M. H. C. R. App. 2.

6. Grounds of.

1. If F. I. R. falsifies the complaint, accused should be acquitted. 224 P. L. R. 1911.
2. If court had no jurisdiction, verdict of acquittal is bad in law. 45 A. 226.
3. If there is a reasonable doubt of guilt, there should be an acquittal. 15 P. R. 1909.
4. If prosecution fails to prove its case accused is to be acquitted. 1926 P. 5.
5. If the approver's evidence is unreliable and identification of accused is doubtful, I should be acquitted. 113 I. C. 73=30 Cr. L. J. 57.
6. If the agent who filed complaint on behalf of his master has compromised the case accused should be acquitted. 1924 A. 778=83 I. C. 658.
7. If there is no clear finding about the time of occurrence and prosecution evidence is vague, accused should be acquitted. 1922 Pat. 88.
8. If the prosecution is false, accused is entitled to acquittal whether the defence of the accused is false or true. 1921 C. 531=65 I. C. 1004.

7. Reference to High Court against.—*See* Reference.**8. Remarks against accused while acquitting.**

A court while accused is acquitted should be scrupulously careful not to go beyond the implications of evidence and remark that accused has escaped the clutches of law. 1930 M. W. N. 1253.

9. Revision against.—*See* Revision—2.

ACT.—*See* Illegal omission.

Act endangering Personal safety.—*See* Rash and negligent act.—1.

ACTS DONE IN FURTHERANCE OF COMMON INTENTION. S. 34, I. P. C.

1. Acquittal of some of the accused.

If some accused were acquitted under Ss. 467-193-34, I. P. C. and the rest were convicted under Ss. 467-193, the conviction is invalid. 58 C. 822=1931 C. 625.

2. Applicability of S. 34.

1. S. 34 does not apply to S. 304, Part 2, I. P. C. 1925 C. 913=86 I. C. 475=26 Cr.

Acts done in Furtherance of Common Intention—(contd.)

9. On a charge under Ss. 304-149, a conviction under Ss. 304-34 is legal. 1934 M. 565, 54 M. 25, 1929 Pat. 11, 52 C. 197, 47 M. 746 and 49 B. 84. *Foll.*
10. S. 34 does not apply to sudden quarrels. 1935 Pesh. 41=1935 Cr. C. 250.
11. Absence of specific mention in the charge sheet does not make conviction invalid, if no failure of justice is occasioned. 1934 L. 227=151 I. C. 741.

3. Constructive responsibility.

1. A court is not to presume that every person who is proved to have been present in a riot at any time or to have joined it at any stage during its activities is in law guilty of every act committed by it from beginning to end. 1923 M. 369.
2. If there is renewal of activities of a riotous mob after one hour, it must be shown that they were present during the second riot or that the second riot was a continuation of and a likely result of the first. 73 I. C. 147=1923 M. 369=24 Cr. L. J. 531.
3. Because a person is an important personage among the riotors he cannot be held responsible for all that his comrades did in the course of riot. 1923 M. 369.
4. If there was no common intention to cause hurt and the fatal blow was an unpremeditated act springing from his mind alone, then the other persons who may have struck a blow or two are not liable constructively of murder. 12 L. 442.
5. Where several accused of whom B and M were two, invaded the compound of L with a view to insult females by way of retaliation and were armed with *gandasas* and one of them struck the blow and killed D. Held that in order to make B and M equally liable for murder, it must be proved that both of them struck the deceased. They were liable under Ss. 325-109, I. P. C., 24 P. R. 1919 Cr., 41 C. 1072, 21 P. R. 1919 Cr.
6. Accused incited others to cut deceased and he was cut resulting in death. Held, he was guilty under Ss. 302-34. 1933 Rang. 236, 1925 P. C. 1.
7. Fatal injury was caused by some of the accused in a sudden fight. The author of injuries was not known. All accused should not be convicted unless S. 34 applies. 1933 L. 865.

4. Criminal act.

1. A criminal act means that unity of criminal behaviour which results in something for which an individual would be punishable if it were all done by himself alone, that is, in a criminal offence. 27 Bom. L. R. 148, 27 Cr. L. J. 827, 52 C. 197 overruling 41 C. 1072 and 50 C. 41.
2. "Criminal act done by several persons" includes the case of number of persons acting together for a common object and each doing some act in furtherance of the final result, when various acts make up the final act. 1924 C. 257=81 I. C. 353.

5. Deadly weapon carried by some—

1. Where one or more members of an assembly carries deadly weapon and where the carrying of a deadly weapon is in prosecution of common object the others are liable under S. 148 or S. 149. 1926 M. 741=96 I. C. 158=27 Cr.L.J. 894, 22 C. 276 *Expl.*
2. If one of the party of dacoits carries a deadly weapon it cannot be said that it would increase the gravity of the offence in the case of his associates who were not similarly armed. 1927 L. 149=99 I. C. 49, 1923 L. 104 *foll.* 16 P. R. 1901 and 15 P. R. 1901 not *foll.* 52 B. 168, 98 I. C. 181.
3. If a deadly weapon is carried without the knowledge of the other members of the assembly for the private ends of a particular individual, the other persons would not be guilty under S. 148. 27 Cr. L. J. 894=96 I. C. 158.
4. S. 34 does not apply to dacoits who had no weapons. 130 I. C. 267=1931 P. 49.
5. When the common intention is to cause grievous hurt and blow on the head is given with *chhavi* by one accused, causing death, the accused are guilty under Ss. 326-34. 1935 L. 97.

6. Distinction between common object or common intention under S. 34.

1. The object of an assembly as a whole may not be the same as the intention which several persons may have when in pursuance of that intention they perform a

Acts done in Furtherance of Common Intention.—(contd.)

18. Where a fight in response to a challenge resolves itself into two single combats the principle of joint responsibility under S. 34 does not apply. 1930 L. 485.
19. In case of joint assault, the accused are responsible for the injuries to the extent to which they had common intention to cause those injuries. 61 I. C. 522.
20. Where grievous hurt is caused in furtherance of common intention, all are guilty under S. 325 but one man cannot be convicted under S. 326. = 30 Cr. L. J. 167.
21. If grievous hurt is the result of the aggregate of several simple injuries caused by accused they are guilty under S. 325 read with S. 34. 133 I. C. 455.
22. Where a number of persons armed with *dangs* and *chhavis* go to forcibly carry off girl, all are guilty of grievous hurt if it is caused to the friends or relatives of the girl in attempting to save her. 1925 L. 565 = 88 I. C. 273.
23. Where all accused came on the spot armed before murder is completed and the murder is a pre-arranged one and the accused has part assigned to him beforehand such as keeping away the intruders, it is no defence that he did not give any blow, nor his presence can be considered accidental. 1930 Pat. 545 = 11 Pat. L. T. 787 = 32 Cr. L. J. 66 = 128 I. C. 114, 52 C. I. 197.
24. In absence of common intention none of them can be guilty of murder, unless it is proved that he actually struck the fatal blow. 1930 Sind 99 = 120 I. C. 520 = 31 Cr. L. J. 117 = 24 S. L. R. = 1930 Cr. C. 282.
25. A murderer of a person who ran away from the scene of robbery cannot be said to be in furtherance of common intention. 1929 L. 338 = 115 I. C. 1.
26. Four persons went to the house with the common intention to rob and if necessary to kill any person resisting or raising alarm, they are all guilty if death is so caused. 1927 L. 765 = 104 I. C. 630 = 28 P. L. R. 583, 89 I. C. 719.
27. If the common intention is to give thrashing and one of the accused gives spear blow, others are not liable. 86 I. C. 150 = 26 Cr. L. J. 710.
28. Where four persons armed with deadly weapons pursued and killed a man, all are guilty of murder. 1924 L. 415 = 69 I. C. 449.
29. If a man joins another to assault a person, even though the original intention may be to cause harmless injuries and he sees his companion causing death, he is guilty under S. 304 read with S. 34 if he does not interfere with the action or assist the deceased. 1929 P. 65 = 114 I. C. 222 = 30 Cr. L. J. 276.
30. Several persons assaulted A with *chhavis*, on a quarrel over turn of water, who died of injuries. It was not certain as to who caused the fatal blow. Held, all are guilty under S. 326 read with S. 34. 1924 L. 216 = 24 Cr. L. J. 401.
31. If five men assaulted at one and same time, each of them seeing that the other four are assaulting also, they may be regarded as having common intention to beat the victim of the assault, though impulse to assault may have arisen independently. 1931 Rang. 321 = 1931 Cr. C. 1007.
32. If there was no common intention to cause hurt and the fatal blow given was an unpremeditated act, others are not liable although they gave some blows as well. 12 L. 422 = 1931 L. 749 = 134 I. C. 793 = 32 Cr. L. J. 1219.
33. Where all accused joined in beating the deceased to death mercilessly, but it was not shown who inflicted the fatal blow the accused may be sentenced to transportation for life. 1932 L. 189 = 137 I. C. 282 = 33 P. L. R. 1.
34. Whether an act is done in furtherance of common intention is a question of fact and it can be inferred from the circumstances. 1935 Rang. 89 = 13 Rang. 210 = 154 I. C. 881. 1924 C. 257 = 25 Cr. L. J. 817 (F. B.), 1925 P. C. 1 = 52 C. 197, 1931 Rang. 1 = 32 Cr. L. J. 495, 1933 Rang. 236 = 35 Cr. L. J. 41 = 146 I. C. 392, 49 B. 84 = 1924 B. 502, 55 A. 607 = 1933 A. 528 Rel. on.
35. Two persons making concerted attack on deceased are both guilty although it is not proved that one of them struck any blow. 1933 L. 313 = 34 Cr. L. J. 724.
36. Where the common intention was to commit robbery but one of the accused shot down the deceased. Held, others were constructively guilty under S. 302. 1933 L. 819. 1925 P. C. 1 101 21 P. R. 1919, 52 I. C. 395 and 41 C. 1072 overruled by 1925 P. C. 1.

Acts done in Furtherance of Common Intention—(concl'd.)

37. When two or more persons set on another with hatchet and *dangs*, S. 34 applies. 1933 L. 927=34 Cr. L. J. 911.
38. Accused attacked with *lathis* a person on inimical term with them, as soon as they saw him, S. 34 applies. 1936 A. 437, 35 A. 560 Ref. 9 A. L. J. 180 and 1931 L. 523 not foll.

10. Killing while retreating.

Two persons went armed with guns to commit robbery. Large number of shots were fired by them while retreating and trying to escape. One of the pursuers was killed by a shot from one of them. Held, that the other was guilty under S. 302 read with Ss. 34 and 114. 1934 C. 10=61 C. 190.

11. Presence at the occurrence.—Liability. See abetment 36. S. 114 I. P. C.

1. The mere presence of a person on an unlawful occasion does not raise a presumption of that person's complicity in an offence then committed. 14 B. 115, 1923 M. W. N. 104=1923 M. 369 (2)=73 I. C. 147=24 Cr. L. J. 531.
2. A man is not liable if present at the scene, if he takes no part in it and does not act in concert with the offenders, merely because he did not endeavour to prevent it or to apprehend the felon. (1866) 5 W. R. (Cr.) 45.
3. When four persons are present at the commission of murder all are guilty even if two of them are alleged to have taken no part in it. 52 C. 197=1925 P. C. 1, 1929 L. 338=30 Cr. L. J. 385=115 I. C. 1.
4. Where both master and servant were present at the sale of *ganja* in contravention of the terms of license and servant received the money, he was guilty by operation of S. 34. 29 C. 496.
5. Where all accused came on the spot armed before murder is completed and it was a pre-arranged murder and the accused was appointed to keep off the intruders, he cannot plead that he is not liable as he did not strike the blow on the deceased. His presence cannot be considered accidental. 1930 P. 545=32 Cr. L. J. 66.
6. When three men fired at the postmaster but there were only two wounds, all are guilty of murder. 52 C. 197, 29 C. 495, 35 C. 693, 35 A. 329, 21 C. 263, 41 C. 154.
7. Where four persons took out a woman with the intention or knowledge that one of them should kill her, all are guilty if she is killed by one. 1927 Sind 85.
8. Persons who are present at the murder and thereby give moral support to it are equally guilty as the murderers. 47 A. 276=1925 A. 185=85 I. C. 130=26 Cr. L. J. 450.
9. Where the only evidence against the accused was that they were found near the scene of occurrence and there was no evidence that they conspired to kill the deceased, they were not guilty. 1932 L. 254 (2)=137 I. C. 65, 1934 L. 813.
10. Where one of the accused is present when the fatal blow is struck and shares with the others the intention to cause death, he can be convicted of murder. 8 Rang. 603.
11. Accused was charged with murder. He came to the spot armed with *lathi* but did not give blow although others killed the deceased. Held, he could be convicted under Ss. 325-109. 132 I. C. 529=32 Cr. L. J. 905=1931 Oudh 274.

12. Series of acts.

1. S. 34 contemplates series of acts done by several persons, some by one of those persons and some by others, but all in pursuance of common intention. All will be equally liable. 1935 C. 529=157 I. C. 529=36 Cr. L. J. 1229, 52 C. 197 foll.
2. Where the accused who was in company of others who had fired shots did not try to run away or prevent his companions from doing it but was seen putting his hand in the belt where lay a dagger to wound those who were surrounded by him. Held, he was guilty of murder like his companions. 1935 C. 529=157 I. C. 529=36 Cr. L. J. 1229, 52 C. 197 foll.

ACTS DONE IN PROSECUTION OF COMMON OBJECT.—S. 149, I. P. C. See Unlawful assembly.

ADDITIONAL DISTRICT MAGISTRATE.—See District Magistrate.

ADDITIONAL EVIDENCE.—S. 424 Cr. P. C. See Appeal.—3

Admission—(contd.)

11. Evidence given by accused, on his own behalf in extradition proceedings, is an admission by an accused and is admissible under S. 21. 112 I. C. 50=29 Cr. L. J. 962=1929 Sind 15.
 12. Statement of accused on oath at Coroner's inquest is admissible at his trial. 50 B. 111=1926 B. 151=28 Bom. L. R. 111=93 I. C. 690=27 Cr. L. J. 466.
 13. An accused in a criminal proceeding cannot be deemed to have admitted any fact not denied by him in such proceeding. 41 C. 173.
 14. When it is proved that accused soon after the occurrence made a statement incriminating himself, the reasonable inference is that it was true representation of actual facts in the absence of rebutting evidence. 26 I. C. 654=16 Cr. L. J. 62.
 15. When the accused admitted that he obstructed the road under mistake without admitting that danger or injury was caused to any person, he cannot be convicted under S. 283, I. P. C. 1925 L. 153=81 I. C. 195=25 Cr. L. J. 707.
 16. The statement made by an accused, although it may amount to an admission in his favour, is relevant otherwise than an admission as negating any inference of guilt which may be drawn against him in consequence of his silence when he was apprehended. S. 21, Cl. (iii), Evidence Act. 1935 Sind 145 (165).
- 3. By conduct.**
1. A statement may be made otherwise than by word of mouth or writing. 1926 Rang. 112.
 2. Such a statement can hardly be called as an oral or documentary statement. 1931 A. 9=32 Cr. L. J. 1006.
- 4. By Pleader.**
1. A pleader can admit facts, so as to dispense with the necessity of further proof in a criminal case at the appellate stage. 52 B. 686=1928 B. 241=112 I. C. 110.
 2. Court can act on the plea of guilt by pleader, if the personal attendance of accused is dispensed with under S. 205. 50 B. 250=1926 B. 218=27 Cr. L. J. 440.
 3. Where in an Excise case the Excise Analyst was not produced and only his report was admitted, the Sessions Judge on appeal wanted to call him as witness under S. 428 Cr. P. C. but the pleader admitted that the report was correct and the parcel contained cocaine, held, that even if the admission could not legally be acted upon, the irregularity was curable under S. 537, Cr. P. C. 52 B. 686=1928 B. 241.
- 5. By witness.**
1. Statement of a person to police before he is charged for an offence is an admission and is admissible against him. 1928 Pat. 473=111 I. C. 721=29 Cr. L. J. 913.
 2. Before an admission can be used against a party, it must be put to him and an opportunity afforded to him to explain if it is capable of explanation. 31 P. L. R. 243=1930 L. 991=123 I. C. 278=11 L. 410=12 L. J. 161.
 3. If the admission is not put to the party making it under S. 145, Evidence Act, the admission is not legal evidence and cannot be used against the party making it. 1930 L. 695, 1915 P. C. 7, 21 C. W. N. 280, Ref. 31 P. R. 1903 Diss.
 4. Admission in a civil suit about a document that it is genuine cannot be regarded as confession in the trial for forgery. 1929 C. 539=1929 Cr. C. 194. 37 C. 467.
- 6. Collective.—By number of persons.**
- Admission by six accused together is inadmissible unless witness can say particular words of each accused. 6 L. 437=1925 L. 418=90 I. C. 145=26 Cr. L. J. 1489.
- 7. Distinction between confession and—**
1. "Admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime is a confession. *Stephen's Digest, Art. 21*, 16 P. R. 1889 Cr., 20 P. R. 1905 Cr., 6 A. 509 (539); 6 B. 34, 14 B. 280 (263).
 2. Statements containing admissions damaging to the accused have been held to amount to confessions. 1925 P. 521=40 B. 122, 1900 Sind 190 B. 661=1923 B. 65, 50 B. 185, 24 Cr. L. J. 385, 41 C. 603, 42 I. C. 307, 1906 Cr., 20 P. R. 1905 Cr., 19 B. 34, 14 P. 282; 6 A. 509.

Admission—(contd.)

3. The test is that if the prosecution relies on the truth of the statement, the statement would be confession; otherwise, an admission. 1930 Sind 225=126 I. C. 449; 46 B. 961; 41 C. 601; 1923 B. 65=24 Cr. L. J. 870; 1925 Sind 237=26 Cr. L. J. 778; 1922 A. 24=23 Cr. L. J. 193.
 4. A report made by accused to police will be inadmissible if prosecution relies on the truth of it. 1933 L. 899.
 5. "If no police is given in evidence to show that he gave a statement, or one given by him in court, the statement will be inadmissible." Cr. L. J. 530.
 6. The test is whether statement as a whole suggests a necessary inference of guilt. If it does, it is confession. 7 A. 646; 16 P. R. 1886 Cr., 5 Bom. L. R. 312.
- 8. To be accepted as a whole.**
1. When the only account of what happened on the night of murder is given by the accused himself, his admission in the statement must be accepted in its entirety and if it establishes any mitigating circumstance the accused should be given the benefit of it. 1930 L. 269=121 I. C. 178=31 Cr. L. J. 226, 33 P. L. R. 287.
 2. Conviction cannot lie on the partial admission of accused in defence. 1928 Oudh 373=110 I. C. 795=29 Cr. L. J. 763.
 3. Admission to be relied upon must be taken as a whole. 1930 P. C. 245=127 I. C. 746, 1930 Oudh 370, 49 A. 707, 1932 C. 39=134 I. C. 921, 60 I. C. 482, 5 I. C. 340, 1923 Rang. 24=70 I. C. 911
 4. All the words of admission must be taken together even though they operate in favour of accused. 41 M. L. J. 525=71 I. C. 270.
 5. It is not permissible to pick out such portions of admission as are favourable to one and to neglect the rest. 1923 Rang. 24=70 I. C. 911; 1927 A. 385=49 A. 707.
 6. Where the admission is made subject to qualifications they must be considered. 1934 M. 100=150 I. C. 132; 39 B. 399; 12 I. C. 246, 2 C. 341 (350).
- 9. To Panchayat.—See Confession.—10.**
- 10. To Police.—See Confession to police officer—S. 25, Evidence Act.**
- 11. To Villagers.**

Although evidence of admission of guilt to villagers is sufficient to justify a conviction, still the evidence that such an admission was made must be closely scrutinized. 1929 Oudh 272 = 117 I. C. 737 = Cr. L. J. 829.

12. Vague.—

In answer to a question put by Court to the accused whether three packets of cocaine were recovered from him, he replied that three packets were recovered from him but were left with him by one B. and that he did not know what these packets contained. Held, that statement does not amount to an admission that he had cocaine in his possession. 1924 A. 198 = 83 I. C. 904 = 21 A. L. J. 869 = 26 Cr. L. J. 200, 6 L. 437 = 1925 L. 418.

13. Value of.

1. Admission is a statement suggesting an inference as to any fact in issue or relevant fact made by accused person. 16 P. R. 1886 Cr, 6 A. 509 (539), 6 B. 34, 14 B. 260, 20 P. R. 1905.
2. Admission by husband in the presence of witnesses that he kicked his wife, is sufficient. 8 W. R. 29.
3. Admission explained away by the accused is on the same footing as retracted confession and conviction cannot lie on such admission. 1927 L. 549=102 I. C. 492=29 P. L. R. 313.
4. In case of admission of guilt by the accused, the statement must be clearly recorded. 18 A. W. N. 1889.
5. A person is not entitled to give an undertaking to a criminal court to abstain from certain action and then file a civil suit for declaration that that undertaking was of no effect. 1925 A. 605=85 I. C. 586.

Admission—(contd.)

6. Admission to be relied upon must be taken as a whole. 1930 P. C. 245=127 I. C. 746, 1930 Oudh 370, 49 A. 707, 1932 C. 39, 60 I. C. 482.
7. Oral confession to a magistrate is relevant and may be proved by testimony of the magistrate. 1929 L. 794=121 I. C. 497=31 Cr. L. J. 269, 11 P. R. 1918 Cr., 1925 L. 557=27 Cr. L. J. 134=91 I. C. 806, 1922 M. 40.
8. Admission under inducement by police is inadmissible. 8 P. R. 1832 Cr.
9. Admission is not necessarily a confession. 16 P. R. 1886 Cr.
10. Admission by an agent or guardian of a minor about minor's age is of little value. 1923 R. 164=71 I. C. 140.
11. Conviction cannot lie on the partial admission of the accused in defence. 1928 Oudh 373=110 I. C. 795=29 Cr. L. J. 763.
12. Different men are differently constituted, and some though innocent deliberately abscond or make a false admission of guilt in the hope of escaping with a small punishment. 1930 Oudh 324=126 I. C. 694=31 Cr. L. J. 1081.
13. Admissions by parties to a marriage is not sufficient to prove marriage. 20 A. 166.
14. Statement of Honorary Magistrate as to what accused's father admitted or promised is inadmissible. 1935 Pesh. 73.

ADULTERATION.—Of food and drink. Ss. 272=273 I. P. C. See Cheating.—6.

1. Sale of adulterated food which is not noxious is no offence under S. 272, although it may be under S. 420 or Municipal Act. 3 C. W. N. 66.
2. To sell inferior food is not an offence. 15 P. R. 1873.
3. Adulteration with harmless ingredients is no offence. 12 B. R. 153.
4. Mixing of vegetable oil with ghee is no offence. 7 Cr. L. J. 405.
5. Person mixing pig's fat with ghee intending to sell the mixture as good or knowing it that it will be sold as such is not guilty. 46 A. 94=1924 A. 214 (1)=83 I. C. 1004.
6. "Noxious as food" means unwholesome or injurious to health and not repugnant to one's feelings. 46 A. 94=1924 A. 214, 12 C. W. N. 698.
7. Mixing of water with milk is no offence. 1 Weir 228, 1926 L. 49=89 I. C. 961.
8. Sale of grains or fodder unfit for horse to eat is no offence. 3 P. R. 1908 Cr.
9. Selling wheat with admixture of extraneous matter is no offence. 6 B. L. R. 520. Nor is the sale of grain in a closed pit. 28 A. 312=3 Cr. L. J. 208.
10. Prosecution must prove that the accused had knowledge or reason to believe that the article sold was noxious as food or drink. 1922 A. 273 (1)=77 I. C. 1001.
11. Toddy in which germs have germinated is noxious. 1 Weir 228.

ADULTERY.—S. 497, I. P. C.**1. Abatement of—**

The death of husband does not necessarily put an end to a prosecution under S. 497. 4 L. 7=71 I. C. 77=24 Cr. L. J. 29, 4 M. H. C. R. App. 55.

2. Abetment of—

Wife is not punishable as abettor. 36 P. R. 1881 Cr., 26 M. 463, 5 P. R. 1871.

3. Applicability of S. 497 to Europeans.

1. S. 497, I. P. C., applies to Europeans. 61 I. C. 238=22 Cr. L. J. 382.
2. S. 61, Divorce Act, does not preclude public prosecutions under S. 497. 1928 L. 50=29 Cr. L. J. 382.

4. Attempt—

1. Producing opportunity for sexual intercourse with a married woman is only a preparation and not attempt. 13 Bom. L. R. 1879 Cr.
2. Absence of complaint by husband for attempt to commit adultery is fatal. 4 N. L. J. 245.

Adultery—(contd.)

3. Where a married woman went to visit a man but before adultery was committed she was taken away by the husband, the man was not guilty of attempt. 13 P. R. 1879 Cr., 25 P. R. 1902 Cr.

4. It is not sufficient to establish attempt that accused was found in a place where adultery might be committed or he was minded to commit it. (1889) 1 Weir 569.

5 Charge of—

1. A charge of adultery alleging commission of offence between two dates is legal where it is impossible in the circumstances of the case to assign particular date on which sexual intercourse took place. 41 C. 488.

2. If the particular dates on which the offence is committed is not known, it is enough to specify period during which it was committed. 1935 Oudh 506, 51 C. 488 and 61 I. C. 238 Rel. on.

6. Complaint of.—S. 199, Cr. P. C.

1. A husband under the age of 18 can lodge a complaint. 1922 L. 168=68 I. C. 837, 4 W. R. 31.

2. The dissolution of marriage does not take away from the complainant (husband) the right to make a complaint. 1922 L. 477=67 I. C. 734=16 P. W. R. 1922.

3. Absence of complaint by husband for attempt to commit adultery is fatal. 4 N. L. J. 245.

4. Husband's complaint is not necessary in case of house trespass with intent to commit adultery. 23 A. 82, 47 I. C. 77=18 Cr. L. J. 881 2 P. R. 1877 Cr.

5. Accused acquitted of rape, cannot be convicted of adultery, if no complaint is made by husband. 19 I. C. 716=14 Cr. L. J. 284.

6. Complaint must be made to a magistrate and not to police. 1923 M. 59=68 I. C. 624.

7. Examination of complainant on oath is not a part of complaint. 1922 M. 353.

8. Where husband refused to make charge under S. 497, the magistrate cannot convict the accused. 2 C. 415. See 38 A. 276.

9. A formal complaint of the offence must be instituted in the manner provided by S. 199, Cr. P. C. 29 C. 415, 30 C. 910, 2 P. R. 18, 1925 L. 631=6 L. 375.

10. A complaint under S. 498, I. P. C., can be treated as one under S. 497. 64 I. C. 134=22 Cr. L. J. 742=24 Oudh C. 232.

11. S. 61, Divorce Act, is no bar to prosecution by Crown, when moved by an injured husband. 1928 L. 50=103 I. C. 381=29 Cr. L. J. 332, 1935 Oudh 506.

12. Complaint by husband headed as one under Ss. 366-368 and accusation under S. 497 as well is proper one. 1934 L. 945.

13. Complaint need not express precisely the section under which the accused is to be charged. 1934 L. 945, 20 C. 483 and 1934 A. 472 Rel. on.

7. Connivance or consent of husband to—See Enticing away married woman.—5-9.

1. The mere fact that the husband on being informed by the police that his wife had been discovered at a certain place expressed his unwillingness to take her back on the ground that she had lost her religion, was no evidence of connivance on the part of husband at her living a life of adultery with the accused. 24 A.L.J. 155=1925 A. 189.

2. Mere negligence is no connivance. 1925 A. 189=24 A. L. J. 55=27 Cr. L. J. 101.

3. If the accused enters the house of another at night to commit adultery with his wife, he is guilty under S. 451. The fact that husband was absent in the legitimate pursuit of his occupation, it may be safely presumed that he neither consented nor connived at the adultery of the wife. 1925 L. 635=59 I. C. 319=25 Cr. L. J. 1343, 22 Cr. L. J. 266=60 I. C. 666.

4. Husband was driven out by wife and he was supplanted by the accused with whom the wife lived. He preferred no complaint for 15 months. Held that it amounted to connivance at the adultery. 1934 Sd 10=35 Cr. L. J. 116=145 I. C. 753.

5. Where the husband was unwilling to proceed, the Judge declined to interfere in

Adultery—(contd.)**8. Defence—Custom.**

1. Plea of ignorance of law is a good defence to a charge under S. 497, I. P. C. the language of which leaves room for such admission. 1 B. 317, 6 B. 126, 1 B. 97 (116).
2. Custom that a woman can contract second marriage cannot be pleaded. 2 B.H.C. 117.

9. Essentials and evidence.

1. Adultery *per se* is no offence. It must be without consent or connivance of husband. 1928 Pat. 375=111 I. C. 762=9 P. L. T. 397.
2. Mere negligence is no connivance. 1926 A. 189=27 Cr. L. J. 101=91 I. C. 533.
3. For a prosecution under S. 497, marriage must be strictly proved. Mere admission of parties is insufficient. 1928 Pat. 481=112 I. C. 469, 1925 Oudh 701.
4. The evidence that both slept together for 15 days on the same bed and there was attachment is sufficient. 61 I. C. 238=22 Cr. L. J. 382=24 P. L. R. 419.
5. Letter written by complainant's wife to accused, who did not receive it, is insufficient for conviction. 1923 C. 248.
6. If a person convicted of an offence under S. 497 again commits adultery, he may be prosecuted again. 53 B. 69=1923 B. 530. Rat. Un. Cr. 150.
7. Where husband omits to take any step against the accused for seven years, the offence has been condoned. 1 C. W. N. 498.
8. It is not necessary to prove direct fact of adultery. Adultery can be inferred from circumstances. 1923 Pat. 375=111 I. C. 762=9 P. L. T. 397, 1935 Oudh 506, 22 Cr. L. J. 382, 21 W. R. 13.
9. A complaint for adultery cannot be dismissed on the ground that the husband was deserted by the wife for one year. 38 I. C. 433=18 Cr. L. J. 321.
10. It is not necessary that the adulterer should know whose wife the woman is, provided he knew she was married woman. (1873) 21 W. R. (Cr.) 13.
11. Where accused after abducting a married woman lived with her in adultery and subsequently remarried her, he is guilty under S. 497 and Ss. 494/109. 24 A. L. J. 155=1926 A. 189=27 Cr. L. J. 101=91 I. C. 533.
12. The admission of parties that they lived as man and wife leads to the inference that adultery must have been committed. (1867) 7 W. R. (Cr.) 59.
13. Sexual intercourse is necessary ingredient of the offence. 1935 Oudh 506.

10. House Trespass to commit.—See House trespass.—14.**11. Marriage.—See Enticing away married woman.—19. Bigamy—16.**

1. In a prosecution for adultery, marriage must be strictly proved. 1925 R. 328=94 I. C. 603, 1927 Oudh 140=100 I. C. 535=28 Cr. L. J. 311, 5 C. 566.
2. Mere admission of parties about the marriage is not sufficient. 1928 Pat. 481=112 I. C. 469=29 Cr. L. J. 1045.
3. Mere desertion of the husband by the wife for one year does not dissolve marriage 38 I. C. 433=18 Cr. L. J. 321.
4. Where a man and a woman lived together as man and wife, there is a presumption that they were legally married, even though they belong to castes which ought not to intermarry. The doctrine of *factum valet* applies. 1927 Rang. 261.
5. Cohabitation is not necessary to legally complete a marriage. 4. P. R. 1874.
6. Marriage cannot be proved on the presumption of marriage arising from cohabitation for a number of years. 1934 Sind 10=148 I. C. 753.

12. Subsequent acts of—.

1. Evidence of acts of adultery subsequent to date of acts charged is admissible to show acts of improper familiarity. 1935 Oudh 506.
2. If a person convicted of adultery continues his adulterous intercourse, he is liable to second conviction. Rat. Un. Cr. 150.

Advertisement—**ADVERTISEMENT.—****1. Definition of—**

Advertisement means a public notice or announcement of a thing. *Wharton's Law Lexicon*, P. 37.

2. Forfeiture of newspapers and books containing.—*See* Forfeiture of books and newspaper.**3. Of Cheating.—**

Puffing one's goods or exaggeration of the quality of one's goods is not indictable. 29 C. W. N. 362=1925 C. 605=86 I. C. 985=26 Cr. L. J. 921.

4. Of Lottery.—*See* Lottery—1.**5. Obscene books and paintings —***See* Obscene books.—1.**ADVICE.—****1. Absence of legal.—***See* Transfer (Grounds of)—1.**2. Disclosure of.—***See* Privilege.**3. If abetment.—***See* Abetment.—6.**4. Improper—by counsel.** *See* Legal Practitioners' Act, Ss. 13—16.**5. Right to Legal —***See* Remand—1.

Accused should have access to legal advice even during police investigation. 1930 L. 945 = 31 P. L. R. 780 = 129 I. C. 481 = 12 L. 16.

ADVOCATE.—*See* Counsel.**ADVOCATE-GENERAL.—**Ss. 333, 194, Cr. P. C.**1. Certificate by.—**

If an Advocate-General grants a certificate under Cl. 26, Letters Patent (Madras), High Court has jurisdiction to say that such certificate is misconceived and incompetent on ground of absence of decision on point of law. 1935 M. 486=58 M. 523.

2. Cognizance of offences on information by—S. 194, Cr. P. C.

High Court can take cognizance of offences on information by Advocate-General.

3. Definition of.—S. 304 (a) Cr. P. C.

Advocate-General includes an acting Advocate-General. 35 M. 397, 1932 B. 71.

4. Powers of—To enter *nolle prosequi*. S. 333, Cr. P. C. *See* *Nolle prosequi*.

1. If Advocate-General enters a *nolle prosequi*, the accused should be discharged. 2 C. W. N. 481.

2. When twice the jury was divided and the Judge did not agree with the jury, the Advocate-General entered *nolle prosequi*. 41 C. 1072.

3. An order of discharge under S. 333, Cr. P. C., is no bar to fresh proceedings being taken against the accused. 40 C. 91.

4. Though an order under S. 333 does not amount to acquittal, a *nolle prosequi* puts an end to indictment. The prisoner cannot subsequently be proceeded against on the same charge. 52 C. 590=1925 C. 902=89 I. C. 709=26 Cr. L. J. 1397.

5. Power to exhibit information S. 194 (2). Cr. P. C.

1. The information to the High Court by Advocate-General should contain a statement of charge as definite and detailed as an indictment. 1933 P. C. 124.

2. Allegations as to opinion of Executive are not to be included. 1933 P. C. 124.

3. Procedure under this section should not be resorted to where ordinary procedure can be adopted, as in cases of perjury or conspiracy. 1933 P. C. 124.

6. Right of Pre-audience.

Under S. 114, Government of India Act, as well as under Bar Councils Act, 1926, Advocate-General has a right of pre-audience over all other Advocates.

AFFAIRS OF STATE.—*See* Privilege.—3.**AFFIDAVIT.** S. 539-A, Cr. P. C.

Affidavit—(contd.)

1. **By accused in transfer application.** See Transfer.

2. **By convict to get rid of conviction.**

1. A person cannot tender his affidavit to get rid of conviction standing against him. 19 A. 200, 23 A. W. N. 1897, 28 A. 331.
2. Accused cannot contest the propriety of conviction by affidavit containing matters not on record. 8 A. W. N. 1900.
3. Affidavit may be used to show want of jurisdiction in a magistrate, but not for affording material for reviewing the magistrate's decision on merits. 10 B. H. C. R. (Cr. C.) 102.

3. **Contents of—**

1. If affidavit contains statement of belief on information, it must show the source of information. 90 I. C. 703, 11 B. L. R. 1298.
2. The ground of belief must be stated clearly to enable the court to judge whether it would be safe to act on the deponent's belief. 37 C. 259, 73 I. C. 721, 14 C. W. N. 153.
3. An affidavit must contain only bare facts known to the deponent. 36 A. 13.

4. **Counter—**

1. A counter affidavit is admissible for deciding whether complaint is sustainable. 58 C. 1211=1931 C. 344=131 I. C. 262=32 Cr. L. J. 674.
2. An application for the transfer of a case was put in on certain alleged facts which were denied by the other party by counter affidavit and by the statement of trying Magistrate. A complaint under S. 193, I. P. C., was lodged. Held, that it was improper on such a material although an inquiry under S. 476 was proper. 58 C. 1211=1931 C. 344=131 I. C. 262=32 Cr. L. J. 674.
3. Where an application is made for transfer of a case on the ground of partiality of a Magistrate, it is highly improper for District Magistrate to make a counter affidavit swearing as to his impartiality. 25 B. 179.

5. **Court before which—be sworn.**

1. An application for transfer cannot be entertained if the affidavit is sworn before District Judge and not High Court. 1931 C. 710=33 Cr. L. J. 61.
2. A Deputy Magistrate has no power to administer oath to a person making affidavit to be used in the High Court and such person cannot be convicted of perjury. 5 Pat. 110, 14 C. 653, 1926 Pat. 214=93 I. C. 963=27 Cr. L. J. 499.
3. An affidavit to be used in civil courts may be sworn before any Magistrate. 8 C. W. N. 40.
4. Affidavits sworn before Presidency Magistrate, Calcutta, are not admissible in the Patna High Court. 1925 Pat. 755=92 I. C., 697=27 Cr. L. J. 313.
5. An affidavit made before a Bench Magistrate in Sind is one made before a proper person. 1927 Sind 128=99 I. C. 600=28 Cr. L. J. 168.

6. **False.—**See False evidence.—3. False information.—1.

7. **Prosecution for False Affidavit.**

1. Accused can be prosecuted for false affidavit in support of application for transfer. 6 L. 34, 3 L. 46, 1925 L. 12=89 I. C. 457, 23 Cr. L. J. 133, 108 I. C. 124, 55 A. 114, 33 A. 163 no longer good law.
2. Where an accused handed over an affidavit containing false allegations to his pleader, who filed it in court, he was not guilty under S. 182, as it was open to him to instruct his counsel not to file it. 1925 M. 123=83 I. C. 343=25 Cr. L. J. 1383.

8. **Reading over—**

Affidavit must be read over to the deponent. 36 A. 13

9. **What is—**

Affidavit is a written statement sworn before a person having authority to administer an oath. *Wharton's Law Lexicon, P. 41.*

Affirmation.**AFFIRMATION.**—See Oaths Act.—

Affirmation is a solemn declaration without oath. *Wharton's Law Lexicon*, P. 42.

AFFRAY.—Ss. 159, 160 I. P. C.**1. Essential and Evidence.**

1. Disturbance of the public peace is the essence of the offence. Where a Station Master and a Railway peon fought on a Railway platform, when a goods train was in the station, held, it is a case of ordinary assault. 1883 A. W. N. 197.
2. The evidence required to prove affray must prove : (a) that there was fight, (b) that it was in a public place and that (c) it led to the breach of the public peace. Parties fighting over their right to fish in a place, are guilty of affray. 21 C. 392.
3. Accused was quarrelling in a public street and no blows were exchanged when police interfered. Held, it is not affray. 1928 L. 813=116 I. C. 810.
4. Prosecution should not lodge complaint simply for exchange of abuse in a public place. 1926 L. 412=94 I. C. 888=27 P. L. R. 176.
5. If one attacks and the other defends, the case comes under S. 159. The gist of the offence consists in the terror it causes to the public. 53 A. 229=1931 A. 8.
6. For a charge under S. 160 there must be two or more persons concerned. 1933 M. 843.

2. Procedure.

1. Alteration of conviction under Ss. 147, 323 Penal Code, into one under S. 160 is not justified. 47 M. 61=1924 M. 375=81 I. C. 42.
2. Accused discharged under S. 152 can be charged under S. 160. 1933 Sind 173.
3. A person charged under S. 325 and acquitted of the charge cannot be convicted under S. 160 without first charge being framed. 1933 M. 843=33 Cr. L. J. 76.
4. In affray or party faction cases, the members of each faction should be tried separately. They can give evidence against their opponents, but cannot be compelled to do so, on the ground of implicating himself. 1 N. W. P. H. C. R. 293.
5. Where L. and M. after abuse came to blows while others also joined, and M. dies of injuries. Held L. is guilty under S. 160. 32 P. W. R. 1912 Cr.
6. Acquittal under S. 160 does not bar prosecution under S. 323. 1936 P. 503=37 Cr. L. J. 785, 1925 A. 299 Rel. on. 1921 P. 22 and 1930 P. 26 Expl.

3. Public Place. See Public Gambling Act, S. 13.

A private *chabutra* (platform) adjoining a public thoroughfare is not a public place, although it is exposed to public view, unless public had right of access to it. 17 A. 166.

AGE.**1. Birth certificate in Municipal register.**—S. 35 Evidence Act.

1. A certificate of birth of a person is conclusive evidence of his age, unless disproved by the evidence of the party denying its correctness. 1935 Pat. 474.
2. A register of birth kept by a *chaukidar*, or *topadar* or a village munshi or in a police station is an official register. 1933 Pat. 473, 54 I. C. 166=21 Cr. L. J. 22, 52 I. C. 162, 35 I. C. 551, 1926 M. 985, 1925 M. 1005, 46 C. 152, 46 A. 637.
3. An entry as to date of birth a person made in the register of a *chaukidar* is admissible even if the entry was not made by the *chaukidar* himself but at his instance by *Daffadar*, provided the *Daffadar* has been called to prove the entry. 1933 Pat. 473, 46 A. 637, 41 M. 26, 54 I. C. 166.
4. An entry in a Municipal register of births and deaths is admissible. 59 P. R. 1901, 1934 Oudh 167.
5. Certified copies of registers of births and deaths are admissible. 46 C. 152, 46 A. 637, 1926 M. 985=95 I. C. 1005, 59 P. R. 1901.
6. A register of births and deaths kept in police station is a public document. 46 C. 152 but not a *chaukidar's* register of births and deaths. 36 I. C. 941.
7. Birth register is to be preferred to guardianship certificate for determining date of birth. 1933 A. 100=54 A. 1019.

Age—(contd.)

2. Certificate of doctor as to—

Certificate of doctor as to age is valueless. 21 C. W. N. 257 (P. C.).

3. Consideration of—in punishment. See Sentence—2, Murder—8.

4. Data for determining.—Of child or young person.

1. The chief data for estimating age of an individual are—(1) the teeth (2) height and weight (3) some minor signs and extent of ossification. (4) The age of living can only be estimated with any degree of certainty in the young. After adult life is reached, the age can only be guessed at approximately, in the absence of a regular certificate of birth or a horoscope. *Lyon's Med. Jur.* 1901, Pp. 34-35.
2. As regards the age of child, a medical man has no advantage over a layman. A mother will be better authority than a Doctor. *Lyon's Med. Jur.* 1935, P. 83.
3. In determining age by physical signs, a wide margin must be admitted. 1934 Sind 119=150 I. C. 984.
4. If there is a difference of 2 or 3 years only it is impossible for a medical man in a rape case on an ordinary inspection to state with any degree of certainty the exact age of a person A. L. R. 1932 L. 440=1932 P. C. L. 440 Cr.
5. The evidence of Indian witnesses on question of age is notoriously often very vague and unreliable. 1935 P. C. 199.

(A) By Teeth.—

1. Teeth yield indications of age up till the thirteenth or fourteenth year, and with the 'wisdom' teeth up to the eighteenth year. Permanent teeth are 32 in number, 16 in each jaw.—
2. Generally a child of nine should have twelve permanent teeth; at ten or eleven 24; at thirteen or fourteen it will have 28. *Lyon's Med. Jur. Ed. 1935, P. 84.*
3. Dr. Powell notes "I have seen wisdom teeth in Hindu children aged 13 2/12, 13 4/12 and 13 9/12. A few extraordinary irregularities may be found, but such freaks do not invalidate the general rules. I have known European cut a wisdom tooth at thirty-six. *Lyon's Med. Jur.* 1904, P. 36.
4. In the absence of documentary proof the estimation of the age of living child must be a very loose one until it arrives at the time when dentition commences. *Taylor's Med. Jur.* 1928, Vol. I, P. 166.
5. The indication afforded by the wisdom teeth is notoriously untrustworthy. 1934 Sind 119=150 I. C. 984.

(B) By height and weight.

1. The ratio between these is too variable for any formula to be of much value. The average weight of Indian children at birth has been estimated at 5 lbs., that of English children at 6 1/2 lbs.; and during the first year after birth about one pound is gained each month. *Lyon's Med. Jur.* 1904, P. 37.
2. On the average a child should measure about two feet high by the end of the first year, and should weigh about twenty pounds, with proportionate increase from birth upwards. *Taylor's Med. Jur.* 1928, Vol. I, P. 166.

(C). Hair on Pubes and arm pits, etc.

1. This growth begins about ten or eleven years of age and in boys is attended about fifteen to eighteen by deepening of voice. *Lyon's Med. Jur.* 1901, P. 39, *Taylor's Med. Jur.* 1928, Vol. I, P. 168.
2. In the male downy hair begins to appear on the upper lip and chin at about the age of fifteen or sixteen. *Lyon's Med. Jur.* 1935, P. 87.

(D) Breast development.

1. The breast development in girls varies greatly in time. The average age of puberty is twelve to thirteen. But even women of twenty sometimes have not menstruated *Lyon's Med. Jur.* 1901, P. 39.
2. The development of breasts in girls is very vague and liable to be altered by loose habits. *Taylor's Med. Jur.* 1928, Vol. I, P. 169.

Age—(contd.)

3. It is a mistake to think that development of breast is a sign that menstruation has been established. *Lyon's Med. Jur. 1935, P. 87.*

(E). By Ossification.

1. Besides the dentition and bright weight, it is possible to make more extensive use also of that other precise criterion of age, namely, the progress of ossification. For table regarding points of ossification by Ogston See *Lyon's Med. Jur. Ed. 1904, P. 41, and Taylor's Med. Jur. 1928, P. 167.*
2. Ossification is less easily and certainly observable in the living than in the dead, the *Röntgen rays* enable it to be observed in the former. *Lyon's Med. Jur. Ed. 1904 P. 41, Lyon's Med. Jur. Ed. 1935, P. 85.*

(F). By Menstruation.

Among eastern races manstruation occurs at the age of twelve or thirteen, among Europeans about thirteen or fourteen. In exceptional cases the menstrual flow may be established at an earlier age or may not occur till 20 years of age. It is a mistake to think that development of breasts is a sign that menstruation has been established. *Lyon's Med. Jur. 1935 P. 87.*

(G). By X-ray.

Union of Bones and Epiphyses.

By 1½ years the anterior fontanlles should be closed.

- „ 9 „ the ilium, pubes, and ischium should meet in the acetabulum.
- „ 13 „ these three should be united but still separable on maciration.
- „ 15 „ the coracoid should be united to the scapula.
- „ 16 „ the olecranon should be united to the ulna.
- „ 16-17 „ the head of the radius and the lower end of the humerus should be joined to their respective shafts.
- „ 17-18 „ the internal epicondyle should be united to humerus.
- „ 18-20 „ the head of the fermur should have joined the diaphysis.

If all the epiphyses are found united, the individual is certainly over 25 years of age. The age can be accurately determined by X-Ray. *Taylor's Med. Jur. 1928 Vol. P. 168.*

(H). By Wisdom Tooth.—Sec—A.

The indication afforded by wisdom teeth is notoriously untrustworthy. 1934 Sind 119.

5. Entries in Hospital Register.—Certificate. S. 35 Evidence Act.

1. Entries in the Prescription Register of a Government Dispensary are admissible under S. 35 Evidence Act. 1927 Oudh 310 = 103 I. C. 512.
2. An entry as to age of a person in an inoculation or vaccination register is relevant under S. 35. 1934 C. 766.
3. A certificate as to age of a private patient does not fall within the terms of S. 35 Evidence Act. 33 I. C. 142.

6. Entries in Panda's or Bhat's Register about —S 32 (5) Evidence Act.

1. Bhat's are heralds who are interested in keeping family record which is evidence if it comes from proper custody. 25 C. W. N. 908 = 66 I. C. 894.
2. Book maintained by various members of a family of hereditary bards and containing entries of domestic events relating to the family, is admissible. 46 A. 655.
3. But when such entries are on leaflets of different sizes and stitched books containing blank pages, they must be taken with great caution. 1920 L. 759, 15 I. C. 625, 30 A. 510, 89 I. C. 895.
4. Papers, books and statements of family priest are admissible. 6 L. L. J. 550.

6-A. Evidence of.

1. A man cannot give direct evidence of his age, but his statement cannot be dismissed as of no value. 63 I. C. 525, 86 P. W. R. 1910 Cr.

Age—(contd.)

2. Casual statement by agent or guardian about the age of the accused is of no value. 71 I. C. 140=1923 Nag. 164.
3. Statement of age of witness at the head of deposition in no evidence of age. 25 A. 108, 80 I. C. 357.
4. A slight change in the date of birth is not necessarily to be discredited. 1924 Oudh 385=81 I. C. 484.
5. Evidence of Indian witness on question of age is notoriously often vague and unreliable. 1935 P. C. 199.

7. Finding age of a person from hair.

1. The expert can determine the age of a person by examining some of that person's hair, it is especially easy when hair is given to him with its root, for the root of a hair dissolves in a solution of caustic potash, and the younger the owner of the hair the more easily does it do so; the hair of children will dissolve immediately, but that of old people will resist the action of the solution of caustic potash for hours; with several hairs of the same person various experiments may be made and the average time necessary for dissolution of their roots be established, it may then be determined what are the persons of a known age of the person whose hair is the subject of examination may be thus determined. *Criminal Investigation by Dr. Hans Gross, Ed. 1934, P. 135.*
2. There are other means of determining the age of a person from the hair e.g., by the diminution of pigmentary cells, of the medullary substance, and the spaces or gaps thereby produced. Thus it can be established whether perfectly white hair belongs to a young man who is growing grey in early life or to a really old man. *Ibid.*
3. The hairs of the sexual part of a young girl have the tips very fine, while the tips of those of an old woman are claviform. In both sexes the hair in the arm-pits is very slender in youth and as the subject ages it will in that locality reach a diameter of 15 millimeters and even more. *Ibid.*

8. Horoscope.

1. A horoscope is inadmissible unless its correctness is vouchsafed by the writer. 38 M. 166, 16 M. 134.
2. Horoscope containing date of birth and prepared by a person having special means of knowledge and who is dead is admissible to prove date of birth. 6 Pat. 388=1927 P. 271, 1933 C. 51, 39 I. C. 401, 33 I. C. 637=969.
3. Horoscope brought into the Court by family Pandit was held as evidence of the proof of age. 1924 Oudh 353=83 I. C. 840=11 O. L. J. 164.
4. A horoscope is often accepted as substantive evidence of the date of the birth of the person mentioned in it, perhaps with a vague idea of reference to S. 32 Evidence Act. No part of that section can make any statement of a date in such a document a relevant fact. 1923 Nag. 164=71 I. C. 140.
5. Horoscope or birth-day book is admissible to prove age. 1916 P. C. 242. 31 I. C. 637 (P. C.), 33 I. C. 969.
6. Horoscopes are not evidence by themselves but they could be used for refreshing the memory or as statement of deceased person under S. 32 Ev. Act. 1924 Oudh 353=83 I. C. 840.
7. A statement about the date of son's birth by a father at the time of preparing a horoscope is admissible under S. 32 (5) as it was the date of commencement of relationship. 52 I. C. 456=10 L. W. 67.
8. If the horoscope represents the statement of a person who is alive at the time it is given in evidence, it is not relevant, but it may be used to refresh memory under Ss. 159, 160 Ev. Act. 12 Mys. L. J. 133, 1924 Oudh 353, 1923 N. 64=71 I. C. 140, 41 A. 63, 45 I. C. 460.
9. It can be used to corroborate or contradict the testimony of a witness. 45 I. C. 460.
10. A horoscope which is produced by a stranger, and when the person who made it has not been called as a witness, is inadmissible in evidence. 35 M. 166.

Age—(contd.)

11. A horoscope may be admissible as an admission under Ss. 17-18. Ev. Act or under S. 35. 17 M. 134.

9. Medical Evidence of.—

1. A certificate that a person was 21, by a doctor who formed his opinion "judging by his appearance, his voice and his teeth" is worthless. 21 C. W. N. 257 (P. C.)=39 I. C. 401=1916 P. C. 242.
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4. Where a Civil Surgeon reports about the probable age of a person to a magistrate on the latter's requisition, he is merely giving his expert opinion and is not making a record of his act in his official capacity for the public and the report so made is not a public document. 1928 Oudh 155=108 I. C. 817.
5. No medical witness can testify to exact age of minor, as it is always possible for medical testimony to err within a year or two or the correct age. 1 Weir 373, (374).
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7. The effect of medical evidence is to render other evidence as to age of person probable or improbable. 56 I. C. 313.
8. After adult life is reached, the age can be guessed approximately. *Lyon's Med. Jur.* 1901, pp. 31-35.
9. As regards age of child, layman, e. g., mother is better authority than a doctor. *Lyon's Med. Jur.* 1935 P. 83.

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1. After the age of twenty-five there is little, if any, scientific proof of age, whether in the living or the dead. *Taylor's Med. Jur.* 1928, Vol. I, P. 169.
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3. The tell-tale crow's-feet about the eyes may be produced by prolong suffering, anxiety or worry; white hair often comes on in quite young people from grief or shock, and often for no reason that can be estimated. Hence in the absence of documentary proof or of some very exceptional circumstantial evidence, it is impossible to swear the exact age of an adult *Ibid.*
4. That the person has reached adult age will be indicated by the union of all epiphyses to the bones. *Ibid.* P. 185.
5. An estimate based entirely on appearance may well be faulty by ten or more years. Every body has met the old youngman and the young old one *Lyon's Med. Jur.* 1935, P. 88.

11. School certificate. S. 35, Evidence Act.

1. The officers of the Education Department of a state are executive officers within the meaning of S. 74, Evidence Act, and therefore the records of the acts of such officers are public documents and admissible in proof of age of scholar. 50 B. 716=1927 B. 11.
2. School certificates duly prepared according to authority are relevant. 1934 N. 44=149 I. C. 660.
3. An entry as to the age of scholar in school register is an entry in public register made by a public servant in the discharge of his duty. 1935 Oudh 41, 1934 C. 766, 1929 Oudh 113=114 I. C. 801, 1932 Nag. 117=140 I. C. 66, 1931 B. 178, 1924. Oudh 353=83 I. C. 840.
4. An entry in a school register as to the age of a scholar, which is made on information

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—(contd.)

- supplied by the deceased father of the boy, is admissible in evidence under S. 32(5).
1935 Oudh 41, 1929 Oudh 113=114 I. C. 801.

5. Entries in school registers are of little value as evidence of age. 1936 L. 593.

2. Statement of deceased persons as to.—S. 32 (5), Evidence Act.

1. Statements written or verbal made by a person who is dead or who cannot be found or has become incapable of evidence are admissible when they relate to existence of relationship. S. 32 (5) Evidence Act.
2. Statements made by the relatives of the person, who were since deceased, relating to the date of birth of that person are admissible in evidence under S. 32 (5). 20 C. 753, 13 Q. B. D. 818 not foll.
3. A statement contained in petition under the Guardians and Wards Act, (VIII of 1890) as to the age of person by his deceased aunt of her appointment as guardian is admissible. 19 C. W. N. 646=23 I. C. 595, 20 C. 753 foll. But see 1924 C. 523, 12 L. 336.
4. The plaint in a former suit verified by a deceased member of the family, was admitted under S. 32, (5) to prove the order in which certain persons were born and their ages. 24 C. 265=1 C. W. N. 270, 8 Oudh C. 94.
5. A statement made by a sister about the age was admissible. 25 M. 183, 8 Oudh C. 94, 9 M. L. T. 220.
6. If the person making the application for guardianship is alive, the statement in the petition will not be admissible. 1924 Oudh 525, 28 I. C. 595, 66 I. C. 433.

13. Statement of a person about his.—

1. Statement as to the date of birth of a person contained in his deposition and in affidavits by him are admissible under S. 21 (1) read with Cl. 5 of S. 32, if made by a person having special means of knowledge, whether personal or hearsay. 33 I. C. 969.
2. A man can not give direct evidence of his age, but his statements on the subject are not to be dismissed as of no value. 63 I. C. 525, 86 P. W. R. 1910 Cr.

AGENT. See Breach of trust—7 cheating—compounding.—2.
Master is not criminally liable for the criminal acts of his agent. 19 C. W. N. 1239.
See 23 B. 423.

AGENT PROVOCATEUR.

The evidence of *agent provocateur* is looked upon with suspicion and should be seldom, if ever relied upon in support of conviction. 1929 L. 436=30 P. L. 603.

AGITATED STATE OF MIND

The fact that accused was in agitated state of mind, soon after the crime and pointed out places where weapons were concealed, makes the crime highly probable. 1925 M. 574 (2)=26 Cr. L. J. 840.

AGGRIEVED PARTY. See Compounding—3. Defamation.—7.

AGREEMENT.

1. To pay maintenance. See Maintenance.—2.
2. To refund embezzled money. See Breach of trust.—4.

AID.—See Abetment.

AID TO POLICE OFFICER OR MAGISTRATE. Ss. 42-43, Cr. P. C., S. 187, I. P.

1. No person is bound to obey an unreasonable order of a magistrate or police officer. A magistrate ordered a landholder to find the clue of theft within 15 days. Held, an illegal order and its disobedience is not punishable. 3 A. 201, 7 C. L. R. 575.
2. The law does not intend that police officers should have a general power of call upon members of public to join them in arresting a number of unknown persons whose whereabouts are not known. 42 A. 314.
3. Aid means personal aid and not a supply of contingent of men to assist. 2 Weir 37

4. Person arrested by police was lying down on the ground and refused to move. Police asked the assistance of accused but he expressed sympathy with the arrested person. Held, he was guilty under S. 187, I. P. C. read with S. 42, Cr. P. C. 1932 A. 506=139 I. C. 106=33 Cr. L. J. 736.
5. A. refused to answer question put by Police under S. 161, Cr. P. C., is not punishable under S. 187. 23 M. 544, 27 P. R. 1908 Cr.

ALCOHOL.—See Drunkenness.

1. Analysis of.

Ethyl alcohol is produced by the fermenting action of yeast on sugar, and is concentrated by distillation.—*Taylor's Med. Jur.* 1928, Vol. II., P. 621.

2. Percentage of—in whisky, etc.

Percentage of spirit in whisky, brandy and rum is fixed by law at 25 per cent. under proof=36 per cent.

Port, Sherry and Madeira ... about 15 per cent.

Claret, Burgandy, and similar red wines ... 10 "

Grave, chablis, and similar white wines ... " 8 "

Bear and stout ... " 3 to 6 "

Taylor's Med. Jur., 1928, P. 621. *Lyon's Med., Jur.* 1935, P. 624.

3. Effect of Alcohol.—Drunkenness—symptoms of.

1. The absorption of alcohol is very rapid, and it can be detected in the blood within a few minutes....It is most rapid when taken on an empty stomach, but is delayed if food is present, and particularly when a fatty substance is present in the food. *Taylor's Med. Jur.* 1928, Vol. II, Pp. 622-623.
2. The concentration in the blood reaches its maximum in half an hour to two hours and gradually diminishes until it is completely lost in about twenty hours. *Ibid.*
3. We may take it approximately correct that when the percentage in the blood reaches the neighbourhood of 0.2 per cent. the patient will be distinctly affected by alcohol, when it reaches a point between 0.2 and 0.4 per cent. he will probably be drunk, and that when a concentration of about 0.6 per cent is reached there is distinct danger of death. *Ibid.*
4. There is a distinct difference in the effect of alcohol on different individuals and on the same individual at different times. *Ibid.*
5. In the early stages where there is a simple loss of control, no precise diagnosis is possible. His conduct would be abnormal. *Ibid.*
6. In a more advanced stage there may be obvious signs of alcoholism. The breath smells of drink. The face may be flushed and the pupils slightly dilated....Indistinctness in speech may be noted, varying with the stage of intoxication and with the individual. Hiccup may be present. *Ibid.*
7. The examination of urine will prove whether a person is intoxicated by alcohol. *Ibid.*
8. There is first a feeling of well being and a certain slight excitation. The actions, speech and emotions are less restrained, due to a lowering of the inhibition normally exercised by the higher centres of the brain. *Ibid.*

4. Poisoning by.—Post Mortem.

1. Cases of alcohol poisoning are usually accidental. *Ibid.*
2. Alcohol may act as a poison by its vapour. If the concentrated vapour be respired it will produce the usual effects of intoxication. *Taylor's Med. Jur.*, 1928, Vol. II, P. 629
3. The post mortem appearance in case of alcohol poisoning will be as follows:—The stomach would be found intensely congested or inflamed, the mucous membrane presenting in one case a bright red, and in another a dark red-brown colour. The brain and its membranes are found congested and in some instances there is an effusion of blood or serum beneath the inner membrane. *Ibid.*

Appeal.

APPEAL.—S. 423, Cr. P. C.

1. Abatement of.—S. 431, Cr. P. C.—See Abatement.

2. Acquittal without—

1. Acquittal without appeal is not competent while enhancing sentence of co-accused. 5 P. R. 1869.
2. High Court has power to acquit without appeal. 14 P. W. R. 1909.
3. Where the grounds are common to acquitted appellants and non-appealing accused, the case of the latter can be considered under Revisional powers. 6 P. R. 1867, 71 P. R. 1866.
4. Where in a trial, the magistrate took action against one of the accused under S. 562 and sentenced the others to imprisonment, the sentences were set aside in revision on the ground that trial was illegal. Held, that conviction under S. 562, Cr. P. C. could not be said to have been automatically set aside. 1931 L. 199=32 Cr. L. J. 731

3. Additional evidence on.—Ss. 428, 375, Cr. P. C.

1. The Appellate Court may take further evidence but cannot direct further enquiry. 67 I. C. 498=23 Cr. L. J. 402=12 A. L. J. 961, 4 P. 204.
2. Appellate Court can record additional evidence in case of appeal against an order for compensation. 1930 M. 483=123 I. C. 809=31 Cr. L. J. 602=53 M. 688.
3. The evidence of co-accused as witness ought not to be recorded by the appellate Court although he has not appealed. 7 L. 148=1926 L. 309=27 Cr. L. J. 463.
4. According to S. 375, Cr. P. C., additional evidence may be taken upon any point bearing upon the guilt or innocence of accused. 1925. M. 106, 1928 M. 1174.
5. When the medical evidence was not given *viva voce* before Jury, High Court declined to take his evidence under S. 428. 56 C. 566=1929 C. 244=119 I. C. 378.
6. Appellate Court cannot send under S. 428 a case to police for investigation. 1900 A. W. N. 130.
7. When the lower Court refused to examine certain witnesses for defence and the accused was prejudiced, additional evidence may be taken by the appellate Court. 19. M. 375.
8. The object of S. 428 is the attainment of justice even at the late stage. 1925 Pat. 526=88 I. C. 595, 7 L. 148=1926 L. 309=27 Cr. L. J. 463.
9. The Court of Revision will not interfere with an order of appellate Court allowing additional evidence. 88 I. C. 595=1925 Pat. 526=26 Cr. L. J. 1171.
10. The accused need not be examined under S. 342, Cr. P. C., after the additional evidence. 52 B. 699=1928 B. 200, 86 I. C. 459=1925 Pat. 414=26 Cr. L. J. 811.
11. Where the report about the contents of a bottle containing cocaine was vague, the appellate court ordered the examination of Excise Analyst as witness. 53 B. 685.
12. Appellate Court will take additional evidence to supply a defect in formal proof, *e.g.*, to see if sanction for prosecution was granted by the proper authority. 42 M. 885.
13. Before taking additional evidence, court must record reasons. 42 M. 885, 7 L. 148.
14. Omission to record reasons is not fatal if accused is not prejudiced. 1930 M. 483=123 I. C. 809=53 M. 688=31 Cr. L. J. 602, 12 Cr. L. J. 240.
15. High Court has power under S. 307 read with S. 428 to call further evidence. 55 C. 566=1929 C. 244=119 I. C. 378=30 Cr. L. J. 1031.
16. If Sessions Judge thinks that evidence of some more witnesses is necessary, he may order additional evidence. 31 C. 710.
17. When there was some doubt as to the truth of identification and though the deceased was alleged to have mentioned the name of the accused to Karnam, the latter was only examined in the committing Magistrate's Court and not in the Sessions Court, the High Court directed the Sessions Judge to examine the Karnam as a Court witness. 1931 M. W. N. 731.

Appeal—(contd.)

18. The Appellate Court acting under S. 476-B. has inherent jurisdiction to take additional evidence. 1931 Sind 115=134 I. C. 1007=33 Cr. L. J. 41, 44 M. 47=1921 M. 453=29 Cr. L. J. 372 foll. 51 M. 603 not foll.
19. Irrespective of whether the trial Court be civil, criminal or revenue, the proceedings on appeal under S. 476-B. is proceeding under the Criminal Procedure Code. The appellate Court cannot make a remand to the trial Court but it can itself make an inquiry, when the inquiry by the lower Court is defective. It cannot take additional evidence under S. 428 as that section is specially limited to appeals under the chapter in which it occurs. 1931 L. 761=135 I. C. 594=1931 Cr. C. 1065.
20. When first information report was not placed before the Court and the accused came to know of it at a later stage, additional evidence should be allowed by the appellate court. 1935 A. 63=152 I. C. 550=36 Cr. L. J. 117.
21. The Sessions Judge has no power to order a re-trial with the condition that evidence already on the record should be considered. The proper course would be to take additional evidence under S. 428 (1). 1935 Nag. 125 (2)=36 Cr. L. J. 740.
22. S. 428 cannot be invoked to cure an illegality, e.g., disregard of the provisions of S. 256 or S. 162, Cr. P. C., 53 B. 378=1929 B. 309, 1935 Sind 145 (179).
23. If the prosecution did not choose to examine certain eye-witnesses, the Appellate Court should not fill up the gap by summoning such witness. 1935 Oudh 402.
24. When a Sessions Judge hears an appeal against the order of Additional Sessions Judge who had decided the case with the aid of assessors or Jurors, he cannot take additional evidence. It is inadmissible and conviction is illegal 1935 Oudh 402=36 Cr. L. J. 844, 15 A. 136 and 43 A. 125 Rel. on. 47 I. C. 274=19 Cr. L. J. 902 Dist.
25. A District Magistrate under S. 428 can order the taking of formal evidence, by lower court, in proof of a document but cannot order to hear other evidence to "complete the inquiry." 1934 L. 316=35 Cr. L. J. 1166.

4. Adjournment of.—Cost—.

S. 344 does not apply to appeals and therefore they cannot be adjourned by awarding costs. The order of cost is *ultra vires*. 29 P. R. 1919 Cr. 1933 M. W. N. 878.

5. Against Acquittal. See Acquittal—2.**6. Against attachment order under S. 89.—S. 405, Cr. P. C.**

1. "Court to which appeal ordinarily lie" means Court to which appeals in majority of cases lie, even though in a particular instances, the appeal may lie to another Court. 11 B. 438, 22 C. 487, 32 P. R. 1919.
2. A subordinate Court getting delegated process is not—. 26 M. 656, 27 M. 124.

7. Against an order requiring security under S. 107—110.—S. 406, Cr. P. C. See security for good behaviour—2.

1. An appeal lies to the District Magistrate from an order of good behaviour passed by an Additional District Magistrate. 48 C. 874=1921 C. 347.
2. In case of appeal under S. 406 from an order under S. 107, Cr. P. C., the appellate Court can order retrial. 48 A. 501=1926 A. 403=27 Cr. L. J. 945.
3. An appeal from an order under S. 118 passed by Additional District Magistrate lies to the District Magistrate and not the Sessions Judge. 32 P. L. R. 453.
4. If the accused is bound over on his own plea of guilty, there is no right of appeal. 134 I. C. 379=1931 Sind 151=25 S. L. R. 337=32 Cr. L. J. 1142.

8. Against an order of first class Magistrate.—S. 408, Cr. P. C.

1. If some accused are sentenced to less than four years and some to more than four years, the appeal of all the accused lies to High Court, even if the accused who got more than four years do not choose to appeal. 1925 A. 160=91 I. C. 959=27 Cr. L. J. 175, 37 A. 471. 12 P. R. 1900, 5 P. R. 1916 Cr.=17 Cr. L. J. 299, 11 Bom. L. R. 544, 161 P. L. R. 1911=12 Cr. L. J. 236.
2. When two sentences of fine exceeding in the aggregate fifty rupees are passed by a Magistrate the appeal would lie to the Court of Sessions. 1925 B. 416=27 Cr. L. J. 920=28 B. L. R. 668=96 I. C. 270.
3. An appeal lies under S. 408 from an order passed under S. 552 (1), Cr. P. C. 24 P. R. 1904, 1926 B. 382 1925 C. 329, 37 A. 31, 46 A. 823=1924 A. 765.

Appendix—(contd.)

4. Where a case is referred to District Magistrate under S. 342, Cr. P. C., he cannot award five years' imprisonment and even if he does so, the appeal lies to the Sessions Judge. 4 L. R. 53=6 Cr. L. J. 29.
 5. An order awarding compensation and repayment of fine under 22, Cattle Trespass Act, is appealable under S. 408 and the restrictive provisions of S. 413 are not applicable. 46 B. 54, 1931 C. 642=33 Cr. L. J. 90=59 C. 19.
 6. Under S. 35(3), Cr. P. C., concurrent sentences cannot be aggregated together for the purpose of raising the status of the form of appeal. 3 P. L. J. 134, 35 A. 154.
 7. If a first class Magistrate with S. 39 powers awards a sentence of imprisonment for more than four years, the appeal lies to High Court. 5 P. R. 1916 Cr.
 8. If appeal is presented to the Sessions Court instead of High Court and the Sessions Judge disposes of the appeal, his proceedings are void. 1925 Rang. 39.
 9. Where an accused was sentenced by a District Magistrate under S. 124-A, I. P. C., to two years and under S. 153-A, to one year the appeal lies to High Court for both the sentences. 38 C. 214.
 10. Where a Magistrate who begins as a second class Magistrate and completes the case as a first class Magistrate, passes a higher sentence in the latter capacity, the appeal lies to the Sessions Judge and not the District Magistrate. 1927 L. 138=99 I. C. 82=28 Cr. L. J. 50, 1925 Pat. 472=26 Cr. L. J. 914.
 11. The moment a second class Magistrate is invested with first class powers, any convictions by him as a second class Magistrate would be convictions as a first class Magistrate and an appeal would lie to the Court of Sessions. 51 M. 257=1928 M. 55=53 M. L. J. 733=26 M. L. W. 685=29 Cr. L. J. 71=106 I. C. 583.
 12. Where accused was sentenced under Ss. 376-366, I. P. C., to less than four years but the aggregate of the two exceeded that term, the appeal lay to the High Court, when sentences were to run consecutively. 1930 A. L. J. 1206.
 13. If the total term of imprisonment does not exceed four years the appeal lies to the Court of Sessions and the other concurrent sentences of lesser period need not be considered by the Sessions Judge. 1927 N. 255=28 Cr. L. J. 672, 1921 C. 152.
 14. A Court of Sessions in Baluchistan has same powers over European British subjects and other persons as are held by Court of Sessions in British India and therefore can hear appeals as prescribed by Cr. P. Code. 1929 L. 187=118 I. C. 438=30 Cr. L. J. 918, 5 P. R. 1907 Cr.=41 P. L. R. 1907=25 P. W. R. 1907.
 15. Sentence of four years' imprisonment means substantive sentence of four years and does not include imprisonment in default of payment of fine. 19 P. R. 1918 Cr.
 16. Where a person was charged with infringement of an order under S. 8 of the Ordinance III of 1914 and a regular trial was held by District Magistrate, the appeal lies to the Sessions Judge under S. 408. 10 P. R. 1916 Cr.
 17. Appeal from an order directing accused to be detained in a Borstal School for a period of 5 years lies to the Court of Sessions. 1936 Rang. 229.
- 9. Against order of 1st Class Magistrate when does not lie.—Ss. 413-415, Cr. P. C.**
1. Where a Magistrate passes two separate sentences of fine of Rs. 40 on the accused, the aggregate of sentences may be added together to save the right of appeal. 134 I. C. 1196=35 C. W. N. 752=1931 C. 642=33 Cr. L. J. 90, 1 B. 223.
 2. If two sentences are passed on accused one for Rs. 20 and the other for Rs. 15, no appeal lies. 36 C. W. N. 407=1932 C. 551=33 Cr. L. J. 704.
 3. Where a Magistrate passed a non-appealable sentence, but at the request of the accused enhanced the sentence to make it appealable, the Sessions Judge is bound to hear the appeal, although sentence was illegal. 35 B. 418.
 4. In case of two sentences of fine, aggregate is to be looked into for determining right of appeal. 1932 C. 551, 1926 C. 895 foll. 1931 C. 642 Dist.
 5. Accused were fined under Ss. 323-427, I. P. C. Sessions Judge held that no appeal was competent. High Court refused to interfere. 1935 A. 630=157 I. C. 123.
- 10. Against order of Assistant Sessions Judge.—S. 408, Cr. P. C.**
1. Two accused were tried by Assistant Sessions Judge and one of them was sentenced to

three years' and the other to seven years' rigorous imprisonment, the appeal lies to the High Court and not the Sessions Judge. 1931 M. W. N. 1068.

2. When an Assistant Sessions Judge or S. 30 Magistrate passes several sentences of imprisonments each of which is for a term of four years or less and sentences are ordered to run concurrently, the appeals lie to the Sessions Court and not the High Court. 34 I. C. 986=17 Cr. L. J. 266, 25 P. R. 1901 Cr., 35 A. 154.
3. If an Assistant Sessions Judge awards less than four years, the appeal lies to Sessions Judge. The mere fact that before an appeal is filed he becomes officiating Sessions Judge the appeal does not lie to High Court. 44 I. C. 970=19 Cr. L. J. 942.

11. Against Plea of guilty.—S. 412, Cr. P. C.

1. If accused pleads guilty he can only question the legality or extent of the sentence. 56 I. C. 851=31 C. L. J. 122, 5 B. 85.
2. Conviction of accused on the plea of guilty does not bar an appeal on the point of legality of the conviction. 1927 B. 67=97 I. C. 668=27 Cr. L. J. 1148.
3. Where a charge is framed against an accused and he has pleaded guilty to the charge that he is a previous convict, the Appellate Court is precluded from opening the question under S. 412, whether accused is previous convict or not. 9 Cr. L. J. 56.
4. In order to consider the legality of the sentence, the appellate Court may satisfy itself that the plea of guilty was properly taken after nature of offence was explained to and understood by the prisoner. 22 B. 759.
5. Where no sentence is passed, *e. g.*, when accused on the plea of guilty was released under S. 562, Cr. P. C., the right to appeal is absolutely barred. 20 P. R. 1917, Cr.
6. The High Court in revision is not bound by S. 412, Cr. P. C., but may examine the record for the purpose of seeing whether the plea was based on proper conception of the facts. 1930 Rang. 349=128 I. C. 845=1930 Cr. C. 1177.
7. If an accused plead guilty to a charge under S. 380, I. P. C., under an erroneous conception of one's right in the property, S. 412 is inapplicable and his right of appeal is not shut out. 53 A. 437=1931 A. 265=130 I. C. 693=32 Cr. L. J. 576.
8. If an accused is bound over on his own plea of guilty he has no right of appeal as binding over is not sentence. 134 I. C. 379=32 Cr. L. J. 1142=1931 S. 151.
9. A plea of guilt based on mistake of law will not be accepted, the magistrate must try him on merit. If the Court in revision holds that a plea of guilty should not have been recorded, retrial should be ordered. 31 Cr. L. J. 122=20 Cr. L. J. 547.
10. Accused is entitled to appeal against his conviction and sentence notwithstanding his plea of guilty, when notice of enhancement of sentence has been issued to him. 1935 Rang. 49=12 Rang. 616=36 Cr. L. J. 336=153 I. C. 390.

12. Against sentence of Court of Sessions.—S. 410, Cr. P. C.

1. S. 410 confers right of appeal to the High Court to a person convicted on a trial held by the Sessions Judge or an Additional Sessions Judge. 1891 A. W. N. 48.
2. If Sessions Judge imposes a fine for intentional insult to him in Court, in a summary way, the accused is said to be convicted on a trial and the appeal lies to the High Court. 4 M. H. C. R. 146.

13. Against sentence passed by Presidency Magistrate —S. 411, Cr. P. C.

1. Where the Presidency Magistrate inflicted a sentence of six months' rigorous imprisonment and fine of Rs. 200 and in default of payment three months' simple imprisonment, the two sentences could not be combined to give the accused right of appeal. 2 M. 30, 16 C. 799, 20 B. 145, 10 Cr. L. J. 255.
2. No appeal lies to High Court from an order under S. 562, Cr. P. C., passed by a Presidency Magistrate. 1932 C. 488=138 I. C. 627=33 Cr. L. J. 639.
3. If two concurrent sentences of 6 months' imprisonment are passed by a Presidency Magistrate, no appeal is competent. 17 C. L. J. 382.

14. Against sentence passed by Second or Third Class Magistrate.—S. 407, Cr. P. C.

1. Where a part of a case is tried as second class Magistrate and part as first class Magistrate and he was invested with first class powers before hearing arguments, the

Appeal—(contd.)

appeal from his order lies to the Sessions Court. 8 L. 203, 86 I. C. 978, 1925 Pat. 472=25 Cr. L. J. 914, foll. 17 Bom. L. R. 895, 101 I. C. 602=1927 B. 366.

2. An appeal from a Bench of Magistrates invested with powers of second or third class will lie to the District Magistrate. 9 M. 36.
3. A person against whom an order under S. 22, Cattle Trespass Act, is made by a Magistrate of second or third class will be deemed to be convicted on a trial within the meaning of S. 407 and appeal lies to the District Magistrate. 29 M. 517, 46 B. 58=1922 B. 191.
4. If the Bench, when sitting together is invested with first class powers, although consisting of second or third class Magistrates, the appeal lies to the Sessions Judge. 9 C. 96=11 C. L. R. 423.
5. A second class Magistrate was invested with first class powers before judgment; trial was held as second class Magistrate. Held, appeal lies to District Magistrate under S. 407. Cr. P. C. 1932 C. 460=33 Cr. L. J. 516. 8 Cr. L. J. 48 and 1925 Pat. 472 Ref. 1927 B. 366=28 Cr. L. J. 474 Dist.

15. Against summary conviction when lies.—S. 414, Cr. P. C.

1. When the accused was summoned on a charge under S. 323, I. P. C., by a second class Magistrate who could not try the case summarily, it is not open to Additional District Magistrate to place the case on his own file and try it summarily, but it should be held as an ordinary complaint. 1932 L. 188=33 Cr. L. J. 108, 4 C. 18.
2. If a Magistrate of the first class passes an order under S. 562 in a summary trial, the appeal lies under S. 408, Cr. P. C., because it is not a sentence of fine. 46 A. 823.

16 Alteration of charge or conviction.—

1. An appellate Court has power to alter conviction under one section of Penal Code into another of the same Code. 1922 A. 143=65 I. C. 854.
2. Appellate Court is not to contravene. Ss. 237, 239, Cr. P. C. 33 M. 264, 38 P. R. 1905.
3. Appellate Court may record conviction in respect of an offence, of which the trial Court has found him not guilty. 1926 A. 700, 35 M. 243, 48 I. C. 502, 20 Cr. L. J. 22. 34 A. 115, 25 C. 975, 34 M. 545, 23 C. 975, 1924 Rang. 93=25 Cr. L. J. 247.
4. S. 238, Cr. P. C., is no bar to alter the conviction under S. 147 to one under S. 323. 46 B. 79=1922 B. 114=64 I. C. 156.
5. Appellate Court cannot convict for offence totally different from that charged in lower Court. 3 L. 440=1923 L. 260=69 I. C. 437, 56 I. C. 592=21 Cr. L. J. 49.
6. Altering conviction by the appellate Court does not include setting aside an acquittal. 1923 C. 658=75 I. C. 362=24 Cr. L. J. 938=27 C. W. N. 555.
7. Alteration of conviction under S. 147 or S. 323 into one under S. 160, I. P. C., is not justifiable. 47 M. 61=1924 M. 375 (2)=1923 M. W. N. 814=25 Cr. L. J. 554.
8. Where the accused were convicted of graver offences and acquitted of minor ones, the appellate Court can acquit them of graver offences and convict them of minor offences. 35 M. 243, 23 C. 975.
9. On an appeal against a conviction of murder, the appellate Court cannot convict the accused for theft while acquitting him of murder, for it is illegal under S. 237 or S. 238. 7 L. 561, 4 L. 373=1924 L. 109 oll., 20 A. 107, 1925 P. C. 130 Dist.
10. Conviction of an accused under S. 409, I. P. C., cannot be altered into one under S. 161 when he was not charged for it. 8 A. 120.
11. If, on the facts proved, the Court misapplied the law, the appellate Court can convict the accused for an offence for which he should have been charged. 26 C. 863.
12. When accused was charged under S. 302 but was convicted under S. 304, I. P. C. the appellate Court can convict him of murder. 1 Rang. 436=1924 Rang. 93.
13. Appellate Court can alter a conviction under S. 182 to one under S. 500 notwithstanding that there was no complaint as required by S. 198. 25 A. 534.
14. Alteration of conviction under S. 376 into S. 366 is illegal. 8 Bom. L. R. 120.

Appel—(contd.)

15. Alteration of conviction under S. 379 into S. 143 is illegal. 54 C. 476, 27 C. 660.
16. Alteration of conviction under Ss. 211-109 into S. 193 is illegal. 3 C. W. N. 367.
17. Alteration of conviction under S. 147 into Ss. 448-323 is illegal. 1926 C. 431=87 I. C. 842, 30 C. 238, 18 C. W. N. 1276=15 Cr. L. J. 704.
18. Alteration of conviction under S. 342 into S. 352 is illegal. 5 C. W. N. 296.
19. Appellate Court cannot convict the accused of an offence, which the lower Court is not competent to try. 4 P. R. 1917 Cr. 7 A. 414.
20. Appellate Court cannot alter the conviction of a substantive offence into abetment of that offence. 33 M. 264, 1928 L. 382=112 I. C. 850=30 Cr. L. J. 18, 13 Cr. L. J. 223=14 I. C. 203. See 42 C. 1094 and 93 I. C. 181.
21. An appellate Court can alter the finding of the lower Court while maintaining the sentence. 46 I. C. 415, 34 M. 545, 1927 M. 789=104 I. C. 440=28 Cr. L. J. 824.
22. If accused are acquitted under S. 325 by the Sessions Judge, the High Court can convict them under S. 323. 39 C. 896.
23. Appellate Court can alter conviction under S. 380 to one under S. 403, I. P. C., the two offences being of the same nature. 1929 L. 508=115 I. C. 25=30 Cr. L. J. 413.
24. Appellate Court cannot alter the sentence of trial Court by substituting whipping—a sentence not within the power of the trial Court. 1930 L. 318=120 I. C. 787=31 Cr. L. J. 166.
25. Sessions Judge can alter finding under Ss. 205 and 109 to one under S. 419, I. P. C. 1927 Pat. 199=102 I. C. 337=8 Pat. L. T. 470=28 Cr. L. J. 529.
26. Appellate Court cannot alter the conviction into one for which accused was not charged. 1925 M. 706=87 I. C. 924=26 Cr. L. J. 1036=21 M. L. W. 520.
27. Alteration of conviction under S. 468 into one under S. 471 I. P. C. is illegal. 1925 N. 294=89 I. C. 398=8 N. L. J. 87=26 Cr. L. J. 1358.
28. Accused were convicted under S. 325 for breaking the knee-cap. The appellate Court found that only K was guilty under S. 325 and others under S. 323 for other injuries. Held, the alteration is illegal, as they had no opportunity of answering that charge. 1924 C. 532=72 I. C. 72=24 Cr. L. J. 312.
29. A conviction on the altered charge is not necessary on alteration of conviction into one . . . Sind 105=89 I. C.
30. A conviction for attempt may be altered into one for substantive offence. 26 C. 863 28 Cr. L. J. 404=1927 C. 520=101 I. C. 180, 52 C. 881, 81 I. C. 881, 1925 R. 122 63 I. C. 145.
31. A conviction under S. 420 may be altered into one under S. 409. 81 I. C. 881 =1925 Sind 105=25 Cr. L. J. 1057.
32. Conviction cannot be altered to sections requiring sanction. 3 L. 440=1923 L. 260 See 25 A. 534.
33. On alteration of finding appellate Court need not frame new charge. 35 I. C. 816.
34. The appellate Court should issue notice to appellant or his Advocate if it intends to convict him of an offence of which he was acquitted by the Lower Court. 1932 C. 723=36 C. W. N. 1152=141 I. C. 622.
35. An appellate Court can change a conviction of a substantive offence into one of abetment, e. g. Ss. 324-114 into S. 324-34. 1935 Pesh. 67, 14 I. C. 203, 15 I. C. 85, 30 I. C. 724 and 25 C. 207 Rel. on.
36. High Court cannot convict the appellant under S. 379 when the accused was charged under S. 302 and S. 392 and who was convicted under S. 302 only. 1935 Rang. 512.

17. Amalgamation or joining together two appeals.—

Accused was convicted in two separate cases. He preferred two appeals. The appellate Court tried the two appeals together and accepted one and rejected the other. Held, that the procedure was bad. 1928 C. 230=109 I. C. 240=29 Cr. L. J. 512.

Appeal—(contd.)

18. By Government.—*See Acquittal—1*

19. By Jail Prisoner.—S. 420, Cr. P. C.

1. Where a Jail appeal is summarily dismissed under S. 421, no further appeal can be preferred through counsel. 44 A. 759, 46 M. 382 (392), 1935 Pat. 426=14 Pat. 392, 4 Cr. L. J. 373, 48 A. 208, 51 I. C. 271, 1931 Pat. 81, 1933 Pat. 38, 47 M. 423 and 61 C. 155 Ref., 1924 Oudh 425=82 I. C. 545.
2. The practice of Court in dismissing the Jail appeal summarily without calling on the appellant to appear is a correct procedure. 1927 S. 223=27 Cr. L. J. 933.
3. A Jail appeal can be disposed of by a Vacation Judge. 46 M. 382=1923 M. 426.
4. Notice of the date of hearing be given to appellant in case of Jail appeal and that he may have reasonable opportunity of being heard. 2 Weir 472.
5. Judgment passed on Jail appeal should be like one filed through counsel. 1923 Oudh 56=65 I. C. 612=23 Cr. L. J. 148=9 Oudh L. J. 1.
6. A Sessions Judge rejected a Jail appeal, not knowing that his Mukhtar had preferred an appeal before. High Court directed the Judge to re-hear the appeal filed by Mukhtar. 48 A. 208=1926 A. 178=90 I. C. 917=26 Cr. L. J. 162.
7. The objection to permit convict-appellants appealing from Jail, arguing in person is founded not on the convenience to prosecution but on their own interest. 1927 Oudh 369=106 I. C. 721=2 Luck 631.
8. Presentation of appeal to officer in charge of Jail is equivalent to presentation in Court. 29 P. R. 1890, (1892-1896) 1 U. B. R. 129-130.
9. If an appeal by Jail prisoner is dismissed on the ground of limitation, subsequent appeal by counsel is not maintainable. 46 M. 382=1923 M. 426.
10. If there is sufficient cause for delay in filing appeal by Jail prisoner, it should be allowed. 29 P. R. 1890.
11. Every facility such as pen, ink, and even writer should be allowed to the prisoner. (1870) 13 W. R. 60.
12. Summary dismissal of Jail appeal filed by the convict under S. 420, Cr. P. C., does not bar the filing and hearing of an appeal filed by counsel. 1934 A. 988 (1).
13. Once an appeal by Jail prisoner is dismissed he is not entitled to file another appeal through counsel. 1936 Oudh 219=37 Cr. L. J. 362, 1923 Oudh 56, 1924 Oudh 425, 1922 A. 480, 19 B. 732, 1923 M. 426, 1935 Sind 84, 1935 Pat. 426, 1933 C. 870 and 1928 L. 462 Foll. 1931 Pat. 81, 1925 L. 355 and 1906 A. W. N. 333 Diss.

20. Compensation in—*See Conviction.*

An order of compensation under S. 250 cannot be passed by appellate Court. 39 C. 157, 14 C. W. N. 212 overruled.

21. Contents of—S. 419, Cr. P. C.

1. A petition of appeal in a case tried by jury, should contain in what respect law has been contravened. 1 W. R. 21, 14 M. 36.
2. A petition of appeal containing defamatory, statements against the Magistrate will not be entertained. It should be returned for representation after eliminating the scandalous remarks. 15 B. 488, 29 M. 100.
3. A petition of appeal containing false statements will not make the petitioner liable for the false statement. 12 M. 451, 1923 P. 574.

21-A. Conviction—*Alteration of in—* See 16.

22. Copy of judgment.—Ss. 419, 371, Cr. P. C.

1. It is in the discretion of the appellate Court to admit an appeal without a copy of judgment or order. 30 Cr. L. J. 235=1929 L. 614=114 I. C. 61, 56 A. 299.
2. Where there are several accused and if they prefer a joint appeal, only one copy of judgment is sufficient. 18 Cr. L. J. 512, 5 Bom. L. R. 704.
3. Where there are connected applications and the full order is on one of them, the others should not be dismissed on the ground that full order is not attached with each appeal. 1929 L. 614=114 I. C. 61=30 Cr. L. J. 235.

Appeal—(contd.)

4. A copy furnished in the prisoner's own language is sufficient. S. 371, Cr. P. C.
5. Appeal by different persons convicted by one judgment in a joint trial may be heard, together, but they must be made separately. 1927 Nag. 48=27 Cr. L. J. 1062.
6. There is no warrant in C. P. C. 1909 to set aside a judgment passed on an appeal filed under S. 371, Cr. P. C. 1909, if the appeal was filed by counsel. 1923 Oudh 56=65 I. C. 612.

23. Course of—Ss. 414-415, Cr. P. C.

1. Where the case which should have been tried by Assessors is tried by Jury, the accused is not debarred from the right of appeal. 3 C. 765.
2. Appeal lies to the Sessions Judge from the order of a magistrate under S. 562, Cr. P. C. 46 A. 828=1924 A. 765=82 I. C. 172=25 Cr. L. J. 1244=22 A. L. J. 751.
3. Appeal is not competent from the order of Superintendent, Hill States, Simla. 14 P. R. 1910 Cr.
4. Appeal is not competent from the judgment of a Single Judge on original side. 1 P. R. 1909, 4 P. R. 1909.
5. No appeal lies from an order fining a defaulter under S. 25, Income Tax Act. 14 W. R. 71.
6. An order requiring accused to pay Court-fee under S. 31, Court-fees Act, is not appealable. 20 C. 687.
7. An order awarding compensation and repayment of fines under S. 22 Cattle Trespass Act, is appealable under S. 408, Cr. P. C. 46 B, 58=1922 B. 191=63 I. C. 160.
8. No appeal lies from an order restoring possession of immovable property under S. 522, Cr. P. C. 25 C. 630, 1924 A. 183 (1)=73 I. C. 773 Cont. 29 C. 724, 36 C. 44. See 14 P. R. 1919 Cr.=20 Cr. L. J. 30=48 I. C. 510.
9. Appeal against trial by jury lies on a matter of law only. 39 A. 348, 21 C. 955 25 C. 230, 19 B. 749.
10. Where case is heard in revision no appeal lies. 225 A. W. N. 1890.
11. No second appeal lies to High Court, where appellate Court takes additional evidence under S. 428, Cr. P. C. 27 C. 372.
12. Sessions Judge is bound to hear the appeal, even if the appealable sentence is passed by the Magistrate later on at the request of the accused. The appeal is competent 35 B. 418.
13. Privy Council is not a Court of appeal. The Board will grant leave to scrutinize whether there has been a miscarriage of fundamental principles of justice. 53 I. C. 703, 69 I. C. 631, 44 C. 876.

24. Dismissal.

1. A criminal appeal once admitted cannot be summarily dismissed. An opportunity must be given to appellant's counsel to be heard fully. 1924 R. 294=81 I. C. 549=25 Cr. L. J. 933=3 Bur. L. J. 18.
2. An appeal once admitted cannot be dealt with summarily that the court has gone through the record. The order is illegal when no judgment was written. 1923 Pat. 368=72 I. C. 613=24 Cr. L. J. 453=4 P. L. T. 552.

25. Dismissal for default.

1. A Sessions Judge should not dismiss an appeal for default under S. 423 but decide it on merits. 1930 O. 334=125 I. C. 848=31 Cr. L. J. 939, 50 B. 673, 50 C. 972.
2. The court is bound to peruse the record, even if the appellant or his pleader is absent. 6 Pat. 16=1927 P. 176=100 I. C. 831=28 Cr. L. J. 351, 1935 P. 460.
3. It is illegal to record an order of dismissing an appeal "in default". 35 I. C. 152=20 Cr. L. J. 744=6 Oudh L. J. 370.
4. Dismissal in default is not justified when officer is on tour. 11 P. R. 1905 Cr.
5. There is no dismissal of a criminal appeal in default and therefore when an appeal is summarily dismissed under S. 421, it is *prima facie* a judgment. 1935 Sind 84=1935 Cr. C. 373, 21 C. 121 (127) Ref.

Appeal—(contd.)

6. Court dismissing an appeal in default can set aside its own order and regular appeal. 9 Cr. L. J. 553.

26. Disqualification of judge. See Disqualification of Judge.

1. Sessions Judge is not prohibited from hearing appeal from a conviction in which as Insolvency Judge he ordered the prosecution. 71 I. C. 363, 39 P. R. 1839.
2. A court sanctioning prosecution is not always precluded from hearing appeal. 1924 Nag. 23=89 I. C. 1049.
3. Sessions Judge is not debarred from hearing appeal against conviction by himself as Magistrate. 22 P. R. 1873 Cr.

27. Duty of appellate Court.

1. Appellate court should arrive at independent conclusions as to facts upon the record. 8 P. R. 1868, 6 P. R. 1898, 129 I. C. 276=1930 L. 1051=32 Cr. L. J. 271.
2. Appellate court should give the accused the benefit of doubt. 3 P. R. 1876, 6 P. R. 1898.
3. Appellate court should give an appellant an opportunity to be heard by counsel. 31 P. R. 1870, 29 M. 236.
4. Appellate court should decide the appeal on merits even if the appellant or his counsel is absent. 50 C. 972=1924 C. 95=25 Cr. L. J. 1150=81 I. C. 974.
5. Appellate court should order retrial of the accused when his defence evidence is not taken. 28 P. R. 1884.
6. Appellate court should treat the opinion of the lower Court, as to credibility of oral evidence, as almost conclusive. 125 P. L. R. 1914.
7. In case there are numbers of appellants, the appellate court should consider the case of each accused separately. 1925 M. 712=26 Cr. L. J. 1089, 12 Cr. L. J. 43.
8. Appellate court should decide the right of private defence from the cross-examination of prosecution witnesses, if accused adduced no evidence on the point. 61 I. C. 654.
9. Appellate court must consider both the oral and documentary evidence. 51 I. C. 664.
10. Where the trial court discussed the evidence carefully, the appellate court need not recapitulate it. 8 O. W. N. 304=1932 Oudh 172=137 I. C. 349.
11. Where evidence is fully analysed and all things in favour of accused are considered and some accused were convicted on testimony of witnesses who were disbelieved as to rest of accused, conclusions of trial Judge should not be disturbed. 1933 Oudh 62=34 Cr. L. J. 377=142 I. C. 813.

28. Finality of order on.—S. 430, Cr. P. C.

1. A sentence is said to be final when it cannot be set aside or interfered with by any court or authority, whether on appeal or otherwise. 12 C. 536.
2. Where the Sessions Judge rejected an appeal as time-barred, the rejection was final and he could not admit the appeal again on the representation of the prisoner. 19 B. 732, 24 P. R. 1887 Cr.
3. An order of summary rejection of appeal is final. 4 B. 101.
4. An order rejecting an appeal for non-appearance of the appellant is an improper order and court can rehear it. 46 M. 382 (403), 5 N. L. R. 76=9 Cr. L. J. 553.
5. When the appellate or revisional court has considered the case in all its aspects, that judgment or order must be final and the inherent power of the High Court under S. 561-A. cannot be invoked to alter the sentences. 1931 N. 169=134 I. C. 686. Cont. 1927 L. 139=28 Cr. L. J. 239=99 I. C. 1039.

29. Grounds of appeal.—Point not raised.

Where the accused who were examined as approvers were committed to the Sessions for trial, the objection could be taken for the first time in appeal, although it was not raised in the grounds of appeal. 1931 Oudh 113=128 I. C. 209=32 Cr. L. J. 91.

30. Hearing appellant or counsel. S. 421, Cr. P. C.

1. Asking the pleader to argue the appeal straight away when it is presented, is improper. 53 M. 865, 117 I. C. 279=1929 N. 150=30 Cr. L. J. 791.

Appeal—(contd.)

2. Appellate Court must give a reasonable opportunity to the appellant's counsel to be heard. 1929 N. 150=117 I. C. 279, 1925 C. 161=93 I. C. 76, 101 I. C. 595.
3. Even if the appeal is filed beyond time, appellant's counsel must be heard. 1927 B. 445=103 I. C. 109=28 Cr. L. J. 653=29 Bom. L. R. 701.
4. A private prosecutor has no right to be heard. 1932 C. 61=33 Cr. L. J. 305.
5. Appeal may not be postponed if opportunity was given to appellant's counsel. 53 M. 865=1910 M. 813=127 I. C. 803=32 Cr. L. J. 40=59 M. L. J. 835.
6. S. 421 does not require that the appellant or his Pleader must be heard before the appeal is allowed, but all that is required is that a sufficient opportunity should be afforded to them to be heard. 1935 Sind 84=1935 Cr. C. 370.
7. If an appeal is dismissed without giving opportunity to appellant or his Pleader for being heard, the order is without jurisdiction and the appeal should be reheard. 1925 L. 355=26 Cr. L. J. 1169=88 I. C. 593.
8. Even if the appellant's counsel was absent, the Sessions Judge examined the evidence, held, that there was hearing of appeal within S. 423, Cr. P. C. 1935 P. 515.
9. Parties must be heard in each other's presence. Appellant has right of reply. 1932 C. 856.

31. Joint.

Joint appeal by accused with common interest is valid, but where their interests conflict, they must prefer separate appeals. 1936 L. 859, 5 Bom. L. R. 704, 13 P. R. 1890 and 18 Cr. L. J. 512 Ref.

32. Judgment—jurisdiction.—See Judgment—jurisdiction,

33. Limitation for filing—See Inherent powers—14.

1. In case of delay in filing appeal, the appellate Court should see if there is sufficient cause. It should be admitted if other co-accused are acquitted. 7 P. R. 1871 Cr.
2. Period between date of application for and delivery of copies to accused's agent should be excluded. 5 P. R. 1888 Cr.
3. The time spent in obtaining a copy of the diary orders in the case, which were filed with the appeal, should not be deducted while computing the period of limitation for filing appeal. 3 R. 220=1925 R. 239=89 I. C. 459=26 Cr. L. J. 1371.

34. New case—

1. The charge cannot be altered by an appellate Court as to make it necessary for the accused to meet an absolutely different case from that with which he is charged by the magistrate. 1926 A. 33=90 I. C. 150=26 Cr. L. J. 1934.
2. The powers of the appellate court are not intended to start a new case against the accused without giving him notice of the charge he has to meet. 30 I. C. 151=16 Cr. L. J. 599, 1932 C. 723=36 C. W. N. 1152=141 I. C. 622.

35. New plea.

New plea that certain statements are inadmissible as being not statements as contemplated by S. 164, Cr. P. C., cannot be raised for the first time in appeal. 1936 C. 101=37 Cr. L. J. 445.

36. Non-appealing accused.

1. In exercise of its revisional jurisdiction, High Court can deal with the sentence of non-appealing accused, while dealing with the appeal of appealing accused. 1934 L. 346=35 Cr. L. J. 1047, 1932 L. 615 (1), 12 Cr. L. J. 250, 5 C. W. N. 330.
2. Court can reduce the sentence of non-appealing accused. 1932 L. 615 (1).
3. High Court when dealing with cases in appeal or revision are competent to acquit an innocent person. 11 Cr. L. J. 99=4 I. C. 980.

37. Notice of—S. 442, Cr. P. C.

1. Notice must specify the exact date of hearing. It is not enough that appeal would be heard in a certain month. 1881 A. W. N. 46.
2. A general notice on the Court House, that appeals will be heard on the first Court day next after presentation of the appeal is not sufficient. 5 M. 11.

Appeal—(contd.)

3. It is necessary to give notice in case of change of place of hearing. 7 P. R. 1871 Cr. 11 P. R. 1905 Cr.
 4. A general notice to follow officer's camp is insufficient. 11 P. R. 1905 Cr.
 5. In case of enhancement of sentence, notice must be issued to appellant. 14 P. R. 1877 Cr.
 6. In case of appeal against order of compensation under S. 250, notice should be given to the public prosecutor. Notice to accused is not necessary although desirable. 33 M. 89, 29 M. 187, 38 M. 1091, 1921 L. 675=76 I. C. 641=25 Cr. L. J. 209.
 7. Omission to give notice to District Magistrate is an illegality and not merely an irregularity. 24 Bom. L. R. 1150=1923 B. 74=24 Cr. L. J. 700.
 8. The objection that District Magistrate is not served with notice should come from him and not from the complainant. 25 Bom. L. R. 251=1923 B. 234.
 9. When appeal is admitted and bail is granted, it cannot be dismissed without giving notice of hearing to the counsel. 1921 R. 294=81 I. C. 519=25 Cr. L. J. 933.
 10. Notice should be given to appellant in case of jail appeal and he should be allowed to argue in person. 50 A. 543=1928 A. 84=108 I. C. 122 (F. B.)=26 A. L. J. 275=29 Cr. L. J. 334, 13 A. 171 and 1927 Oudh 312 Diss. from.
 11. Notice should be given to the complainant, where compensation has been granted to him. 53 C. 969=1926 C. 1054 97 I. C. 62=27 Cr. L. J. 1086.
 12. Notice to District Magistrate is necessary even if the appeal is to be heard by the Joint Magistrate and originally the appeal was to be filed before the District Magistrate. 1925 M. 375=83 I. C. 349=25 Cr. L. J. 1389.
 13. If District Magistrate hears the appeal, no notice is necessary to himself. 1921 M. 281=62 I. C. 823=22 Cr. L. J. 583.
 14. Failure to issue notice to the crown by appellate court is a sufficient ground to set aside the appellate order. 53 C. 969=1926 C. 1054=97 I. C. 62=27 Cr. L. J. 1086, 1925 M. 375=83 I. C. 349, 1923 B. 74=73 I. C. 812.
 15. In the absence of notice to District Magistrate, the order of the acquittal by appellate Court is revisable at the instance of District Magistrate and not the complainant. 1923 B. 204=86 I. C. 287=26 Cr. L. J. 751.
 16. An order of retrial in the absence of notice to accused is bad. 49 P. R. 1918 Cr.
- 38. On a matter of law.**—S. 418, Cr. P. C. See Verdict of jury.
1. An appeal may lie on a matter of fact as well as on a matter of law except where the trial is by jury, in which case the appeal shall lie on a matter of law only. 132 I. C. 232=1931 Oudh 171=8 Oudh W. N. 344.
 2. Where the accused who is charged with an offence triable with assessors is tried with a jury, no appeal is permissible on question of fact but only on question of law. 1931 M. W. N. 129, 25 B. 680, 6 M. L. J. 14 Diss. from.
 3. The alleged severity of sentence shall be deemed to be a matter of law. 1931 Oudh 171=132 I. C. 232=8 Oudh W. N. 344.
- 39. Order of commitment.**—S. 423 (1) (b).
1. Appellate Court is competent to direct a commitment to the Sessions, even if the offence is not exclusively triable by a Court of Sessions. 8 A. 14, 23 C. 350.
 2. Commitment should be directed if the appellate Court is of opinion that the Magistrate should have done it and could not adequately punish the accused. 16 B. 580, 15 A. 205, 16 P. R. 1895.
 3. Where an appellate court orders a Magistrate to commit the accused to Sessions, the magistrate has no jurisdiction to make any further inquiry. The inquiry already made is sufficient. He should frame a charge and make a formal order of commitment. 1935 A. 579=156 I. C. 849=1935 A. L. J. 618. 15 A. 205, 29 I. C. 65=16 Cr. L. J. 439.
 4. Appellate Court can order the commitment itself. 31 M. 40, 10 B. 319, 27 M. 54, 1922 A. 345=23 Cr. L. J. 456=67 I. C. 728, 15 A. 205, 29 I. C. 65.

Appelal—(contd.)

40. Powers of appellate court.

1. Appellate Court has no power to direct an enquiry but may take further evidence. 1921 A. 158=67 I. C. 498.
2. The accused should not be convicted of an offence with which they were not charged by the trial court. 1921 P. 409=62 I. C. 181.
3. The power of appellate court to vary a sentence must be measured by those of the trial court. 45 A. 594= 1924 A. 130=76 I. C. 1032=25 Cr. L. J. 312.
4. Appellate Court cannot decide legality of previous conviction. 1924 R. 295=82 I. C. 471=25 Cr. L. J. 1303.
5. Appellate Court can fully deal with a case as provided by S. 423, Cr. P. C. 1926 N. 53=88 I. C. 178=26 Cr. L. J. 1090 Coll. 21 C. 955 Diss. 25 C. 711.
6. Appellate Court can reject part of prosecution story, and convict on the rest of it. 1927 M. 410=28 Cr. L. J. 238=99 I. C. 1038, 42 C. 784=28 I. C. 795 expl.
7. It is doubtful whether a appellate court can under S. 423 (1) (b), pass an order which would make the position of the appellant worse. 1927 L. 733=102 I. C. 511.
8. S. 423 (1) (a) does not permit a Sessions Judge to revise a wrong order passed by his predecessor. 53 B. 578. 1929 B. 309=311 Bom. L. R. 593.
9. The appellate Court has power under S. 520 or S. 423 (1) (d) to pass appropriate order for the disposal of property produced at the trial, even though the trial magistrate omitted to do so. 10 L. 187. 1928 L. 567=1923 M. 324=46 M. 162.
10. High Court cannot interfere with the verdict of jury unless there has been miscarriage of justice. 1927 C. 398=101 I. C. 661=31 C. W. N. 410=28 Cr. L. J. 495.
11. Appellate Court can alter the nature of sentence. 3 P. R. 1884 Cr.
12. Appellate Court has no power to add to sentence an order requiring security. 23 P. R. 1888 Cr. See 21 P. R. 1905 Cr. 127 P. L. R. 1901.
13. Appellate Court can order the commitment of the accused to the court of Sessions. 23 C. 350, 16 B. 580, 15 A. 205, 16 P. R. 1895, 1923 L. 128 (2).
14. Appellate Court will be reluctant to interfere with the findings of the court unless strong grounds are made out. 1932 Sind 143=33 Cr. L. J. 900=140 I. C. 23.
15. Accused was convicted on one charge but acquitted on other charges. The appellate court while setting aside the conviction cannot order retrial on all charges. 1935 C. 120=154 I. C. 609=38 C. W. N. 1128.
16. There was an appeal against conviction under S. 304 and a revision for enhancement of sentence before the Sessions Judge. He ordered that the case should be committed to the Sessions for trial. Held that the order was legal. 1933 L. 128 (2)=34 Cr. L. J. 640. 15 A. 205, 16 P. R. 1895.
17. Appellate Court can convict accused of offence though not charged but for which he could have been charged. 1936 N. 132. 1925 P. C. 130=6 L. 226.

41. Powers of High Court—(Judgment).—S. 424, Cr. P. C.

1. High Court can dismiss an appeal without giving reasons. 1933 P. 38=34 Cr. L. J. 118, 35 B. 418 and 1931 P. 351 Dist.
2. If the appellate judgment is not in accordance with law, High Court may remand the appeal for rehearing and delivery of a proper judgment. 7 C. W. N. 30, 37 C. 194, 43 P. W. R. 1912, 1 Bom. L. R. 225.
3. Omission to write a judgment is not a curable irregularity. 17 Bom. L. R. 1085.

42. Presentation of.—S. 419, Cr. P. C.

1. The petition of appeal should be delivered to the proper officer of the court by appellant or his pleader. 15 M. 137.
2. Presentation by pleader's clerk is proper. 20 M. 87.
3. Presentation by a person who is not a clerk of pleader and over whose actions he has no control is not a proper presentation. 21 M. 114.
4. The word 'Pleader' includes Mukhtar. 6 B. 14, 1 M. 304.

Appeal—(contd.)

5. Presentation by a prisoner to jail authorities is equivalent to presentation in court. 29 P. R. 1890 Cr.
6. Depositing a petition of appeal in a box kept for convenience of parties is not proper presentation. 19 M. 354.
7. Transmission of petition of appeal by post is not sufficient compliance with S. 419, 2 Weir 467, 15 M. 137.

43. Remand.

1. When one of the Magistrates of the Bench of Honorary Magistrates omitted to sign the judgment, the appellate Court can remand the case for the signatures of the Magistrate. 41 A. 217.
2. Case may be remanded from the stage it becomes irregular. 1924 P. 50=104 I. C. 909=28 Cr. L. J. 893.
3. Sessions Judge can remand a case by setting aside conviction and ordering retrial. 1929 L. 692=126 I. C. 69=1929 Cr. C. 219.
4. If the appellate Court finds the decision of lower Court not satisfactory it cannot remand the case and order the lower Court to write out a proper judgment. 32 C. 1069.
5. Remand of appeal under S. 476 (B), Cr. P. C., for further enquiry is illegal but if it has not led to failure of justice the defect is curable. 1930 Sind 315.
6. If the appellate judgment is not in accordance with law, High Court can remand appeal for rehearing and delivery of proper judgment. 7 C. W. N. 30, 37 C. 194, 43 P. W. R. 1912, 1 Bom. L. R. 225.

44. Remarks and comments in judgments in.—See Expunging remarks.

45. Retrial.—See Retrial.

1. Retrial would not be ordered unless there are grave reasons. 13 A. L. J. 477.
2. Retrial should be ordered if the trial Court had no jurisdiction. 8 A. 14, 1895 A. W. N. 295, 29 C. 412.
3. A retrial should be ordered if appellate Court finds that the accused should have been tried for another offence. 36 M. 457.
4. If conviction is set aside on the ground of misdirection to jury, retrial should be ordered. 4 C. W. N. 576.
5. If there is absence of or defect in charge, retrial can be ordered. 7 C. W. N. 301.
6. If there is irregularity in procedure, retrial should be ordered. 124 I. C. 619=1930 N. 225=31 Cr. L. J. 705=2 Weir 481, 36 M. 457.
7. Appellate court in discharging accused on the ground of misjoinder of parties, can order retrial. 28 C. 104.
8. When the prosecution came with an incomplete case and it confirmed the defence, retrial cannot be ordered. 1928 Pat. 293=107 I. C. 529=29 Cr. L. J. 258.
9. Retrial should not be ordered, if the complainant's story is grotesque and accused has served half the sentence. 1930 Nag. 255=124 I. C. 619=31 Cr. L. J. 705.
10. In case of appeal against acquittal, High Court can decide the case instead of ordering retrial. 1927 Sind 104=99 I. C. 98, 19 B. 749, 1925 Sind 116 Rel. on.
11. Retrial cannot be ordered only because the reasons given by the Magistrate for rejecting prosecution evidence, are not satisfactory. 1927 A. 727=28 Cr. L. J. 946.
12. In the case of appeal from an order under S. 107, Cr. P. C., retrial can be ordered. 48 A. 501, 1926 A. 403=96 I. C. 497=24 A. L. J. 566=27 Cr. L. J. 945.
13. Retrial should not be ordered unless there is reasonable opportunity of accused being convicted. 50 M. 274, 69 I. C. 380, 1926 N. 53=26 Cr. L. J. 1090.
14. If juror gives out his opinion outside Court before the conclusion of trial, retrial should be ordered. 1921 C. 631=62 I. C. 334=25 C. W. N. 240.
15. Retrial cannot be ordered only because inadmissible and irrelevant evidence is admitted. It should be separated. 74 I. C. 72=1923 R. 65=24 Cr. L. J. 744.

Appeal—(contd.)

16. Retrial should be ordered, where the cross-examination of prosecution witnesses was perfunctory owing to counsel's inaptitude and facts were not ascertained. 1924 C. 257=81 I. C. 353=25 Cr. L. J. 817=28 C. W. N. 170.
 17. Retrial cannot be ordered if the prosecution story has hopelessly broken down in every respect. 1930 M. 189=122 I. C. 497=31 Cr. L. J. 422.
 18. If the magistrate holds that the prosecution story is doubtful, the appellate Court should not order retrial on the ground that another view of the case may be taken. 1930 L. 543=31 P. L. R. 729=129 I. C. 300=32 Cr. L. J. 302.
 19. If the Sessions Judge thinks that evidence of some more witnesses is necessary, he should order additional evidence under S. 428 and not a retrial. 31 C. 710, 45 I. C. 149.
 20. High court can order retrial of appeal by the lower appellate court. 7 P. L. R. 1913=2 P. R. 1913 Cr.=43 P. W. R. 1912=13 Cr. L. J. 737.
 21. Appellate Court instead of ordering retrial, may retry the case itself. 30 M. 228 2 Weir 481.
 22. If the appellate Court finds the complaint resulting in conviction to be *ultra vires* it has no jurisdiction to order retrial. 57 I. C. 820=21 Cr. L. J. 660.
 23. An order of retrial is bad in the absence of notice to the accused. 49 P. L. R. 1918
 24. Ordering retrial with the direction to treat evidence already recorded as evidence in the case is irregular. 43 I. C. 109=19 Cr. L. J. 77.
 25. Appellate Court can order retrial on a fresh charge. 19 I. C. 326.
 26. Retrial should not be ordered with the object of enabling the prosecution to fill up deficiencies in prosecution evidence. 8 I. C. 594=11 Cr. L. J. 684.
 27. If the accused has been harassed by repeated trial on insufficient evidence, retrial would not be ordered. 1926 A. 429=95 I. C. 385=27 Cr. L. J. 785.
 28. Retrial should be ordered under special circumstances. 1926 A. 429=95 I. C. 385.
 29. It is to supply formal defects that appellate Court orders retrial. 131 I. C. 454, 1931 M. 227=32 Cr. L. J. 749, 42 A. 522 and 1930 M. 189 Ref.
 30. If prosecution has failed to prove the case, retrial should not be ordered. 1931 M. W. N. 517.
 31. S. 43 does not authorize the appellate court to order retrial from a particular point or that a particular charge to be framed. 1932 M. W. N. 114.
 32. Accused was charged under S. 420 and S. 465 but was convicted under S. 420 only. He was acquitted for the offence under S. 465, as the Magistrate found that the case fell under S. 467 which he could not try. On appeal the Sessions Judge ordered retrial. Held, that order was illegal. 1935 L. 945, 1933 A. 941 Rel. on. 31 P. R. 1910 and 16 P. R. 1895 Dist.
 33. An appellate Court cannot order retrial merely because it disagrees with the finding of lower court, that the accused had not committed the more serious offence but the lesser offence. 1936 A. 758.
- 46. Reversal of finding—**
1. Where a man charged with murder is convicted of a minor offence, the High Court acting as Court of Appeal and Revision can convict him of murder. 4 R. 140=1926 R. 154=98 I. C. 705=27 Cr. L. J. 1393.
 2. An appellate Court cannot retain the case on its own file and ask the lower Court to record a finding which it has failed to record under S. 367. 54 I. C. 404.
 3. On an appeal against acquittal under S. 302, the appellate Court can convict the accused under S. 193, even though the opinion of Assessors was not recorded with regard to this charge. 52 B. 385=1928 B. 130=108 I. C. 501, 1925 P. C. 130, 1924 B. 246 and 19 B. 51 not foll., 1925 Sind 105 Appr.
 4. Appellate Court can reverse the finding in a murder case, if the boy is missing and identity of accused is not established. 1929 A. 710=121 I. C. 248.
 5. Where a Sessions Judge reversed the conviction for non compliance with the

Appeal—(contd.)

provisions of S. 360 and left the question of retrial to the District Magistrate, the retrial of the accused is competent. 53 C 192, 46 C. 212 Appr.

6. Retrial should be ordered under special circumstances. 1926 A. 429=95 I. C. 385.
7. Appellate Court should not disturb the verdict of jury unless opposed to the entire weight of evidence. 1930 C. 199=124 I. C. 818=31 Cr. L. J. 737.
8. Finding of trial court will not be disturbed in the absence of strong grounds. 1932 Sind 143=140 I. C. 23=33 Cr. L. J. 900.

47. Revision and—Distinguished.

1. In appeal the appellant is given a statutory right to demand an adjudication upon a question of law or fact or both. But in revision the applicant has no right whatsoever beyond the right of bringing his case to the notice of the court. It is for the court to interfere in exceptional cases. 1935 A. 814=36 Cr. L. J. 907.
2. A revisional application is not to be regarded as in some sort a second appeal on a question of law. 1935 A. 814=36 Cr. L. J. 907.

48. Right of reply.—See Arguments—7.

1. Right of reply should be conceded to the appellant's counsel after the arguments of the public prosecutor. 21 P. R. 1917 Cr.=36 I. C. 835.
2. There is no right of reply vouchsafed to an accused under S. 423 but permission to reply is a privilege which should not be refused by an appellate Court. 1925 Oudh 50=82 I. C. 37=25 Cr. L. J. 1173, 1925 O. 65=82 I. C. 33.

49. Right of—When co-accused given appealable sentence. S. 415-A., Cr. P. C.

1. Where one of the several accused has a right of appeal, it enures for the benefit of the other accused as well. 134 I. C. 1196=1931 C. 642.
2. If at one trial some of the accused are sentenced to appealable sentences, while the rest are awarded non-appealable sentences, all of them have a right of appeal. 17 Cr. L. J. 27=30 P. R. 1915 Cr., 4 L. B. R. 354=9 Cr. L. J. 356, 16 P. R. 1916 Cr. 38 A. 395, 22 Cr. L. J. 297.
3. Where an accused is convicted on his own plea of guilty and is merely bound over, he has no right of appeal, although he was tried with others who were awarded appealable sentences. 1931 Sind 151=134 I. C. 379=32 Cr. L. J. 1142.

50. Right of—by combining sentences. S. 415, Cr. P. C.

1. Where two punishments such as that mentioned in S. 414 were imposed, by reason of the combination of the punishments S. 415 made the order appealable. 1932 Oudh 27=136 I. C. 248=33 Cr. L. J. 278, 33 A. 510.
2. If a first class Magistrate passes two sentences of Rs. 40 on the accused, the aggregate of the sentences should be taken into account to save the right of appeal. 134 I. C. 1196=30 Cr. L. J. 90=1931 C. 642.
3. S. 415 applies when accused is ordered to give security to keep the peace and not when required to furnish security for good behaviour. 9 Cr. L. J. 368.

51. Summary dismissal of.—S. 421, Cr. P. C.

1. Appeals which are complicated both in law and facts ought not to be summarily dismissed. 48 M. 385=1924 M. 895=19 Cr. L. J. 223, 22 Cr. L. J. 349.
2. Where the credibility of the prosecution witnesses has been impugned, summary dismissal is improper. 24 Cr. L. J. 477=1922 Pat. 552.
3. An order of summary dismissal of appeal is final. 4 B. 101; 19 B. 732; 24 P. R. 1857.
4. If appeal is dismissed for default of pleader's absence, the appellate court may rehear it on merits. 46 M. 382 (403).
5. Where there are disputed facts and large number of documents, the appeal ought not to be dismissed summarily. 61 I. C. 173, 48 M. 385=1924 M. 895.
6. If reasonable opportunity is given to appellant or his pleader to be heard, the appeal may not be postponed. 53 M. 855=1930 M. 863=127 I. C. 803, 1929 N. 150.

Appeal—(concl.)

7. Appeal once admitted cannot be summarily dismissed. 1924 C. 642=69 I. C. 461.
8. Pleader should not be asked straightaway to argue the appeal when presented. 53 M. 865=1930 M. 863=127 I. C. 803.
9. Appellate Court in rejecting an appeal summarily is not bound to write a judgment. 21 C. 92, 20 B. 540, 25 M. 534.
10. Appellate Court should record reasons while rejecting an appeal summarily except in exceptional cases. 1930 P. 331=125 I. C. 121, 36 A. 496, 8 A. 514, 17 A. 241, 38 A. 393.
11. No reason need be recorded in support of summary dismissal of appeal. 1929 C. 773=123 I. C. 243, 1925 L. 196=91 I. C. 55=26 P. L. R. 616.
12. Judgment, dismissing the appeal summarily, need not be elaborate but must show that the Judge has applied his mind to it. 1929 Nag. 150=117 I. C. 279=30 Cr. L. J. 791, 38 A. 393, 36 A. 496.
13. Mere order that appeal is dismissed summarily without giving any reason is bad in law. 1925 Pat. 183=82 I. C. 165, 72 I. C. 893=1922 P. 552, 61 I. C. 49.
14. Order summarily dismissing the appeal, stands on the same footing as an order under S. 424, Cr. P. C. 1929 Sind 26=111 I. C. 856=29 Cr. L. J. 936.
15. Even if appeal is filed after limitation, appellant's counsel should be heard before dismissal. 1927 B. 445=103 I. C. 109=29 Bom. L. R. 701=28 Cr. L. J. 653.
16. Reasons for summarily dismissing the appeal must be given, which will show that points raised by the appellant had been considered. 1935 Pat. 32=152 I. C. 801=36 Cr. L. J. 191. 1930 Pat. 331=31 Cr. L. J. 760 applied.
17. Where memorandum of appeal contained number of grounds admitting of arguments and the judgment simply was "Heard, I see no reason to interfere". Held, that S. 421 was not sufficiently complied with. 1935 Pat. 37=153 I. C. 152=36 Cr. L. J. 261.

52. To Privy Council—See Privy Council.**53. Transfer of.—S. 407 (2), Cr. P. C.**

1. The District Magistrate may delegate his work of hearing appeals, but not any revisional work. 2 Bom. L. R. 536.
2. The Court to which an appeal is transferred is not bound by any opinion as to the necessity of taking further evidence, etc. 31 M. 277.
3. If a Sub-Divisional Magistrate has issued summons to a person as a court witness, while having an appeal transferred to him, the District Magistrate on withdrawing the appeal is not bound to hear that witness, because he is not bound by the opinion of the Sub-Divisional Magistrate. 31 M. 277.
4. S. 407 (2) deals with appeals against convictions only and therefore a District Magistrate cannot transfer to a First Class Magistrate an appeal from an order sanctioning prosecution. 34 A. 244.

54. Who can file.—

1. Legal Remembrancer appointed by Government can file appeal against acquittal. 46 C. 544.
2. Private applicants or police can move District Magistrate for filing appeal. 1923 L. 163=24 Cr. L. J. 433.

55. Withdrawal of.—

A petition of appeal presented for admission may be withdrawn before it is dismissed under S. 421. 5 C. L. R. 372.

APPEARANCE THROUGH COUNSEL.—See Absence of complainant. S. 174, I. P. C.
Exemption from appearance S. 205, Cr. P. C.

APPELLATE COURT. See Appeal—27.

APPRECIATION OF EVIDENCE. See Evidence—2.

APPREHENDED DANGER. See S. 144, Cr. P. C.

APPREHENSION OF IMPARTIALITY. See Transfer (Ground)—7.

Approval.

APPROVAL

1. **Instigation by.**—*See* Abetment.
2. **Taking property on.** *See* Breach of trust.—12.

APPROVER. Ss. 337-339 Cr. P. C. *See* Accomplice. Pardon.—2.

1. Accomplice and—

1. Accomplice under offer of pardon is an approver. 14 P. R. 1894 Cr.
2. Approver, although a competent witness, is not divested of the character of accused until he earns discharge. 12 L. 604=1931 L. 353=32 Cr. L. J. 785.

2. Admissibility of statement of—

1. Statement made by an approver under tender of pardon is admissible at the subsequent trial. 10 P. R. 1895 Cr.
2. Where an accused was given pardon for an offence not exclusively triable by Court of Sessions or those not mentioned in the section, the statement is inadmissible. 52 P. L. R. 1902. *See* 45 A. 226.
3. Approver must be examined as witness in committal and subsequent proceedings of every person tried for the same offence. Non-compliance renders trial illegal. 11 L. 230=1930 L. 95=120 I. C. 489=31 Cr. L. J. 111.
4. Statement of approver may be oral, though it should always be reduced to writing. 9 L. 608=1928 L. 320=108 I. C. 514=29 Cr. L. J. 413.
5. No formal order of discharge was passed in respect of approvers but they were not mentioned as accused in the challan. Held their evidence as admissible. 1923 L. 666=77 I. C. 984.
6. Even if the pardon is invalid, it would not prevent the approver being examined in the Sessions Court as a witness, if he is not committed for trial with the other accused. 1926 A. 590=97 I. C. 367=27 Cr. L. J. 1103.
7. Prosecution is bound under S. 337 (2), Cr. P. C. to produce the approver in Sessions Court, although his pardon is withdrawn before the trial. 1931 L. 102=134 I. C. 193=31 P. L. R. 1010=32 Cr. L. J. 1126.

3. Certificate for prosecution of. *See* Certificate—5.

4. Commitment of. *See* Commitment.

5. Corroboration of. *See* Accomplice.

6. Detention or custody of. *See* Detention—5.

7. Evidence of. *See* Accomplice.—6.

An approver can easily substitute an innocent man for a real offender. 1931 L. 408=132 I. C. 185=32 Cr. L. J. 818=1931 Cr. C. 648.

8. Forfeiture of pardon of. *See* Pardon.

9. Oath to.

Administration of oath to an approver is not necessary when pardon is given. 128 I. C. 209=1931 Oudh 113=7 Oudh W. N. 972=32 Cr. L. J. 91.

10. Pardon of. *See* Pardon.

11. Statement of. *See* Accomplice.—6.

1. An approver's disclosure is in its very nature always the result of inducement or promise of pardon. But should it appear that it was extorted by undue duress, threat or violence to the extent provided in S. 24, Evidence Act, the confessional statement would have to be ruled out of order. 9 L. 608=1928 L. 320=29 Cr. L. J. 413.
2. S. 337 (1) nowhere lays down that the disclosure of facts shall be reduced to writing, the verbal testimony of the person to whom it is made is sufficient to prove the statement, though as a precaution, it is generally reduced to writing. 9 L. 608.
3. A previous statement made by accused, who was subsequently pardoned, is admissible against him. 46 A. 236=1924 A. 220=81 I. C. 604=25 Cr. L. J. 956.

Approver—(concl'd.)

4. A discrepancy between the statements of approver and witness cannot be explained away by reference to statement before Police. 1934 L. 102=35 Cr. L. J. 517.
5. Retracted statement of approver must be extrinsically corroborated. 1934 Pesh. 46. 1928 L. 320, 5 A. L. J. 691 and 59 P. R. 1905 Foll.
6. No conviction can be based on the uncorroborated testimony of an approver. 1933 L. 838.
7. An approver accepting a tender of pardon can be examined under S. 164. 35 Cr. L. J. 111=1933 L. 868, 1933 L. 321=34 Cr. L. J. 469, 1924 L. 490.
8. If approver's evidence is rejected against an accused whom he falsely substituted, his entire evidence against other accused should also be rejected. 1933 L. 871=35 Cr. L. J. 137.

12. Trial of. See Pardon.

1. Certificate of Public Prosecutor is an essential requisite under S. 339 and the absence of certificate vitiates the trial of the approver. 5 L. 379=1925 L. 15=26 Cr. L. J. 237=84 I. C. 61.
2. Action can be taken against the approver after the trial of the other accused is finished. If he has forfeited pardon during the preliminary enquiry, he cannot be committed to the Sessions along with other accused. 23 B. 493, 24 M. 321, 31 M. 272. *Cont* 42 C. 856, 20 A. 529, 29 A. 24, 25 B. 675.
3. If the accused has forfeited his pardon during the trial he cannot be tried at once, as he was not committed to the Sessions as accused but as witness. 14 A. 336, 1 L. 218.
4. The burden is on the prosecution to prove that the approver forfeited the pardon. 1930 M. W. N. 773.
5. Accused cannot be tried and convicted of murder, until the court trying him has recorded a finding that he has forfeited the pardon. 5 L. 379=1925 L. 15=26 Cr. L. J. 237, 1929 Oudh 256=116 I. C. 64=30 Cr. L. J. 559.
6. Approver can plead pardon as bar to his trial and can say that he sufficiently complied with the conditions of pardon. 1922 Sind 31=68 I. C. 835=23 Cr. L. J. 611, 5 L. 379=1925 L. 15=26 Cr. L. J. 237=84 I. C. 61.
7. If an approver made contradictory statements, sanction cannot be refused to prosecute him for perjury. 1933 L. 868=35 Cr. L. J. 111.

ARBITRATION.**1. In compoundable cases.**

1. A criminal complaint cannot be referred to arbitration and the award following it cannot be made a rule of Civil Court. 1929 L. 394=116 I. C. 215=30 P. L. R. 122=11 L. L. J. 89.
2. Parties to a case under S. 427, I. P. C., agreed to be bound by the decision of arbitrator whose award was objected to by the complainant. Held that the agreement to refer the case to arbitration is not a final settlement. 1926 C. 266=90 I. C. 544=26 Cr. L. J. 1584=42 C. L. J. 139.
3. Parties referred their disputes including a case for defamation to an arbitration. Held that until arbitrators decided the dispute, the offence cannot be treated as compounded. 1925 M. 1211=90 I. C. 666=26 Cr. L. J. 1594.
4. If a compoundable case is referred to arbitrators, the Court is not bound to wait for award though it should and the award may amount to compounding the offence. The Court will give effect to such compounding. 26 Cr. L. J. 1594=1925 M. 1211.

2. In case under S. 145 Cr. P. C. See Dispute about immovable property.**3. In maintenance cases. S. 488, I. P. C.**

Where an arbitrator has made an award in application to reduce maintenance, he cannot subsequently reduce it. 1934 A. 940.

4. In Nuisance cases.

As the dispute under Chapter X, Cr. P. C. (Public Nuisance) is of public nature it cannot be referred to arbitrators by consent of parties even. 61 I. C. 55=22 Cr. L. J. 327, 22 Cr. L. J. 511, 42 C. 702, 21 C. W. N. 926.

Arbitration—(contd.)

5. In Security cases. See Breach of Peace—4.

6. Sanction for Prosecution.—

Sanction for prosecution under S. 195 is requisite for offences under Ss. 193, 471, I. P. C., alleged to have been committed before an arbitrator appointed in a civil suit. 3 P. R. 1914 Cr., 17 M. L. J. 420.

ARGUMENTS.

1. By accused.

An accused has no right to personally argue his own bail application, although in special cases he can be permitted to do so. 134 I. C. 842=1931 A. 356=32 Cr. L. J. 1271.

2. By counsel in appeal. S. 421, Cr. P. C. See Appeal—30.

3. By counsel in revision. S. 439, Cr. P. C. See Revision.

4. By counsel in trial.

1. Although Code does not provide for arguments by counsel, yet opportunity for arguments must be allowed. Conviction was set aside on affidavit given to that effect. 1925 A. 282 (1)=23 A. L. J. 253=87 I. C. 796.

2. It is the duty of the Court to hear any arguments that may be offered in every criminal trial or proceedings. 1925 Oudh 228=83 I. C. 340=25 Cr. L. J. 1380.

3. The nature of defence can be ascertained not only from the statement of the accused but from the trend of cross-examination and the arguments of accused's counsel. 1930 C. 442=127 I. C. 263=51 C. L. J. 339=31 Cr. L. J. 1203.

4. When the Court is in camp, it can give judgment without hearing the pleaders who did not attend. 69 I. C. 640.

5. In an application under S. 488, Cr. P. C., the parties were examined and the case was closed for orders. Pleader for the husband appeared and wished to argue the case and file some documents. The Court ruled him out and passed judgment. Held, that the case should be retried. 31 Cr. L. J. 110=1930 N. 59.

6. Omission by party to ask for opportunity for further arguments when magistrate examined witness after close of the case and submission of arguments is a bar to raising objections as a ground of revision. 1924 C. 980=25 Cr. L. J. 1107.

7. When there are more than one accused, their counsels should all be heard after the conclusion of the whole evidence, if not, the procedure is illegal, but does not vitiate the trial in absence of prejudice to the accused. 1932 L. 103=135 I. C. 209=33 Cr. L. J. 97=33 P. L. R. 891.

8. A junior pleader is not entitled as of right to complete the arguments, left unfinished by his senior. 53 I. C. 955.

9. Magistrate's refusal to hear accused's counsel is an illegality vitiating trial. 1928 M 1234=112 I. C. 586=29 Cr. L. J. 1082.

10. *Audi alteram Partem*. (Hear the other side—i. e., no man should be condemned unheard). 24 Q. B. D. 712, 32 L. J. C. P. 185. *Wharton's Law Lexicon*, P. 87.

5. By Private Prosecutor.

1. A private prosecutor has no right to be heard. 35 C. W. N. 976=1932 C. 61.

2. A complainant cannot claim as of right to be heard in appeal. It is purely in the discretion of the Court. 29 P. R. 1886, 7 M. H. C. R. 42 (App.)

6. Cutting short.

Court cannot cut short a counsel's arguments unless irrelevant or is a repetition. 1928 L. 319=107 I. C. 763=29 Cr. L. J. 279.

7. Right of reply in appeal. See Appeal—44.

8. Right of reply in trials. S. 292, Cr. P. C.

1. Where the accused has not called any evidence on his behalf, he has the right to be heard last. 53 B. 119=1923 B. 557=30 B. L. R. 1530.

2. The putting in of deposition of witnesses made before the Committing Magistrate and

Arguments—(concl'd.)

the police is not adducing evidence. 31 C. 1050, 11 Bom. L. R. 177, 14 C. 245, 17 C. 930, 10 C. 1024, 14 B. 436.

3. Even if one of the accused calls witnesses, and the others do not, the prosecution is entitled to reply not merely on the evidence adduced by one of the accused, but generally on the whole case. 18 B. 364.
4. The prosecution shall be entitled to reply if the documentary evidence for the defence is adduced after the case for the prosecution is closed. 43 C. 426.

9. Undefended accused.

Where in a Sessions court an accused is unrepresented, the judge should bring to the notice of the jury the argument which would have been advanced, if he had been represented by pleader, else it will be urged that there was non-direction in the charge of the jury. 1930 Sind, 30S=23 Cr. L. J. 172.

10. Written.

1. Written address filed by counsel do not stand higher than judge's notes of counsel's arguments. 53 B. 119=1928 B. 557=30 Bom. L. R. 1530.
2. It is open to court not to accept notes of arguments filed by pleader of the accused, but if he accepts it, it must form part of the record and should not be destroyed till the expiration of period of appeal. 1926 Sind 194=94 I. C. 903=27 Cr. L. J. 711.
3. Counsel can waive his right of oral address in favour of written one. 53 B. 119.

ARMS ACT.—(XI of 1878).

S. 1.—(i) Licence for weapon need not be with the person. 64 I. C. 275, 20 C. 444.

(ii) Sale by Nazir of Court is excluded from the operation of the Act but court should give notice under S. 5. 9 B. 518.

(iii) A penal enactment like Arms Act must be strictly construed in favour of individual, when some doubt exists. 1928 N. 219=109 I. C. 511=29 Cr. L. J. 575

S. 4.—“Ammunition”—Definition.

(i) Empty cartridge case is included in “Ammunition.” 46 A. 107=1924 A. 215, 32 A. 152=10 Cr. L. J. 573=7 B. L. R. 474. *Cont.* 20 P. R. 1890.

(ii) Lead moulded into bullet of 20, 24 bore is “Ammunition.” 16 P. R. 1910=23 P. W. R. 1910.

“Arms”—Definition of Arms is not exhaustive. 60 C. 1477.

1. Whatever can be used as an instrument of attack or defence or cutting or thrusting and is not an ordinary implement for domestic purposes is an arm. 34 C. 749, 32 P. R. 1918=46 I. C. 486, 2 L. 291=1922 L. 138 (2)=64 I. C. 847=23 Cr. L. J. 63=12 P. L. R. 1922.
2. The test is whether particular instrument is usually employed for the purposes of defence and offence. 16 P. R. 1910, 10 P. R. 1919, 52 I. C. 193, 6 I. C. 952, 1927 L. 162=99 I. C. 935=28 Cr. L. J. 199.
3. The definition of “arms” is neither exhaustive nor happy. 32 P. R. 1918, 26 I. C. 133. The mere fact that it is dangerous does not make it arm.
4. Fire-arms mean arms that are fired by gun-powder or other explosive. 42 C. 1153.
5. “Arms” includes parts of arms. 42 C. 1153, 7 M. 70, 1933 C. 495 (1).
6. A gun rendered unserviceable by the loss of trigger is not an arm. 6 M. 60.
7. Air-gun is not an arm. 4 Cr. L. J. 239. *Cont.* 60 C. 1477=1934 C. 368.
8. Chhavi is an arm. 20 P. R. 1900, 10 P. L. R. 1919, 52 I. C. 193, 33 P. L. R. 1914.
9. Cook's knife is not an arm. 5 L. B. R. 130.
10. Sword stick is an arm. 34 C. 749, 1933 B. 438.
11. Empty cartridge case is an arm. 32 A. 152.
12. Revolver with its trigger out of order is an arm. 21 M. 360.
13. Gun-barrel and nipple are ‘arm.’ 7 M. 70, 5 Cr. L. J. 435.

Arms Act—(contd.)

14. Dashi-Upyat is not an arm. 8 I. C. 972.
15. Battle-axe is an arm. 1 Weir 654.
16. Rockets under the definition of ammunition are war-rockets. 5 M. 159.
17. Sword hilt is an arm. 38 P. R. 1889.
18. A revolver out of repair is arm. 6 P. R. 1908.
19. A clasp-knife is not an arm. 1 L. B. R. 271.
20. A hunting knife is an arm. 81 I. C. 943 (C).
21. Bolts and bars of rifles are 'arm.' 1923 L. 617=77 I. C. 1003.
22. Gandasa for purposes of offence and defence is arm. 33 P. L. R. 1914.
23. The true criterion is not whether any given Dah is *upyat* but what was the intention of the maker. 68 I. C. 818=1923 R. 23 (1)=11 L. B. R. 381.
24. In order to fall under this section the weapon need not be in serviceable condition. 21 M. 360, 1923 L. 617.
25. "Chhavi"—Everything which has a large axe-like blade curved or otherwise with an arrangement of ring for fastening it to the handle and a handle of considerable length is *chhavi*. 1 P. W. R. 1914=33 P. L. R. 1914.
26. Empty brass '405 and cartridge case which cannot be reloaded in India is not an arm, 87 I. C. 927=26 Cr. L. J. 1034=1925 A. 498=23 A. L. J. 455, 6 L. R. A. Cr. 127, 87 I. C. 26 Cr. L. J. 1039.
27. "Ammunition" does not include 'Patakhās.' 53 A. 226.

Ss. 5-16.

1. Exemption only applies to *kirpans* carried by Sikhs but not to manufacture of *kirpans*. 3 L. 437=1923 L. 267=77 I. C. 230.
2. The word manufacture does not include repair. 1 Weir 653—6. 5 L. 308=1924 L. 600, 1930 B. 153=125 I. C. 435=31 Cr. L. J. 847.
3. A servant carrying gun and shooting under the orders of his master is not guilty. 1881 A. W. N. 7, 22 A. 118 (120), 51 I. C. 208, 38 I. C. 329, 47 M. 438=1924 M. 668. =81 I. C. 623, 13 C. W. N. 124.
4. A person exempted from the operation of Act can send a servant to shoot for him. 38 I. C. 329.
5. A servant possessed his master's gun who though licensed was dead is guilty. 14 B. L. R. 501=15 I. C. 797.
6. Sikhs are exempt for possessing *kirpan*, which is another word for sword. 5 L. 308 =1924 L. 600, 77 I. C. 230.
7. A person who applied for permission to sell gun is not guilty for selling it, although he sold it before permission being granted to him. 1 Weir 657.
8. A person lawfully entitled to possess arm, signing the prescribed receipt of purchase in the name of another, is guilty of forgery. 43 C. 421.
9. Mere temporary possession of arm by servant for the purpose other than its use, viz. fetching it from the neighbouring village, is no offence. 37 B. 181=18 Cr. L. J. 860, 24 A. 454, 1933 P. 600=146 I. C. 498 (1).
10. Possession of a part of fire arm is prohibited. 42 C. 1153.
11. There is no provision in S. 14 requiring a person to deposit a spear. It refers to fire-arms only. 29 I. C. 544=16 Cr. L. J. 528.
12. Where a person kept a gun for some time and gave it to another to keep it for him is not guilty under S. 19 (f). 37 B. 161.
13. The knowledge of the existence of fire-arm found in a hut on search should not be imputed to any other than the occupier. 41 C. 350.
14. To pass an order confiscating a gun because of mere delay in renewing the license is not legal. 22 I. C. 165=15 Cr. L. J. 21.

Arms Act—(contd.)

15. A person getting a licence for protection cannot use it for sport. 1 Weir 663.
16. When a Havildar was appointed Jamadar with a retrospective effect from the date prior to the commission of offence, his conviction must be set aside. 27 P. R. 1885.
17. Possession of master's gun for unlawful purpose is offence. 1935 A. 916.

Ss. 19—20.

1. Carrying gun by a cousin of licensee in a marriage procession in contravention of the terms of licence is unlawful. 1923 B. 35=67 I. C. 722=23 Cr. L. J. 450.
2. Recovery of gun not in the presence of witnesses, cannot be relied upon. 1933 L. 466.
3. In a case under Arms Act, the question of exclusive possession cannot be raised for the first time in appeal. 1 P. W. R. 1914.
4. Whether there is ammunition for the use of gun in the immediate control of the accused or not, as he goes holding the gun, he goes armed. 77 I. C. 736, 1925 Sind. 177=25 Cr. L. J. 448.
5. Arms found in a joint family house, accessible to many, cannot be held to be in the possession of any. 41 I. C. 157, 21 C. W. N. 839.
6. Sale of clasp knives is not punishable under S. 19 (a). 25 I. C. 337.
7. Intention is no ingredient of offence under S. 19 (c). No sooner a person enters British India with unlicensed arms, he is guilty. 35 M. 596, 37 B. 181.
8. A servant going with his master's gun to shoot is guilty of going armed. 9 I. C. 720, 24 A. 54. *Cont.* 38 I. C. 329, 41 C. 11.
9. Possessing of arms without licence by a minor comes under S. 19 (f). 40 A. 420.
10. Person keeping the gun for sometime and then handing over to another is not guilty under S. 19 (f). 10 I. C. 688=15 C. W. N. 440 *Cont.* 27 P. W. R. 1915=30 I. C. 461.
11. Chhavi found in the joint possession of two accused, there is no exclusive possession and they are entitled to the benefit of doubt. 1923 L. 513 (1), 65 I. C. 447 (1).
12. Discovery of arms in consequence of information by the accused that he buried it in fields comes under Ss. 19 (f) and 20. 72 P. L. R. 1916.
13. Carrying revolver in pocket comes under S. 19 (f) and not S. 20. 27 P. W. R. 1915 Cr.
14. The concealment of Chhavis and other arms from the possession of accused at his information comes under S. 20. 1923 L. 434.
15. Gun placed in a cabin in order to conceal it from the police is punishable under S. 20. 1923 L. 79=68 I. C. 833, 8. P. R. 1915, 9 P. R. 1912 not followed.
16. Accused took the chhavi blade from the place of concealment which fitted the dang, and threatened a Railway servant, is guilty of offence under S. 19 and not 20. 1923 L. 10.
17. A sentence of 3 years under S. 20 is very heavy. 32 I. C. 672, 66 I. C. 995.
18. S. 20 does not apply to ordinary case of concealment but where export or import is attempted. 9 P. R. 1912=128 P. L. R. 1913, 6 L. 151=1925 L. 395 (2)=86 I. C. 221, 27 C. 692. *Cont.* 1933 C. 692, 1934 C. 705.
19. Pistol was found in the possession of servant in the shop. The master is not guilty. 1923 A. 33=69 I. C. 457=23 Cr. L. J. 729.
20. Offence under S. 19 (a) is keeping arms for sale and not keeping arms only 42 C. 1153.
21. If the place where an article is found is accessible to several persons, it cannot be held to be in the possession of any person. 13 C. W. N. 861, 15 A. 129, 41 C. 350, 18 C. W. N. 498, 92 I. C. 589.
22. The head of joint Hindu family cannot be punished for arm found in the common room. 52 P. R. 1905, 21 C. W. N. 839.
23. During communal riots, brother of the licensee took his brother's gun and fired shot in air to scare away the mischief makers, *held*, no offence is committed under S. 19 (f). 47 A. 267=1925 A. 175=26 Cr. L. 479.

Arms Act—(contd.)

24. The son of licensee may be convicted for possessing father's gun for shooting birds. 47 A. 267=1925 A. 175=85 I. C. 159. Sentence of fine sufficient.
25. Pistol and cartridges were found hidden in a room frequented by number of people, accused who is a tenant is not guilty of illegal possession. 92 I. C. 589.
26. Where arms discovered in the possession of the accused might have been placed by his servant, conviction under S. 19 (f) is illegal. 97 I. C. 743=8 L. L. J. 464.
27. Possession of empty cartridge that cannot be reloaded in India is not an offence under S. 19 (f). 1926 A. 255=91 I. C. 808, 1925 A. 498.
28. Servant of the holder of a gun-license who is merely carrying it to the magistrate for renewal of licence is not guilty. 41 C. 11 16 A. 276, 35 C. 219, nor when he takes it to blacksmith for repairs nor the blacksmith. 16 A. 276.
29. Servant of exempted person can carry arms of the master. 24 A. 454. But he cannot use it himself, although he can use it for the master. 81 I. C. 623. He can even shoot game for the master. 51 I. C. 208.
30. When the gun is given for repairs in the neighbouring town, the person in possession of it is not guilty. 24 A. 302. 1929 A. 720=30 Cr. L. J. 984.
31. When master and the servant believed that there was nothing wrong in shooting, by the latter, the order of the confiscation is wrong. 47 M. 438=81 I. C. 623.
32. Where article is discovered by reason of information given by accused, conviction based on that evidence is legal. 1927 L. 900=28 Cr. L. J. 250, 1923 L. 734.
33. Each case of concealment of arms must be decided on its own facts. 8 P. R. 1915, 1923 L. 79, 68 I. C. 833, 1933 L. 231.
34. To bring the case under S. 20, the possession must be furtive against public servants Railway servants or public carriers and such cases occur when arms are illicitly imported or exported. 1926 L. 262=7 L. 65=94 I. C. 401, 1925 L. 395=86 I. C. 221=6 L. 151.
35. Where arms and ammunition are hidden under a bag covered with a chadar worn by the accused, the offence falls under S. 20. 1926 L. 61=89 I. C. 1027.
36. S. 20 does not apply to ordinary cases of concealment. Where the intention of accused was that the pistol might not be shown to public servant, it comes under S. 20. 96 I. C. 390, 68 I. C. 833, 42 C. 1153. See 1933 C. 692, 1933 P. 493.
37. Mere denial on the part of accused that he has no arms in the house does not constitute concealment. 28 A. 302.
38. Indifference on the part of accused to conceal unlicensed *chikuri* disproves the intention requisite to constitute the offence under S. 20. 1923 L. 10=83 I. C. 726.
39. A concealment in loin cloth at a public fair comes under S. 20. 8 P. R. 1915 Cr.
40. Concealment of a *dang* with detached blade is punishable. 64 I. C. 847.
41. "Going armed" indicates two things (1) an intention to use and (2) possibility of using it. 1925 M. 585 (1)=87 I. C. 916=26 Cr. L. J. 1028.
42. Approver disclosed his illegal possession of fire-arms. His trial under S. 20 is illegal in view of pardon. 63 I. C. 827.
43. If a person carries pistol, dagger or *chhavi* blade, he naturally puts it in his pocket or *dab*, while going in the bazar, street, or Court house, it cannot be said that the intention specified in S. 20 is present. 1927 L. 561=28 Cr. L. J. 671.
44. Cartridge is found in a house. It might have been placed by his brother, who is retired military officer, held, accused was not guilty. 1927 L. 726=23 Cr. L. J. 337.
45. Subject of native state carrying gun in British India without licence is guilty. Sentence of fine is proper. 1929 Oudh 157=115 I. C. 839 (1)=30 Cr. L. J. 543.
46. Cartridges were discovered in a house occupied by strangers and owners. Strangers are not guilty. 1929 C. 302=119 I. C. 297 (1)=30 Cr. L. J. 1038.
47. A person in possession of arms ran away when challenged by a constable, intentions under S. 20 is established but not in the case of his companion who ran away and was without arms. 1929 L. 576=31 Cr. L. J. 79, Cont. 55 A. 631.

Arms Act—(contd.)

48. Spear concealed next to skin, intention of S. 20 is not established. 1929 L. 576=31 Cr. L. J. 79.
49. House occupied by joint family, initial presumption is that head of family is in possession, although he is 80 years old. 1929 L. 872 (1)=30 Cr. L. J. 668.
50. Carrying spears with iron heads for gymnastic parades is "going armed." 1930 B. 174=126 I. C. 881=31 Cr. L. J. 1109.
51. Railway passenger having revolver and cartridges in the inner Coat was guilty under S. 20. 1931 L. 663=132 I. C. 855=32 Cr. L. J. 995.
52. Finding of a chhavi with a dang to fit in with the blade, in a house would fall under S. 19. 1931 L. 561 (1)=1931 Cr. C. 849.
53. Accused cannot be acquitted under S. 19 (f) because the search was irregular. 131 I. C. 441=1931 Oudh 115=32 Cr. L. J. 699.
54. R a boy of 18 occupied with another a house, searched by the police. A lady of the house produced the key of the room from which two cartridges and gun were recovered. Held, R. was not guilty. 1931 Oudh 115=32 Cr. L. J. 699=131 I. C. 441.
55. Appellate court can alter the conviction from one under S. 20 to S. 19. 130 I. C. 437=1931 Sind 9=32 Cr. L. J. 517.
56. Conveying revolver in a trunk in a Railway train would fall under S. 20. 1931 L. 571=33 Cr. L. J. 110=32 P. L. R. 651, 9 L. 302, 120 I. C. 273.
57. Intention to conceal arm is the real test under S. 20. 60 C. 545, 1931 Sind 9.
58. Where the accused was of good character and was not engaged in any criminal undertaking, a sentence of 3 years' rigorous imprisonment was sufficient under S. 20. 1931 L. 663=132 I. C. 855=32 Cr. L. J. 995.
59. If unlicensed gun is found in the house, presumption is that it was in the control of all the male members of the family. Accused has to prove non-possession. 1932 A. 441=139 I. C. 153=33 Cr. L. J. 719=1932 A. L. J. 570.
60. If the possession of pistol was not intentional, sentence should be reduced to one year. 1932 L. 365=137 I. C. 141=33 Cr. L. J. 413.
61. Possession of arms of which the licence is not renewed is offence under S. 19 read with S. 14. 60 C. 445=1933 C. 218=34 Cr. L. J. 363.
62. A person convicted under S. 411 for possession of a stolen revolver, can be convicted under S. 19 (f). 1933 Oudh 470.
63. When an accused charged under S. 19 absconds and is again found in possession of arms when arrested, he can be convicted for the latter possession. 1933 L. 231.
64. Sanction of District Magistrate is necessary in the Frontier Province. 1933 Pesh. 69.
65. Conviction without sanction is illegal. 1933 L. 869.
66. Mere pointing out a place from where revolver is found is insufficient. 1933 L. 314.
67. Mere negotiation for sale of a weapon is no offence. 60 C. 445.
68. Arms were found under gunny bag spread in a bullock carts; only the persons sitting on it are guilty. 1934 Oudh 200=35 Cr. L. J. 973.
69. No sanction for prosecution under S. 20 is necessary. 1934 C. 705.
70. Transferring rifle to non-license holder is offence. 1935 Pesh. 103.
71. Being in possession of unlicensed revolver a sentence of one year is inadequate. 1936 A. 850.

S. 22.—

Master is liable for the act of his manager for selling arms to unlicensed persons. 23 B. 423.

S. 24.—Confiscation of arms.

If the license holder fails to take precautions for safe custody, his licence is liable to be confiscated. 1935 Pesh. 163.

Arms Act—(concl'd.)**S. 25.—**

1. Order for the search of arms is a judicial act. 42 M. 96.
2. District Magistrate must comply with S. 25. 30 C. 953, 36 C. 433.
3. S. 25 refers to a case in which Magistrate considers that arms are kept for illegal purpose or to endanger the public peace. 8 C. 473.
4. An illegal search does not vitiate conviction. 47 A. 575. See 1935 P. 465.
5. Magistrate must record grounds of his belief in order to avail himself of the protection of that section from the consequences of his action. 36 C. 433, 15 A. 129.

S. 27.—

1. A volunteer is generally exempted to carry arms. 22 A. 323.
2. Servant of exempted persons carrying the arms is not liable to punishment. 51 I. C. 208, 22 A. 118, 24 A. 454.

S. 30.—

1. Sub-Inspector of Police can search for arms without a warrant from the Magistrate. 47 I. C. 801.
2. "In the course of any proceedings instituted" implies that the proceedings must have begun. Search without witnesses is illegal. 47 A. 575=1925 A. 434.
3. S. 30 requires the presence of some specially empowered officers besides the officer conducting the search. 8 C. 473.
4. Even if search is illegal, the conviction is sound if evidence is conclusive. 35 A. 575, 1929 A. 68=116 I. C. 29=30 Cr. L. J. 566.

S. 31.—

In a case of technical offence, a nominal sentence is always quite sufficient to meet the ends of justice. 23 P. W. R. (Cr.) 1910.

ARMY ACT—Ss. 69-70.

An offence of criminal breach of trust is triable both by Criminal Court and by a Court-Martial and it rested with the Military authorities to decide whether the accused should be tried by Court-Martial. 1928 All. 672 (673)=29 Cr. L. J. 803.

ARREST.—S. 46 to S. 59, Cr. P. C. See Wrongful confinement.

1. Aid in making—See Aid to Police officer and Magistrate.
2. By Abkari Inspector—See Wrongful confinement.—3.
3. By Bailiff of Judgment-debtor—See Wrongful confinement.—4.
4. By Magistrate. Ss. 64, 65, Cr. P. C.
 1. Where a Magistrate travelling in a Railway carriage requested the accused, his fellow passengers to desist from smoking and on their contemptuously refusing to do so, arrested and tried them. Held, that the Magistrate was disqualified from trying the case. Ratan Lal 339.
 2. Magistrate has authority not only to issue a warrant of arrest but arrest himself. 31 B. 438.
5. By Magistrate in the middle of trial.
 1. A magistrate is not bound in the middle of trial, to arrest any person against whom there is some chance of getting conviction, and to start *de novo* the original trial. 85 I. C. 236. 25 M. 61 exp.
 2. The hasty proceeding as placing a witness on his trial during a case is bad, as the necessary result is to intimidate subsequent witnesses. 9 S. L. R. 176, 21 Cr. L. J. 29, 8 B. H. C. R. 126.
6. By Police officer. S. 54, Cr. P. C.
 1. A complaint of rape was made by a girl and the Sub-Inspector and a constable to arrest accused. The constable was resisted. Held, that the Sub-Inspector, armed with warrant, he had authority under S. 54 to arrest the accused. 140=25 Cr. L. J. 652=21 A. L. J. 791.

Arrest—(contd.)

2. Village 'chowkidar is not a police officer. 27 C. 355, 35 C. 351, 41 C. 17, 1929 A. 935=120 I. C. 205=31 Cr. L. J. 12=1930 A. L. J. 242.
 3. When warrants are issued by a magistrate against a person, any police officer, even though he is not entrusted with the execution of such warrant, can arrest under S. 54. 40 I. C. 709=18 Cr. L. J. 709=40 M. 1023, 22 Cr. L. J. 758=1922 A. 457.
 4. Where a complaint is made of a cognizable offence, a police officer can arrest without warrant, even if he is not in uniform. 21 A. L. J. 791, 1922 A. 457=64 I. C. 278=22 Cr. L. J. 758, 81 I. C. 140=1924 A. 201=25 Cr. L. J. 652.
 5. Powers to arrest without warrant must be cautiously used. 44 C. 76.
 6. When a person is arrested on suspicion of dacoity, he should be discharged when there is no evidence and should not be detained so that the police might institute proceedings against him under S. 110. For this purpose he can be re-arrested under S. 55. 43 A. 186=1921 A. 278=59 I. C. 547=22 Cr. L. J. 115.
 7. A warrant issued by the police of any other province is a credible information within S. 54 (1). 36 A. 6. See S. 54 (9).
 8. When a complaint of a cognizable offence is sent by magistrate to police under S. 202 and directed the police to make investigation and report, the police officer can arrest without warrant, as the complaint under S. 200 was a credible information. 2 Pat. 379=1923 P. 547=72 I. C. 375=24 Cr. L. J. 375, 21 A. L. J. 791.
 9. Omission to notify the substance of the order of arrest is an irregularity cured by S. 537, Cr. P. C. 40 I. C. 314=18 Cr. L. J. 666, 1926 P. 424=98 I. C. 254, 1926 P. 53.
 10. A policeman of a Native State cannot arrest in British India, for offence committed in the State. The subsequent custody of the chaukidar in British India is illegal. 29 A. 377, 19 B. 72.
 11. The detention and arrest of members of the public are not matters of caprice. Mere fact that a party of persons are in a certain place at a certain time does not mean that they are about to engage in criminal act, therefore there is no legal justification for the arrest of those persons by the police and they are not guilty of rioting if they oppose the arrest. 1926 Pat. 560=90 I. C. 712=25 Cr. L. J. 1603.
 12. The Code does not deal with arrest for the prevention of crimes except under circumstances specially mentioned. 46 M. 605=1923 M. 523=24 Cr. L. J. 599.
 13. A police officer entering into a building for the purpose of arresting suspected persons will not be liable for trespass. 36 C. 433.
 14. Unnecessary force need not be used in arresting a supposed thief. 32 P. R. 1894 Cr.
 15. For an arrest under S. 54 (7) two things are necessary; knowledge by policeman affecting arrest and actual existence of warrant issued under Extradition Act. 1933 L. 159=34 Cr. L. J. 679.
- 7. By Private person.** S. 59, Cr. P. C. See Wrongful confinement—5.
1. S. 59 gives power to a private person to arrest any person who in his view, commits a cognizable non-bailable offence. Arrest by a person in whose presence the offence is not committed is not justified. 1922 L. 73=64 I. C. 371=19 P. L. R. 1922, 35 C. 361.
 2. The intention of S. 59 is to prevent arrest by a private person on mere suspicion or information. 11 M. 480.
 3. A private person has no power to arrest an accused who is running away after committing murder, when murder did not take place in his presence. 1922 P. L. R. 19=64 I. C. 371=23 Cr. L. J. 3=1922 L. 73.
 4. "In his view" in S. 59 means "in presence of" or "within sight of" and not "in his opinion". 1926 P. 53=89 I. C. 1030=26 Cr. L. J. 1462, 1933 P. 508, 1922 L. 73.
 5. Where a person arrested a man with a pot of toddy in his hand, standing on the ground and two of his confederates, climbing the tree, held, that the man on the ground should be deemed to be committing theft "in the view" of his arrester, 1924 M. 384=81 I. C. 312=25 Cr. L. J. 792.
 6. Where an accused suspecting complainant to have committed an offence under S. 366, I. P. C., arrested him and instead of taking him to the Police Station, took him to

Arrest—(contd.)

Dharmasala, the accused is not protected by S. 59 and is guilty under S. 342, I. P. C. 98 I. C. 594=27 Cr. L. J. 1378=8 P. L. T. 204.

7. A chowkidar as a private individual has power to receive custody of person arrested under S. 59 and to take him to Police Station. 1932 P. 214=33 Cr. L. J. 572.
8. A person entering a house with the intention of carrying out his armour with married woman, can be arrested under S. 59. Owner can pursue him if he evades arrest and to use all means necessary for securing him. In this case axe blow was given which caused grievous hurt. 1935 Pesh. 83=156 I. C. 704.
8. **Escape from.**—See **Escape**—2 and S. 29, Police Act.
 1. Chowkidar is not a police officer and hence escape from his custody is not unlawful. 20 I. C. 750=14 Cr. L. J. 494=41 C. 17, 27 C. 366=4 C. W. N. 252.
 2. Two constables were taking an undertrial prisoner by a camel cart on a dark night. The prisoner wanted to get down to make water, who got himself free from the rope and bolted. Held, the constables are not guilty. 1925 O. 281=26 Cr. L. J. 130.

Delay in—See **Delay**—4.

9. **Examination of accused before.**—See **Examination of accused**.

10. **Exemption from.**—S. 135, C. P. C. See **Wrongful confinement**—.

A pleader is exempted from arrest under Civil Process under S. 135, C. P. C. while attending court. If arrested he can claim exemption and get himself released, but such arrest will not entitle him to claim damages for tort. 1930 R. 131=7 R. 598.

11. **Hand-cuffs**—

1. Handcuffing is a safe precaution adopted by executive order, but is not legally incumbent. 18 P. R. 1871 Cr.
2. Judge can direct the removal of chains or fetters unless satisfied by a representation from the proper officer that they were necessary. 4 M. H. C. R. App. 69.

- 12 **Illegal or irregular.**

1. When a warrant of arrest is issued, the officer making the arrest must have the warrant in his possession, otherwise the arrest is illegal. 5 A. 318.
2. When the act of a public servant is entirely *ultra vires* in making an arrest, the right of private defence may be exercised against him. 13 B. 168, 16 C. W. N. 549,
3. A police officer arresting a person unjustifiably is guilty of an offence under S. 220 I. P. C. 40 M. 1028, 36 A. 6.
4. Illegality of arrest does not vitiate extradition proceedings. 39 C. 164.
5. Arrest under a *bona fide* belief is a good defence. 12 B. 377, 47 M. 442.
6. Magistrate having jurisdiction to take cognizance of an offence should not consider the question of legality of arrest. 26 M. 124.
7. An arrest by a mere declaration without the actual touch of the process-server is illegal under S. 46 (1), Cr. P. C. 113 I. C. 288=30 Cr. L. 7. 123.
8. Mere showing a warrant is not sufficient. An opportunity should be given to the person arrested to read it. (S. 80, Cr. P. C.), 26 C. 748.
9. A Police Officer making arrest without observing the provisions of S. 80 may be able to justify his action under S. 46 (2). 55 C. 881=1929 C. 174=30 Cr. L. J. 703.
10. Arrest of foreign subject in foreign territory without the intervention of the State authorities is illegal. 6 P. R. 1899 Cr.
11. The conviction of an accused is not invalid on account of illegality of arrest. 37 P. R. 1906 Cr., 6 P. R. 1899 Cr.
12. Rescue from illegal arrest is not punishable. 12 P. R. 1893 Cr.
13. Arrest at midnight of accused lurking armed in a village inhabited by professional dacoits is legal. 7 P. R. 1869 Cr.
14. Resistance to the execution of an illegal warrant is no offence. 16 P. R. 1904 Cr.

Arrest.—(contd.)

15. The absence of the seal of the Court makes the warrant void. An arrest made in execution of such warrant is illegal. 42 C. 708.
 16. Where certain arrests were made without the substance of the warrants being notified to the persons arrested, the omission was cured by S. 537, Cr. P. C. 18 Cr. L. J. 666.
 17. The irregularity of arrest is not a ground for invalidating proceedings and trials subsequent to the arrest. 6 P. R. 1899 Cr., 1 P. R. 1911 Cr. Cont. 7 Bur. L. R. 83.
 18. An arrest by mere oral declaration is sufficient. 113 I. C. 288=30 Cr. L. J. 123.
 19. If the warrant is not shown to the person to be arrested, the arrest is illegal. 5 C. W. N. 843.
 20. Endorsement of the name of constable actually making arrest is not necessary. 1934 A. 879, 18 A. 246 Expl.
 21. When the warrant for the arrest of debtor was initialled and not signed in full, it is no defence to resist the arrest. 8 A. 293, 19 M. 349, 21 M. 296, 13 M. 131, 27 A. 491.
 22. When bailable warrant for the arrest of woman under S. 498 was not shown and no opportunity to produce bail was given, the arrest is illegal and S. 99 does not apply. 1935 A. 913=1935 Cr. C. 1129.
- 13. Of a deserter.**
Police can arrest a deserter from army without warrant. 260 P. L. R. 1912.
- 14. Of a foreign subject.**
1. Arrest of a foreign subject in foreign territory without the intervention of state authorities is illegal. 1 P. R. 1896 Cr., 6 P. R. 1899 Cr.
 2. An arrest by a Police Officer of the Native State, in British India, of a person suspected of an offence committed in state is illegal. 29 A. 377.
 3. How far an arrest in a ceded territory is illegal. See 1 P. R. 1896 Cr., 6 P. R. 1897 C.
 4. Arrest of a person at Gwalior Railway Station for offences committed in British India is illegal. 1 L. 406.
- 15. Of Habitual offender.** S. 55, Cr. P. C.
1. S. 55 is independent of S. 110, Cr. P. C., although proceedings under Chapter VIII might follow on the arrest of a habitual offender under S. 55. 1930 P. 106=124 I. C. 638, 35 A. 407, 1926 S. 190=94 I. C. 404.
 2. Arrest under S. 55 (c) is not justified on mere suspicion that accused was concerned in several offences. 47 M. 442=1924 M. 555=81 I. C. 51.
 3. After acquittal on the charge of dacoity, it is illegal to detain the accused for 12 days in order that proceedings under S. 110 may be started against him. 41 A. 483.
 4. Officer-in-charge of Police Station, Calcutta, can arrest under S. 55 without warrant. 31 C. 557.
 5. When the police arrest a person under S. 55 he should be given the option of bail. 14 A. 45.
 6. Police cannot arrest under S. 55 persons who earn livelihood by means of gambling. 3 L. B. R. 94=3 Cr. L. J. 20.
- 16. Of Judgment-debtor.** See Wrongful confinement.—2.
- 17. Of witnesses.** Ss. 90—93, Cr. P. C.
A Magistrate is competent to admit to a bail a recalcitrant witness against whom he may issue a warrant of arrest legally. (1881) 2 Weir 39.
- 18. On an order from a police officer.** S. 56, Cr. P. C.
1. S. 56 (1) does not require a chowkidar on his own initiative to show to the accused an order given to him by the officer in charge of police station. 1925 Oudh 544=93 I. C. 427=26 Cr. L. J. 795.
 2. Where a common certificate is given to a constable under S. 56 for effecting the

Arrest.—(contd.)

arrest of a person but the constable arrests him without notifying the substance thereof, the arrest is not illegal, as he could arrest under S. 54. 5 Pat. 533=1925 P. 424=98 I. C. 254=27 Cr. L. J. 1310.

3. A chowkidar is an officer subordinate to an officer-in-charge police station. 10 C. W. N. 237=3 Cr. L. J. 201.
4. Mere writing of the name by subordinate on the back of the warrant and signing the endorsement by the police officer does not constitute the warrant an order in writing. 18 A. 246.
5. The issuing of a warrant by a magistrate is no bar to a police officer issuing order under S. 56. 18 A. 246.
6. Police constable deputed by police officer cannot arrest without complying with S. 56. 1936 R. 119=37 Cr. L. J. 463.
19. **On breach of bond.** S. 92, Cr. P. C.
 1. Magistrate can order the arrest of a person who does not appear when he is bound to appear by virtue of the bond. 1919 A. 155.
 2. S. 92 does not apply where prior to time fixed for appearance, arrest by warrant is sought to be effected. 17 Cr. L. J. 132, 38 M. 1088.
20. **Outside British India.**—See British India—1.
21. **Rescue from.** See Escape or rescue from lawful custody.—4.
 1. Rescue from illegal arrest is not punishable. 12 P. R. 1898.
 2. In a prosecution under S. 498 I. P. C., on the application of the complainant, that the abducted woman would escape, the magistrate issued warrant against her. Held that omission to record reasons is only an irregularity and the persons rescuing her from the custody of constable are guilty. 22 Cr. L. J. 111.
22. **Resistance to.** S. 353, I. P. C., S. 46, Cr. P. C. See Assault on Public Servant. Unlawfully assembly.
 1. Where a police constable suspecting a person carrying stolen cloth, took hold of the pieces and was obstructed, held, that the person was legally arrested under S. 34 (5). 12 B. 377.
 2. It is for the prosecution to show that constable had authority to arrest. 1924 M. 555=47 M. 442=25 Cr. L. J. 563=81 I. C. 51.
 3. A warrant signed by a Magistrate who is not the presiding officer within S. 75, Cr. P. C., is invalid and resistance to an arrest made under such warrant is no offence under S. 352, I. P. C., 39 I. C. 494=18 Cr. L. J. 526.
 4. If a person forcibly resists the endeavour to arrest him, police officer can use force to arrest him. But right to cause death of a person not accused of offence punishable with death or transportation. S. 46, Cr. P. C., 2 W. R. 9.
 5. A shot over the head of the suspect is justified by S. 46. 1933 Sind 193=34 Cr. L. J. 751.
23. **Right of Private Defence against—illegal**—See Right of Private Defence—21.
24. **Search of accused at the time of—** S. 51, Cr. P. C. See Search—11.
25. **To prevent offences.**—S. 151, Cr. P. C.

If without emergency an arrest is made under S. 151, to prevent a cognizable offence, it is illegal. 1930 L. 348.
26. **Warrant of—**See Warrant.
27. **When—amounts to wrongful confinement** See Wrongful Confinement—2.
28. **What amounts to—**Touch A. S. 45, Cr. P. C.

In making an arrest the person authorized to make it shall actually touch the body of the person to be arrested, unless there be submission to the custody by the words of a constable. 1903 P. 121=123 I. C. 137, 2 W. R. 60 Reck on.

ARSENIC—See Poison—1, Murder—23—35.

ARSON—See Fire.

ASSAILANT, POSITON OF— See Wound—4, Weapon—11.

ASSAULT—S. 352, I. P. C.

1. Charge and conviction.

1. In a charge under S. 147, the conviction can be had under S. 352 but not for abetment of assault. 1922 M. 110=65 I. C. 862=23 Cr. L. J. 206.
2. A person sent up under S. 122, Bombay Police Act, can be convicted under S. 352. 1926 B. 255=93 I. C. 896=27 Cr. L. J. 496, 36 C. 869.

2. Criminal Force. See Criminal Force. Ss. 349—353, I. P. C.

3. Essentials and Evidence.

1. Pulling the trigger of an unloaded gun is not an attempt to murder but is only an assault. 1 R. 209=74 I. C. 1042=1923 R. 251=24 Cr. L. J. 850.
2. Resistance to unauthorised search by Police officer is no offence under S. 352. 1923 A. 433=71 I. C. 996=24 Cr. L. J. 276.
3. When the deceased with an enlarged spleen was struck by the accused, the offence was not culpable homicide but using criminal force under S. 352. 21 P. R. 1876.
4. If a person throws a stone or bottle at another or into another's house, he will be guilty under S. 352 irrespective of consequences. 3 L. B. R. 194=4 Cr. L. J. 201.
5. If one raises a stick to another and the latter moves how little so ever to save himself, it is assault. 23 I. C. 183=12 A. L. J. 154=15 Cr. L. J. 231.
6. But it is not an assault if before the stick is raised, the other runs away out of sheer fright. 1 Cr. L. J. 1057=1 A. L. J. 602.
7. A Sub-Inspector went to the house of a bad character to see if he was there. Sub-Inspector wanted to take his thumb impression, whereupon the accused brought a lathi saying that he would break the head of anybody attempting to take his impression. Held, he was guilty under S. 352 and not S. 353. 30 C. 97.
8. Where a Police officer merely gave a verbal threat to use force, if the passenger did not vacate his seat in the train, it is not an assault. 13 I. C. 237.
9. One of the accused hit the constable and others surrounded the constable in a threatening manner. Held, the latter could not be convicted of assault. 7 I. C. 416=11 Cr. L. J. 483.
10. A pleader turned out a person from his room in the District Court. He, without using violence is not guilty of assault. 15 Bom. L. R. 1039=15 Cr. L. J. 14.
11. Medical examination of an arrested person without his consent amounts to assault. 1931 C. 601=134 I. C. 1053=33 Cr. L. J. 11.
12. Whether a particular act amounts to assault depends upon circumstances of each case. Petitioner interposed between the officer and the cattle that were being removed under his orders and began to abuse and went away after giving threats and came back armed with a lathi, while his companions were sufficiently close to the officer. Held, that this amounted to assault. 1935 P. 214=36 Cr. L. J. 714.
13. Accused went with bailiff to execute a warrant. Judgment-debtor was absent. His wife tried to shut the door and he pushed it violently and she fell down unconscious in great pain. Accused was guilty under S. 352 and S. 79 could not be availed of. 1934 Sind 52=34 Cr. L. J. 963.
14. If the search by police is illegal, the pushing of Sub-Inspector by accused is not covered by S. 352. 1932 P. 66=10 P. 821.

4. Events leading up to—

Events leading up to and preceding assault must be considered. 1934 R. 44=35 C. L. J. 855.

5. On Provocation. See Assault on Provocation, S. 358.

6. On Public Servant. See Assault on Public Servant, S. 353.

7. On Woman. See Assault on Woman, S. 354.

Assault—(contd.)**8. Procedure.**

1. A Civil Court peon may file a complaint under S. 352 without the sanction of Civil Court, when he was assaulted by persons while effecting an attachment. 31 C. 664.
2. No hurt but criminal force was used to Public Servant, charge was altered from S. 323 to 352, I. P. C. 45 A. 142=1923 A. 87=71 I. C. 503=24 Cr. L. J. 151.
3. A person discharged under S. 352 cannot be retried for hurt. 7 W. R. 15, 16 W.R.3.

9. Sentence.

1. An assault on a citizen for appealing to the police needs a deterrent sentence. 1925 B. 255=93 I. C. 896=27 Cr. L. J. 496=28 Bom. L. R. 291.
2. Persons may riot without actually committing assault and the theory that S. 147 embraces S. 352 is fallacious. Separate sentences can be awarded. 1928 M. 21=106 I. C. 338=29 Cr. L. J. 2.
3. For assault the usual sentence is fine. Imprisonment in default of fine cannot exceed three weeks. 16 W. R. 42.

10. To dishonour. S. 355, I. P. C.

1. Accused while under trial, struck a Sub-Inspector of Police who was in witness box giving evidence against him, he was guilty under S. 355. 27 A. W. N. 186.
2. When a low class woman polluted the body of an orthodox Brahmin while performing his prayers, by the splash of stream water, who caught hold of her to express regret, held, that there was no intention on the part of Brahmin to dishonour the woman. He was not guilty as he acted under grave and sudden provocation. 1927 N. 47=96 I. C. 859=27 Cr. L. J. 1003.

ASSAULT ON PROVOCATION. S. 358, I. P. C.

1. Disturbing an orthodox Hindu in prayers by a low caste woman who was assaulted, held there was a grave and sudden provocation and accused was not guilty under S. 355. 96 I. C. 859=1927 N. 47=27 Cr. L. J. 1003.
2. Accused were beating drums at night to celebrate a festival, the complainant got annoyed and snatched away a drum and threatened the festive gathering who retaliated by assaulting and broke the arm of the intruder. The accused were guilty under S. 352 only. 39 I. C. 687.
3. Assault on provocation is an offence in which provisions of S. 95 should be read side by side. Gour's Penal Code, S. 358.
4. Accused assaulting under grave and sudden provocation is guilty under S. 358. 1934 A. 872.

ASSAULT ON PUBLIC SERVANT. S. 353, I. P. C.**1. Illegal arrest. See Arrest—12.****2. Illegal search. See Search—10.**

1. No offence is committed where no harm beyond a push is done to a Police officer entering house without search warrant. 1929 A. 903=30 Cr. L. J. 1145, 10 P. 821.
2. Unless the provisions of S. 165 (3) and S. 166 are complied with resistance is no offence. 30 I. C. 141, 1923 A. 433 (1)=24 Cr. L. J. 276.
3. A Sub-Inspector suspected stolen property in a house. He seated himself outside and asked a constable to search. The accused asked the constable for a list of articles to be searched and none was produced. Held, that his pushing him out was no offence. 17 M. L. J. 323=6 Cr. L. J. 105. 19 M. 349 Dist.
4. Resistance to a public officer who is attempting to search a house without proper written order authorising him to do so is not punishable under S. 353. 23 C. 896, 26 C. 630, 1 C. W. N. 223, U. B. R. 1907 Cr.

3. Illegal warrant. See—6.

1. Where the warrant is illegal, resistance thereto is no offence. 1934 A. 1016, 51 M. 873=1928 M. 624.
2. No offence is committed in resisting time barred warrant. 1924 N. 68=25 Cr. L. J. 223. But see 38 I. C. 744=18 Cr. L. J. 360.

Assault on Public Servant.—(contd.)

3. If the warrant does not show the name of person to be arrested, it is illegal. 51 C. 902.
4. Resistance to warrant executed within time fixed by judge and beyond time allowed by Nazir, is an offence. 1923 M. 687=25 Cr. L. J. 64.
5. Resistance to warrant to attach suppurddar's property is no offence. 1924 L. 667.
6. Resistance to warrant allowing bail is no offence if the person to be arrested is not informed of bail. 16 C. W. N. 549.
7. If an officer is not authorized to sign a warrant, the mere fact that there was practice to have it signed by Deputy Nazir will not make it legal. 1934 M. 206=35 Cr. L. J. 782.

4. On Duty—

1. In order that a public servant may avail of the special protection conferred, his act must be shown to be not only excusable but legal. 18 A. 246, 28 C. 411.
2. The resistance to an act of public servant is legal, when the act is not only illegal but is not done in good faith under colour of his office. 19 M. 349, 21 M. 296, 27 M. 52.
3. Doctrine of self help is always placed before an illegal act. 390 P. L. R. 1904, 51 C. 902=1924 C. 959=83 I. C. 481=26 Cr. L. J. 2.
4. Where the excise officer had not entered upon his duties of making a house search and was assaulted, the offence falls under S. 353. 41 C. 836.
5. A constable who made a search in contravention of S. 165 and S. 166, Cr. P. C., does not act within his authority and the resistance to such a search is not punishable under S. 353. 30 I. C. 141=20 Cr. L. J. 48.
6. Resistance to a warrant, which did not contain the name of person to be arrested is no offence. 51 C. 902=1924 C. 959=26 Cr. L. J. 2, 47 M. L. J. 447.
7. A constable arrested A, against whom there was a warrant of arrest awaiting in the Station House. B interfered and beat the constable. Held, B is guilty under S. 353. 36 A. 6.
8. Authority to make a search by a subordinate must be in writing under S. 165. In the absence of such authority the resistance to search is not punishable. 30 I. C. 141.
9. The fact that a person was not donning his official livery is no excuse for an assault on a public servant, if his vocation and position was known to his assailant. 40 I. C. 689=13 N. L. R. 87=18 Cr. L. J. 689.
10. If the demand by Tehsil peon was not in legal or proper form, the peon was not acting in the execution of a duty imposed on him by law; no offence under S. 353 was committed, although persons assaulting were guilty under S. 329. 1931 L. 524=32 Cr. L. J. 853=132 I. C. 214.
11. If the officer is acting illegally, there is no offence under S. 353. 1931 R. 169.
12. Police officer who helps another officer outside jurisdiction but in the District, acts in discharge of his duty. 1925 Sind 280=26 Cr. L. J. 1071.
13. If the act of public servant is not strictly justifiable under law, assault committed on such servant does not fall under S. 353 but under S. 352. 1933 Sind 174; 18 A. 246 Foll. 19 M. 349 and 7 B. H. C. R. 50 not foll.
14. By "duty as such public servant" is meant duty imposed by law on such public servant and not acts done in good faith under colour of office. 38 P. W. R. 1913 Cr.=325 P. L. R. 1913.
15. A person cannot claim exoneration from liability under S. 353 because the Court passed a wrong order, if in fact the Court had jurisdiction to pass such order. 40 I. C. 689.

5. On Police Officer.

1. Policar officer deputed in a private place to control traffic was assaulted. Accused is guilty. 1928 L. 230=111 I. C. 665=29 Cr. L. J. 905.
2. Accused abused and spat on the face of investigating Police officer, when he was standing outside Court room after giving evidence. Offence falls under S. 355 and not S. 353. 7 Mys. L. J. 136.

Assault on Public Servant.—(contd.)

3. Public servant assaulted when not acting as such, there is no offence under S. 353. 1927 L. 162=99 I. C. 935=28 Cr. L. J. 199.
 4. "In consequence of" in S. 353 includes motives which actuated assault, as well as the cause of assault. 1927 L. 162=28 Cr. L. J. 199=99 I. C. 935.
 5. Resistance to Sub-Inspector who had no right to search the house is no offence. 1923 A. 433 (1)=71 I. C. 996=24 Cr. L. J. 276.
 6. Throwing shoe and abusing constable who prevented accused from holding conversation with prisoner in lock-up falls under S. 353. 1924 L. 257 (2)=4 L. 448=76 I. C. 29=25 Cr. L. J. 93.
 7. Rescuing persons from custody of Police officer is an offence under Ss. 353-225. 43 A. 233=60 I. C. 322=22 Cr. L. J. 210=19 A. L. J. 196.
 8. Resistance to a distress warrant under Income-Tax Act issued by Collector and executed by a Police officer is no offence. 1923 Pat. 388=24 Cr. L. J. 490.
 9. Two persons were improperly arrested and marched to Police Station by a Forest watcher who was assaulted and slapped. Held, it was a trivial offence. 1923 M. 624=51 M. 873=109 I. C. 365.
 10. A mild assault on a Police officer should not be punished with imprisonment. 1931 P. 342=134 I. C. 432=32 Cr. L. J. 1166=12 P. L. T. 791.
 11. If police search was illegal owing to non-compliance with the provisions of S. 165, the accused cannot be convicted under S. 352 for pushing the Police Inspector. 10 P. 821=1932 P. 66=33 Cr. L. J. 233.
 12. If a constable notified to the accused that he was executing a warrant for his arrest and the warrant turns out to be invalid, the arrest is not validated by the fact that under S. 54 (1), Cr. P. C., the Police officer was empowered even without the aid of warrant. Resistance by accused to such arrest is no offence. 1932 P. 171=13 P. L. T. 135=47 M. 442=1924 M. 555=25 Cr. L. J. 563.
 13. The prosecution must prove that arrest by police was legal in every way. If the warrant is signed not by a Magistrate who took cognizance of the offence, but by another 'for' him, the warrant is invalid and accused is not guilty of resistance. 133 I. C. 844=33 Cr. L. J. 706=1932 P. 171=13 P. L. T. 135 Cont. 1932 P. 175.
 14. If the warrant of arrest is illegal, there is no offence under S. 352. 1932 A. 227=140 I. C. 118=33 Cr. L. J. 887.
 15. A constable was informed that gambling was going on in a thoroughfare, he was prevented by the use of criminal force from proceeding in that direction to arrest gamblers. Held that the accused were guilty under S. 353 I. P. C. 1935 A. 516=154 I. C. 740, 37 A. 353 and 16 Cr. L. J. 589=1915 A. 442 Dist.
 16. No offence is committed where no harm beyond a push is done to Police officer entering a house without search warrant. 1929 A. 903=30 Cr. L. J. 1145.
 17. A constable knocked at the door of a suspected person at midnight but was turned out by force and was hurt. Held, that constable was guilty of criminal trespass and therefore accused had right of self-defence. 27 M. 52.
 18. A Pathan was sent for at Police Station in connection with house breaking. On being abused he threatened the Sub-Inspector with a cane. Held, he was guilty under S. 353. 1936 N. 234.
6. On process-server. Illegal warrant.
1. Resistance to execution of warrant of attachment which does not specify the date on or before which it is to be executed is not illegal. 38 I. C. 744=18 Cr. L. J. 360.
 2. Assault on a Tehsil peon ordered to procure camels is no offence. 22 Cr. L. J. 65.
 3. No hurt was caused to the bailiff who was resisted when executing an illegal warrant. No offence under S. 353 committed. 1924 7 (2)=75 I. C. 731=25 Cr. L. J. 43.
 4. Bailiff whose name did not appear on the warrant but was appointed by Nazir was assaulted. Held, he comes under S. 353. 7 Cr. L. J. 122.

Assault on public servant—(concl'd.)

5. Public servant attaching property of lessee of defaulter was assaulted. No offence under S. 353 is committed. 1924 M. 859 (2)=83 I. C. 1007=26 Cr. L. J. 223.
6. Accused resisting a warrant, the time of which as fixed by Munsif not expired but as fixed by Nazir expired, is guilty. 1923 M. 637=75 I. C. 768=25 Cr. L. J. 64.
7. Resisting an expired warrant is no offence. 1924 N. 68=25 Cr. L. J. 223=76 I. C. 655=19 N. L. R. 183.
8. Resistance to Revenue Inspector in execution of distraint for arrears of revenue is an offence under S. 363 though the warrant is addressed only to village headman, who is his subordinate. 1924 M. 539=76 I. C. 952=25 Cr. L. J. 290.
9. Two men were improperly arrested on an illegal warrant by a Forest watcher and were marched to the Police Station. The accused came at the scene and gave a slap to the watcher. Held, no offence under S. 343 was committed. 51 M. 873=1928 M. 624=109 I. C. 365=29 Cr. L. J. 541.
10. Warrant to attach *suhud-dar's* property is illegal, and the resistance to it is no offence. 1924 L. 667=75 I. C. 731=25 Cr. L. J. 43.
11. Absence of name of person to be arrested vitiates warrant and the arresting person is not a public servant. 51 C. 902=1924 C. 959=83 I. C. 481=26 Cr. L. J. 2.
12. Where the common object of the unlawful assembly was to stop the house search by excise officer and proceeded to attack him. Held, that the members were guilty under Ss. 353-147. 6 P. 828=1928 P. 115=106 I. C. 591=29 Cr. L. J. 79, 41 C. 836.
13. If the warrant of attachment is not produced, nor its contents satisfactorily proved, the conviction under S. 353 is bad. 26 C. 630, 3 C. W. N. 605. See 29 A. 272.
14. If the warrant is initialled and not signed, it is not illegal and assault is not justified. 8 A. 293, 23 C. 896, 27 A. 491.
15. When a Court pawn in executing a warrant of arrest was resisted, an offence under S. 353 was committed. 58 C. 940=1931 C. 443=35 C. W. N. 228=32 Cr. L. J. 886.
16. If the date on or before which warrant of attachment is to be executed and the date of its return to Court is not given, the warrant is illegal and resistance is no offence. 1934 A. 1016, 35 C. 1076, 37 C. 122 and 1933 A. 46=55 A. 119 relied on.
17. Accused accompanied the bailiff to execute a warrant. Judgment-debtor was absent. He wife was trying to shut the door. Accused pushed the door violently and she fell down unconscious. Held, he was guilty under S. 352 and S. 79 cannot avail him. 1934 Sind 52.

7. Procedure.

1. No sanction is required to initiate prosecution under S. 353, whether the prosecutor be a private person or a public servant. 31 C. 664.
2. It is improper to substitute a relative on the death of complainant. 19 C. W. N. 334.
3. When the warrant is not produced at the trial, nor secondary evidence of its contents is adduced, conviction is illegal. 26 C. 630, 3 C. W. N. 603. Cont. 29 A. 272.

8. Sentence.

1. Assaults on public servants cannot be lightly treated. 1927 L. 162=99 I. C. 935=28 Cr. L. J. 199, 1934 N. 23 (1), 35 Cr. L. J. 447.
2. Even if the resistance to process server is in the most open way, a deterrent sentence should not be given. 111 I. C. 576=1928 N. 135=29 Cr. L. J. 895.
3. Assault on public officer of a mild character, unless there be some element of criminality in it, should not be punished with a sentence of imprisonment. 1931 P. 342=134 I. C. 432=12 P. L. T. 791=32 Cr. L. J. 1166.
4. When no force or violence was used, a sentence of fine is sufficient. 1935 P. 214=36 Cr. L. J. 714.

9. Warrant of attachment.

When an officer is entrusted with a warrant to attach the property of certain persons, he must attach it unless objection is raised. 1935 P. 214=36 Cr. L. J. 714.

*Assault on Woman.***ASSAULT ON WOMAN.** S. 354 Penal Code.**1. Attempt to rape and S. 354—Distinction.** *See Rape.*

1. A lady was travelling alone in a train and on waking found a man sitting on her berth. She screamed and the accused caught hold of her by hair and threatened her with revolver. He began to unbutton his trousers, and when she attempted to reach the communication cord, he aplogised. Held, these were acts of preparation and the accused was guilty under S. 354. 96 I. C. 260=1925 R. 247=27 Cr. L. J. 916 4 Bur. L. J. 83.
2. Accused took off the clothes of a woman, whom he threw on the ground and sat down beside her. Held, he was guilty under S. 354. 16 P. W. R. 1912, 116 P. L. R. 1912
3. But if the accused laid on the woman after making her naked it is attempt to rape 42 P. W. R. 1910.
4. Pulling of a woman by the arm with a request for sexual intercourse is an offence under S. 354. (1890) 1 Weir 347.
5. Accused seeing a woman alone in a field stuffed her mouth with sand and attempted to have intercourse, when her screams brought passersby. Held, he was guilty under Ss. 376-511. A. L. R. 1934 L. 19.
6. If the accused wanted to gratify her passions inspite of resistance, he is guilty under Ss. 376-511. 5 B. 403.

2. Essentials and evidence.

1. Catching a woman by neck while she is sleeping a punishable under S. 354. 1927 C. 505=103 I. C. 553=28 Cr. L. J. 697=31 C. W. N. 583.
2. Where a woman has no modesty to mention, the act of a person in taking her to a room and having intercourse with her, cannot be said to outrage her modesty. 1923 P. 326=108 I. C. 81=29 Cr. L. J. 325.
3. Accused took a girl of six years into his room and lay on her. She screamed and reported the matter to her mother. Held, he was guilty under S. 354, as her screaming and running away proved that she resented her modesty being outraged. 14 Bom. L. R. 961=17 I. C. 794.
4. Where accused pulled a girl by hand and hair in the presence of onlookers, he is guilty under S. 354, 13 I. C. 389. (1890) 1 Weir 347.
5. Accused caught hold of a woman by arm and dragged her. She was rescued by neighbours. Held, no offence under S. 366 is committed. 109 I. C. 127 (2)=10 L. L. J. 325.
6. Accusations connected with indecency and sexual immorality are one which are very easy to make in this country and difficult to rebut. It must be fully corroborated by conduct and surrounding circumstances. (1894) 1 U. B. R. 229.
7. Low class women generally aggravate a simple assault into an indecent one to avenge their husbands. The Court should not rely upon their evidence unless corroborated. 5 B. 403. Lyon's Med. Jur. (1935) P. 375.
8. Every assault on woman does not necessarily fall under S. 354. 1927 C. 505=103 I. C. 553=31 C. W. N. 583=28 Cr. L. J. 697.
9. A woman was caught hold of by accused who dragged her a short distance. Held that in the absence of evidence of intention the accused is not guilty under S. 366 but under S. 354 only, 109 I. C. 127=29 P. L. R. 444.
10. When the evidence of rape depends on uncorroborated testimony of prosecutrix, it is safe to convict only under S. 354. 1 U. B. R. 229 (1892-1896), 1 U. B. R. 325 (1897-1901).
11. A Court peon in execution of an order under O. 21 r. 35, C. P. C., for delivery of possession forcibly removed a woman on whom decree was binding. Held, he was not guilty under S. 323 or S. 354. 1936 Oudh 379.
12. To place a hand on the shoulder of a woman will be an outrage on the modesty of a Hindu or a Muhammadan, but not a European. Cr. Revision No. 53 of 1906 (Bom.)

Assault on Woman—(contd.)

3. Intention.

1. Every assault on a woman does not necessarily fall under S. 354. 1927 C. 505=103 I. C. 553=28 Cr. L. J. 697=31 C. W. N. 583.
2. Accused opened a closed *falki* believing that it contained a runaway debtor against whom he had warrants, but found a *parda-nashin* lady in it. Held, accused is not guilty as the intention was innocent. 24 C. 886.
3. The act must be with the intention or knowledge that it was likely to outrage the woman's modesty. 19 I. C. 149=14 Cr. L. J. 149.
4. If the woman has no modesty there can be no outraging of it. 1928 P. 326=29 Cr. L. J. 325.

4. On girl of 5 years.

1. Offence under S. 354 can be committed on girl of 5½ years though she has not developed sense of modesty. 1933 C. 142=34 Cr. L. J. 308.
2. Accused put his finger in the private part of a girl of 5½ years and caused a mark. She did not complain of it. Held, that accused was guilty under S. 354 (under S. 323 per Jack J.) 1933 C. 366=35 Cr. L. J. 308, 13 Cr. L. J. 858=17 I. C. 794=14 Bom. L. R. 961.

5. Sentence.

Accused felled a woman down in a public place, lifted her shirt and pulled her breasts. Held, that binding him over under S. 562 was inadequate and sentence was enhanced to 3 months' imprisonment. 1934 L. 36 (2).

ASSEMBLING FOR COMMITTING DACOITY. S. 402, I. P. C.

1. Accused were found at a lonely well at a long distance from their respective homes fully armed for committing dacoity. Their conviction under S. 402 is competent. 94 I. C. 269=27 Cr. L. J. 605, 23 A. 124, 6 P. R. 1916, 1925 A. 62=26 Cr. L. J. 380.
2. Accused, three of whom were residents of another village, assembled on the night of dacoity outside a village and were armed with revolvers and spears. Held, they were guilty under S. 402. 1928 L. 114=106 I. C. 350=29 Cr. L. J. 14, 37 P. W. R. 1916 Cr.=17 Cr. L. J. 280, 42 I. C. 1003.
3. Accused coming from different villages were arrested on suspicion by the villagers. They gave very improbable reasons for being there and a lot of ammunition was found in their possession. They are guilty under S. 402. 1925 A. 62=84 I. C. 860=26 Cr. L. J. 380.
4. A mere assembly without further preparation is not a preparation within the meaning of S. 399, but falls under this section. 41 C. 350.
5. It is only the conduct and circumstances from which the Court may justifiably infer the existence of an intent to commit dacoity. 23 A. 124.
6. Accused were found in a hut in a jungle and one of whom was identified as a dacoit in a dacoity committed the previous night. They confessed that they live on dacoity. They are guilty under S. 402. 7 W. R. 61.

ASSEMBLY. See Unlawful Assembly, Religion.

ASSESSOR.—Ss. 309, 284-285, Cr. P. C.

1. Absence of.—S. 285, Cr. P. C.

1. If the Assessor is absent for some time, he should not be allowed to resume his seat afterwards. It vitiates trial. 24 M. 523.
2. Court can proceed if the Assessor absents himself during the trial, in his absence. It is a curable irregularity. 24 M. 523, 8 C. P. Cr. 9.
3. Portion of trial held in the absence of Assessors is invalid. 15 A. 136, 13 A. 337, 6 C. W. N. 715.

2. Appointment of.

1. Appellate court in a criminal case is not competent to appoint Assessors. 17 P. R. 1868.

Assessor—(contd.)

2. If an Assessor in the course of trial is found to be interested, the Sessions Judge can only refer the case to High Court to set aside such appointment. 13 Cr. L. J. 473.
3. **Choice of.** S. 284, Cr. P. C.
 1. The Assessors must be chosen from persons summoned only. 35 A. 570.
 2. Appointment of Nazir in the absence of summoned persons is illegal. 11 Cr. L. J. 724.
 3. But where a person was summoned for a particular case and could not attend, his selection on a subsequent day in another trial was not improper. 17 Cr. L. J. 17.
 4. Objection that the Assessor is a master or landlord of accused and interested is a valid one and should prevail. 1923 P. 116=60 I. C. 662.
 5. If assessors are not chosen according to law, trial is illegal. 1933 Oudh 351, 55 A. 570, and 11 Cr. L. J. 724 Foll. 33 B. 423 Ref.
4. **Number of.** S. 284, Cr. P. C.
 1. Under S. 284 there must be at least 3 Assessors. A trial with two is null and void. 77 I. C. 811=1924 N. 287, 1925 Oudh 110 (2)=84 I. C. 711, 1924 Oudh 417 (1).
 2. Trial with one Assessor and one more deaf and blind is invalid. 21 A. 106, 35 A. 570.
 3. Trial with 3 instead of 4 Assessors and no reasons given for not having 4, the trial is not illegal. 1925 P. 381=86 I. C. 153=25 Cr. L. J. 713.
 4. Trial with less number of Assessors is illegal. 25 Cr. L. J. 459=1924 N. 287.
5. **Opinion of.** S. 309, Cr. P. C.
 1. Assessors should be invited and encouraged to state grounds of their opinion. 2 B. L. R. 323.
 2. When a Judge differs from Assessors the grounds of each Assessor's opinion should be distinctly noted. 48 P. R. 1905 Cr.=192 P. L. R. 1905=3 Cr. L. J. 132.
 3. A trial is bad if Assessors are not asked and apparently not allowed to give their opinion. 40 C. 163, 24 M. 523 (536), 10 A. 414, 9 C. 875, 26 M. 598.
 4. Record of opinion of Assessors in one joint statement instead of separately is curable irregularity. 41 P. R. 1887 Cr., 9 C. 875.
 5. When opinion of all the Assessors is not taken, the trial is illegal and not merely irregular. 26 M. 598, 1934 P. 561.
 6. Assessors are to give their opinion orally and not in writing. 36 C. 119.
 7. A Judge cannot dispense with the opinion of Assessors, merely because he considers the evidence unsatisfactory. 10 A. 414.
 8. Judge is not bound to conform to the opinion of Assessors, although regard should be paid to it. 24 M. 523, 16 I. C. 326.
 9. A Judge cannot convict under S. 201, I. P. C., when opinion of Assessors was taken with respect of S. 307, I. P. C. only. 1924 B. 246=26 Cr. L. J. 394.
 10. When case is partly triable with Assessors and partly with Jury, the Judge should decide the one with the aid of Assessors and send the other to High Court if he disagrees with Jury. 50 I. C. 832=20 Cr. L. J. 352=26 M. L. T. 45.
 11. There is nothing in the Code to allow or forbid Assessors to consult among themselves. 30 I. C. 1003.
 12. Actual words of Assessors must be recorded. 1921 P. 109=22 Cr. L. J. 417.
 13. Judge cannot visit the spot after the opinion of Assessors is taken. 43 I. C. 86.
 14. When opinion of Assessors is taken, a fresh trial cannot be held if Judge finds the first trial illegal. 31 I. C. 1000=16 Cr. L. J. 824=17 B. L. R. 1074.
 15. If Assessors had been asked their opinion in a case under Ss. 393, 403, I. P. C. and gave verdict for theft only. It cannot be said that Judge did not take their opinion. 1929 Sind 147=118 I. C. 193 (2)=30 Cr. L. J. 875.
 16. Distinct opinion on each charge must be taken. 1928 N. 257=109 I. C. 497.
 17. Each Assessor should be asked separately to give his opinion clearly. Giving the opinion as "the same" after the first Assessor has given his opinion is not enough.

Assessors—(contd.)

1929 L. 37=115 I. C. 66=30 Cr. L. J. 378.

18. In case of identification of ornaments of small value, the opinion of the Assessors is of great weight, as they are well-acquainted with the ways of ordinary men. 1925 O. 452=89 I. C. 155=26 Cr. L. J. 1291.
19. Accused is entitled to have Assessor's opinion on all charges. Failure by Judge to do so vitiates trial. 1934 O. 354=35 Cr. L. J. 1066, 26 M. 598, 1928 N. 257, 1924 B. 246 and 1927 P. C. 44 Dist.
20. Each of the Assessors must state his opinion orally on all charges. Judge can record their opinion and can put necessary question. 1935 Sind 23=36 Cr. L. J. 504.
21. Omission to make reference to the opinion of Assessors in the judgment is a curable irregularity. 1933 L. 910=35 Cr. L. J. 168, 48 P. R. 1905 Dist.
22. If Assessors give an opinion of not guilty in a murder case, it is no reason for awarding lesser sentence. 1933 N. 307, 1 R. 751.

6. Questions to.

1. Judge can put questions to Assessors to elucidate their opinion. 40 C. 163, 41 C. 350.
2. Questions by way of cross-examination cannot be put to the Assessors. 41 C. 350.

7. Verdict of.

1. Further evidence cannot be taken after verdict of the Assessors. 14 P. R. 1870 Cr., 43 A. 25=59 I. C. 559.
2. Accused cannot be convicted of offence for which verdict of Assessors is not taken. 25 B. L. R. 1318=1924 B. 246=84 I. C. 938=26 Cr. L. J. 394.
3. Simultaneous hearing of two cases by one set of Assessors renders the trial invalid. 64 I. C. 833.

ASSIGNMENT OF BOND.

Unstamped endorsement of assignment of bond is not an offence under S. 51. Stamp Act. 20 P. R. 1867.

ASSISTANT SESSIONS JUDGE. See Additional Sessions Judge.**ASSISTING COURT.** See Duty of Prosecution.—1.**ASSISTING IN CONCEALMENT OF STOLEN PROPERTY.** S. 414, I. P. C.**1. Applicability of section.**

1. S. 414 is apparently intended to apply to cases where there has not been such a possession as would support the charge under S. 411. 31 P. R. 1879 Cr., 8 Cr. L. J. 11.
2. A person convicted under S. 411 with respect to a property taken on a particular occasion cannot subsequently be tried under S. 414 in respect of other property stolen on the same occasion from the same person. 28 A. 313=3 Cr. L. J. 207.

2. Charge.

1. A charge under S. 414 would in many cases be advisable as an alternative charge. 10 Bom. L. R. 125.
2. A charge under S. 414 should contain details as to the nature of property as well as circumstances under which it was concealed or made away with. 2 B. H. C. R. 130.

3. Disposing of.

1. Where the accused restored to the owner, property stolen by his son, with a view to save his son, and subsequently denied all knowledge of it, he was not liable under S. 414. 'Disposing' in S. 414 has to be construed *ejusdem generis* with concealing and making away with. 11 Cr. L. J. 493=7 I. C. 465.
2. The intention of the section is to punish persons who subsequent to the commission of the offence either conceal it or make away with it by destroying or otherwise disposing of it. It does not apply to the case of a man spending money stolen by another. 1935 L. 587=1935 Cr. C. 968.

Assessor—(contd.)

2. If an Assessor in the course of trial is found to be interested, the Sessions Judge can only refer the case to High Court to set aside such appointment. 13 Cr. L. J. 473.
3. **Choice of.** S. 284, Cr. P. C.
 1. The Assessors must be chosen from persons summoned only. 35 A. 570.
 2. Appointment of Nazir in the absence of summoned persons is illegal. 11 Cr. L. J. 724.
 3. But where a person was summoned for a particular case and could not attend, his selection on a subsequent day in another trial was not improper. 17 Cr. L. J. 17.
 4. Objection that the Assessor is a master or landlord of accused and interested is a valid one and should prevail. 1923 P. 116=60 I. C. 662.
 5. If assessors are not chosen according to law, trial is illegal. 1933 Oudh 351, 35 A. 570, and 11 Cr. L. J. 724 Foll. 33 B. 423 Ref.
4. **Number of.** S. 234, Cr. P. C.
 1. Under S. 284 there must be at least 3 Assessors. A trial with two is null and void. 77 I. C. 811=1924 N. 287, 1925 Oudh 110 (2)=84 I. C. 711, 1924 Oudh 417 (1).
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*Assisting in Concealment of stolen property—(contd.)***4. Essentials and Evidence.**

1. Where a man conceals stolen property in another's house with a view to get the latter into trouble he is liable under S. 414 and for fabricating false evidence under S. 193 I. P. C. 1 A. 379.
2. It is not necessary that owner should be traced. It should be proved that accused voluntarily assisted in concealing the property which had reason to believe to be stolen. This latter fact may be proved from the accused's own conduct, as where a poor Pathan cooly had jewels. 14 Bom. L. R. 893=13 Cr. L. J. 793.
3. The owner need not be traced. Proof that property is stolen is enough and that the accused helped in the disposal of it. 49 B. 878=1926 B. 71 (1)=27 Cr. L. J. 114=91 I. C. 690.
4. A finding that the property is stolen may be based on strong circumstantial evidence. 1924 M. 350=25 Cr. L. J. 790=81 I. C. 310.
5. An accused who conceals property in the belief that it is stolen while really it is not, is not guilty. 1924 M. 350=25 Cr. L. J. 790.
6. The word "believe" in S. 414 is very much stronger than "suspect". It is not sufficient to show that accused was careless or that he had reason to suspect that the property was stolen or that he did not make sufficient inquiry about it. 6 B. 402.
7. This section applies where there is no actual receipt of stolen property. 4 M. H. C. App. 13=1 Weir 469.
8. Neither S. 411 nor S. 414 applies to actual thief. 8 Cr. L. J. 11, 15 P. R. 1896 Cr.
9. Assistance given by aiding the concealment or destruction or by promoting the sale of the stolen property, by one who has reason to believe it to be stolen property constitutes this offence. 29 B. 449, 14 Bom. L. R. 893, 39 P. R. 1881.
10. A European soldier gave stolen jewellery, usually worn by Indian female to accused. Held, accused could not be said to believe or to have reason to believe that jewellery was stolen. 1932 L. 434=139 I. C. 442.

5. Melting stolen ornaments.

1. S. 414 is clearly intended to penalize persons, who deal with the property in such a way that it becomes impossible to identify it or use it as evidence. Thus melting down ornaments would come under the scope of this section. 1935 L. 537 (588)=1935 Cr. C. 968.
2. Disposing of ignots of gold (stolen property) by one would not fall under S. 414, as the act committed is disposing of the property and not assisting in disposing of it. 39 P. R. 1881.

6. Sale of—

Assistance given by promoting sale of stolen property, by one who has reason to believe it to be stolen property constitutes an offence under S. 414. 29 B. 449.

ASSOCITES. *See* Witness—7.**ASSOCIATION WITH ACCUSED.** *See* Accused—2.**A TROPINE.** *See* Poison—3.**ATMOSPHERE.****1. Engendering suspicion.** *See* Transfer (Grounds)—8.**2. Foulting of.** *See* Public Nuisance—18.**ATMOSPHERE OF COURT.**

The atmosphere of court of law should be as scientific as that of a hospital or lecture-room. 1931 M. W. N. 1152.

ATTACHMENT. *See* Absconding, S. 146, Cr. P. C.**ATTACHMENT OF PROPERTY BEFORE JUDGMENT.**

1. Attachment of property before judgment is not desirable, as accused is not presumed to be guilty. 58 B. 152=1934 B. 74.

Attachment of property before judgement.—(contd.)

2. Accused deposited stolen property in the Bank. Money becomes property of the Bank and no order under S. 94, Cr. P. C., can be passed, nor can money in Bank be attached. 58 B. 152.

ATTACK ON RELIGION OR ITS FOUNDER. See Religion—1.

ATTEMPT. Ss. 511, 417, 376, 312, 307, 161, 124-A. 122, I. P. C.

1. Definition.

1. Attempt is some external tangible act, showing progress towards the actual commission of offence. 1927 L. 634=103 I. C. 408, 14 P. R. 1914, 24 P. R. 1914, 8 A. 304, 13 P. R. 1879, 25 P. R. 1902, 15 P. R. 1907, 13 P. R. 1881.
2. Definition by Cockburn C. J. "If the attempt had succeeded the offence charged would have been committed." 14 P. R. 1914, 30 Cr. L. J. 289 (Sp. Bench). 8 B. L. R. 421, 10 B. L. R. 848, 2 Bom. L. R. 286.
3. An attempt is the commencement of series of acts. 1922 N. 40=65 I. C. 494.
4. Transaction which is commenced but interrupted is attempt. 37 B. 553.

2. Distinction from preparation. See Preparation.

1. Preparation consists in devising or arranging means necessary for commission, while an attempt is the direct movement towards commission after preparation is made. 1923 P. 307=65 I. C. 492=23 Cr. L. J. 108.
2. Mere obtaining thumb-impression on a blank paper is only a preparation and not an attempt. 1926 P. 267=94 I. C. 353=27 Cr. L. J. 609.
3. Debtor sending waste papers under an insured cover, as if it contained currency notes is only preparation and no offence is committed. 1927 M. 199=99 I. C. 102, 1924 A. 205. Cont. 10 P. R. 1913 Cr.
4. Mere obtaining signature slip at the Polling Station fraudulently is no offence under S. 171 (f) read with S. 511, I. P. C. 1925 A. 226=84 I. C. 711.
5. Presence on roof of a house is not attempt at house-breaking but only preparation. 15 P. R. 1907 Cr.
6. Assault with a raised naked sword is preparation and not attempt to murder. 45 P. R. 1882 Cr.
7. Milk contractor going with stale milk in the direction of milch cows is not attempt to cheat but preparation. 40 P. R. 1885 Cr.
8. Offering to sell spurious trinkets, by false representation is attempt to cheat. 14 P. R. 1914 Cr.=66 P. L. R. 1914=23 I. C. 473.
9. Possession of *Lahu* is not an attempt to manufacture fermented liquor. 29 P. R. 1884 Cr.
10. Railway goods clerk only entered gross weight instead of actual weight. It is only a preparation to cheat. 1923 P. 307=65 I. C. 492=23 Cr. L. J. 108.
11. A clerk entered in a register higher weight of sugarcane coming to a factory but register had not passed from his hand. Held, it was not an attempt. 1923 P. 307=65 I. C. 492=23 Cr. L. J. 108.
12. Assistance given in the preparation of offence amounts neither to abetment nor attempt, unless the offence is committed. 1925 Oudh 158=25 Cr. L. J. 1162.
13. There are four stages in every crime : the intention to commit, the preparation to commit, the attempt to commit, and if the third stage is successful, the commission itself. 1933 C. 893=35 Cr. L. J. 97.
14. Intention to commit crime or intention followed by preparation is not sufficient to constitute attempt. 1933 C. 893=35 Cr. L. J. 97.
15. Whether any given act or series of acts amounts to attempt is a question of fact in each case. 15 A. 173.
16. Preparation for the committing of an offence is punishable in the case of dacoity. 18 P. R. 1868.

Attempt—(concl'd.)

3. Previous conviction.

S. 75, P. C. (enhanced punishment) does not apply to previous conviction for attempt. 7 P. R. 1872, 14 P. R. 1906.

4. Scope.—Intention.—

1. An attempt is possible though offence attempted cannot be committed. 1922 Nag. 40=65 I. C. 494.
2. If there is some external tangible act, showing progress towards the actual commission of an offence, mere interruption is immaterial. 1927 L. 634=103 I. C. 403=28 Cr. L. J. 680.
3. Attempt itself is an offence. 17 A. 120.
4. When seditious matter is sent by post and is interrupted on the way, it is attempt to commit sedition. 39 C. 522. See 39 C. 606, 34 B. 378.
5. An attempt is punishable though the final act short of actual commission of that offence has not been accomplished. 10 L. 253=1928 L. 551=29 Cr. L. J. 780.
6. S. 511 does not apply to attempt to murder. 14 A. 33.
7. Intention alone, or intention followed by preparation is not sufficient to constitute attempt. But intention followed by preparation followed by any "act done towards the commission of the offence" is sufficient. 1933 C. 893=35 Cr. L. J. 97. 34 B. 378; 2 Bom. L. R. 304; 2 Bom. L. R. 286 Ref. 24 B. 287, 5 I. C. 138, 15 B. 194, 4 N. L. J. 245.
8. It is not legally impossible to attempt the abetment of an offence. 49 P. R. 1887.
9. A widow administered *dhatura* to her parents. Held, she must be presumed to be aware of the fact that it was likely to cause death, although she may not have administered it with that intention. 20 A. 143.
10. Conviction for attempt cannot be justified on mere surmise or probability. 17 Cr. L. J. 431=35 I. C. 991.
11. S. 511 applies to offences under Penal Code. 1 Weir 624—640.

5. Sentence.

1. The sentence of attempts to commit offence is half of that awardable for the offence up to Magistrate's power. 13 P. R. 1871, 10 P. R. 1913 Cr.
2. A sentence of whipping may be awarded for an attempt if the offence is so punishable. 1 Bur. 399—531.
3. The sentence for attempt is half of that can be awarded for the offence and not half of what the Magistrate can award. 13 P. R. 1893.
6. To commit cheating, robbery, etc., etc. See those offences. (Cheating, Robbery, etc.)
7. To commit suicide. S. 309, I. P. C. See Suicide—2.
8. To export opium.
 1. Attempt to export opium is no offence. 2 P. R. 1911 Cr.
 2. Accused was found travelling in a bus to Tranquebar carrying 165 tolas of opium which N had given him with instruction to give him in French territory. Held, it was only preparation. 1932 M. 507=1932 M. W. N. 545=138 I. C. 286=33 Cr. L. J. 582=36 M. L. W. 127.
9. To manufacture liquor.

1. Possession of 'Lahn' in a vessel is not an attempt. 17 P. R. 1889.

10. To murder. See Attempt to Murder.

ATTEMPT TO COMMIT CULPABLE HOMICIDE. S. 308, I. P. C.

If in case of shooting a person intentionally, the bullet passed through that person's bullock and private part and causing grievous injury, the offence falls under S. 303. A. L. R. 1932 L. 499.

ATTEMPT TO MURDER. S. 307, I. P. C.

Attempt to Murder—(contd.)

1. Abetment of.

1. It is somewhat difficult to conceive circumstances which would constitute an instigation to attempt to murder. 9 B. L. R. 190.
2. A wife administered to her husband poison to improve his quarrelsome nature, which was supplied by her lover, who knew it to be *Dhatura*. The latter is guilty of abetment under S. 302, I. P. C. 19 Bom. L. R. 54=38 I. C. 1003.

2. By blows (lathi, sword, etc.)

1. Accused struck his wife with hatchet on the neck. Conviction should be under S. 324 and not under S. 307, I. P. C., as a hatchet blow would not ordinarily cause death. 15 Bom. L. R. 991=14 Cr. L. J. 641=21 I. C. 881.
2. Several blows were aimed at the head, causing 10 incised wounds. Murderous intent is proved. 132 P. L. R. 1915=13 P. W. R. 1915 Cr.
3. Fetching a sword and advancing towards complainant, in a menacing attitude, is not an attempt to murder. 45 P. R. 1882 Cr.
4. Pursuing complainant with a raised axe in hand is an attempt at grievous hurt. 30 P. R. 1904 Cr.
5. Cutting off complainant's hands and maiming him for life is attempt to murder. 1923 L. 236 (2).
6. Accused struck the deceased three blows on the head and believing him to be dead, set fire to the hut. According to medical evidence he died of burning and not of blows. The accused was convicted under S. 307 only. 15 B. 194.
7. Accused came armed with *dangs* and gave beating to their enemy to unconsciousness. They announced their intention of killing him. Held, the charge under S. 307 is not illegal. 1927 L. 67=112 I. C. 224=29 Cr. L. J. 1003.
8. Wounding of a person with knife on the neck falls under S. 307. 6 P. R. 1912.
9. Whether a blow with hatchet is or is not capable of causing such result depends upon the particular nature of the blow inflicted. 21 I. C. 881=14 Cr. L. J. 641.
10. Accused was drunk and on provocation gave slight injuries with sharp-edged weapon. Held, he was guilty under S. 324 and not S. 307 1936 L. 914.

3. By Dhatura. See—5.

4. By gun-shot or revolver. See Wound—12.

1. A shot of cartridge about No. 6 in size fired at a distance of 6 paces is very likely to cause death; the accused is guilty under S. 307. 10 Cr. L. J. 57=9 C. L. J. 432.
2. If a person fires two successive shots towards the same man, an intention to murder is proved. 1 P. W. R. 1910 Cr., 5 I. C. 602=11 Cr. L. J. 125.
3. Using revolver at night to keep watch is not offence, when it was not aimed at any one. 9 L. L. J. 331=1927 L. 853.
4. A Police sowar fired three successive shots while pursuing a person. One of the shots struck a person bathing in the river, no offence under S. 307, I. P. C., is established. 1923 L. 415=76 I. C. 1028=25 Cr. L. J. 308.
5. Accused pulled the trigger twice with no result. In the absence of proof that gun was loaded, there is no offence under S. 307 but under S. 352. 1223 R. 251=I. R. 209.
6. Intentionally discharging loaded gun from a short distance, causing injuries, which might prove fatal is an offence under S. 307. 29 I. C. 670=16 Cr. L. J. 542.
7. If the gun failed to discharge due to the omission of the assailant to cap the nipple, the conviction for attempt to murder does not lie. 4 B. H. C. R. 17.
8. A shot was fired from the house in which accused was residing but it was not aimed at any body. It was not proved that accused fired the shot, he is not guilty. 1927 L. 853=9 L. L. J. 331.
9. If the intention of the accused in firing a shot at a Police officer was not to kill him, but to scare him away, he is guilty under S. 506 and not under S. 307, I. P. C. 1931 M. W. N. 861.

Attempt to Murder—(contd.)

10. The accused fired two shots from a powerful revolver at point blank range at His Excellency the Governor of Bombay. He missed his aim and no injury was caused. Held, he was guilty under S. 307. 1932 B. 279=34 Bom. L. R. 571, 14 A. 33 approved. 4 B. H. C. R. 17 (Cr. C.) doubted.
11. Accused, a soldier, fired at his grandmother during a quarrel and the bullet hit fleshy part causing simple injuries. Held, he was guilty under S. 324 and not under S. 307. 1933 L. 315=145 I. C. 702.
12. Accused fired his pistol at a constable who was chasing him. The bullet struck him on his side. Held, he was guilty under S. 307 I. P. C. and S. 19 (f), Arms Act. 1933 L. 852.
13. Accused shooting at A but wounding B by mistake is guilty under S. 307, having regard to the provisions of S. 301. 1935 Pesh. 74.

5. By poison.

1. Asking a doctor to supply medicine for poisoning a person is 'not an attempt to murder. 24 P. R. 1882 Cr.
2. When the quantity of poison is not known, it cannot be said that accused 'intended to cause more than hurt. 3 I. C. 721.
3. Accused administered *Dhatūra* to several persons, who died. He administered it to C. who did not die. The offence falls under S. 307. 72 P. L. R. 1911=12 Cr. L. J. 125.
4. A young widow administered *Dhatūra* to the members of her family in order to elope away with her paramour. The victims were all saved, as they were soon removed to the dispensary. She is guilty under S. 307. 20 A. 143, 60 I. C. 50. See 15 B. 194.
5. A wife intending to poison her husband, mixed some arsenic in his food but it was insufficient to kill him. He died of inflammation of brain and there was no evidence that poison was even the secondary cause of it, she is not guilty under S. 307. 1 Weir 187.
6. Accused intended to poison A, but A shared the poisoned sweet with B, who also suffered from poison. He was guilty of attempting to murder B also. 1921 L. 108=63 I. C. 50=22 Cr. L. J. 194=3 L. L. J. 191.
7. A young man administered poison under instigation and none of the victims succumbed, the conviction was altered from S. 307 to S. 328. 1931 P. 346=32 Cr. L. J. 1223.

6. By suffocation. See Suffocation.

1. Accused enticed into her house a boy of nine years of age and removed his jewels. As she was unable to remove anklets and ear-rings, she put him in a jar and covered it with a mill-stone after tying his wrist and neck and stuffing his mouth. The boy next morning removed the stone and ran home. Held, she was guilty under S. 307, (1889) 1 Weir 328.
2. A young Brahmin widow was confined of a child. A new-born child was discovered wrapped up in a cloth with a cooking vessel turned over it, in the upper storey. Held, she was not guilty. 8 Bom. H. C. (Cr. C.) 164.

7. Essentials and Evidence.

1. The act must be done in such a way and with such ingredients, that if it succeeded, and death was caused by it, the legal result would be murder according to S. 299 or 300. 14 A. 38.
2. In case of mutual injuries on each other and no eye witnesses, the conviction should be under S. 326 and not under S. 307, I. P. C. 2 R. 558=1925 R. 133.
3. Throwing a child in a pond and wishing that its death should fall as a curse on some other woman is attempt of murder. 11 Cr. L. J. 48=5 I. C. 138.
4. S. 307 makes a distinction between an act of accused and its result if any. The court has to see the act irrespective of result. 1930 L. 253=31 Cr. L. J. 782=125 I. C. 183, 15 Bom. L. R. 991 Dist.
5. Law does not say that when a person is stabbed, his evidence must be corroborated. It must be above suspicion. 1929 M. W. N. 587.

Attempt to Murder—(contd.)

6. Abrasion on the person of the accused is not sufficient proof that he attempted to murder. 1929 N. 350=120 I. C. 210=31 Cr. L. J. 15.
7. In order to constitute offence under S. 307, the act committed must be capable of causing death in the natural and ordinary course of events. 15 Bom. L. R. 991, 4 B. H. C. R. 17.
8. When a prosecution witness who was not interested in accused Nos. 1 and 2 came up after the occurrence and was told by eye witnesses that accused No. 3 killed the deceased and they did not name Nos. 1 and 2 soon. Held, that accused Nos. 1 and 2 cannot be convicted. 1923 L. 236 (2).
9. Intention of the accused should be gathered from his act and surrounding circumstances. 1930 L. 491=11 L. 460=31 Cr. L. J. 1071=126 I. C. 573.
10. Where in a party fight, the evidence on both sides was perjured, the court should go by the marks of injuries on the accused person. 1931 A. 712=32 Cr. L. J. 1073.
11. When the accused does an act which must in the ordinary course of events causes death, an offence under S. 307 is committed. 1931 L. 63, 21 I. C. 881.
12. If the accused does an act with such guilty intention that but for some intervening fact beyond the control of the deceased, the act would have amounted to murder, it falls under S. 307. 1932 B. 279=34 Bom. L. R. 571, 14 A. 38; 4 B. H. C. R. 17 Ref.
13. Under S. 307, the act must be capable of causing death in the natural and ordinary course of things. 1935 N. 177=36 Cr. L. J. 854=155 I. C. 1014, 4 B. H. C. (Cr.) 17, 30 P. R. 1904, 15 Bom. L. R. 991 Rel. on.
14. Accused caused incised wound with axe to his mother-in-law but there was no evidence of intention to kill, the conviction should be under S. 326 and not S. 307. 1935 N. 177=36 Cr. L. J. 854.
15. Accused struck his wife on the neck with a hatchet. It was held that it was not act ordinarily capable of causing death in the ordinary and natural course of events. He was convicted under S. 324. 15 Bom. L. R. 991 (993)=14 Cr. L. J. 641.
16. The fact that accused produced no defence is to be considered in weighing prosecution evidence. 1934 O. 401=35 Cr. L. J. 1244.
17. Causing grievous injury at midnight to a man asleep is offence under S. 307. 1934 L. 353, (2) A. L. R.

8. Intention.

1. When the accused in firing a shot at a Police officer, had no intention to kill him, but only to scare him away, the offence does not fall under S. 307 but under S. 506 (Criminal intimidation). 1931 M. W. N. 861.
2. Intention of accused should be gathered from his acts and surrounding circumstances. 1930 L. 491=11 L. 460=126 I. C. 573=31 Cr. L. J. 1071.
3. Accused took away a boy to perform magic on him and attacked him with a dagger in a very savage manner. But subsequently he attended to his wounds and bandaged them. Held, accused was guilty under S. 325 only. 1935 A. 614=1935 Cr. C. 636.

9. Procedure.

1. Court cannot convict the accused under S. 307 read with S. 34 or S. 114, although charged with Ss. 307, 148, 149, I. P. C. 1924 B. 502=26 Bom. L. R. 954.
2. S. 511, I. P. C., does not apply to attempt to murder. 14 A. 33 (38).
3. Accused acquitted under S. 397, trial under S. 307 is barred. 1934 M. 311.
4. If accused is acquitted under S. 302, the appellate court can convict him under S. 307, that is for attempt to murder, without a charge being framed. 1936 O. 44=37 Cr. L. J. 12.
5. Accused attacking a defenceless person and causing injuries is not guilty under S. 307. 55 I. C. 158=21 Cr. L. J. 734.

10. Sentence.

1. When a young woman on account of ill-treatment at home became desperate and

Attempt to Murder—(concl'd.)

- jumped into a well with her child, a sentence of six weeks and fine of Rs. 5 is proper. 1925 P. L. R. 581.
2. Accused caused several wounds to her mother-in-law with an axe. Held, 18 months imprisonment was sufficient punishment and should not be enhanced, 1935 N. 177= 36 Cr. L. 854, 9 C. P. L. R. 4.
 3. Infidelity of deceased wife is mitigating circumstance. Sentence was reduced to 3 years. 1934 L. 675 (2).

ATTENDANCE OF WITNESSES. *Sec. 90, 160—257, Cr. P. C. See Witness—8.***1. Before Court.—**

1. It is the duty of Magistrate to procure attendance of witnesses residing in foreign territory. 4 P. R. 1873, Cr.
2. Warrant for the attendance of witnesses in the first instance is illegal. 22 P. W. R. 1907.
3. When a Magistrate has once granted process for witnesses he is bound to enforce their attendance. 10 C. 931, 35 C. 1073, 30 C. 121. 25 P. R. 1834, 1922 P. L. R. 5, 4 A. 53, 1925 P. 139=90 I. C. 923, 1925 C. 188=95 I. C. 761.
4. Forfeiture of whole amount of security for non-attendance of witness is a harsh measure. 22 P. W. R. 1907.
5. A warrant was issued against an abducted woman in a case under S. 498, on the application of the complainant that she would escape. Held, that omission to record reasons is mere irregularity. 59 I. C. 415=22 Cr. L. J. 111.
6. It is the business of the Court to see that its summons or warrants are duly executed. If not executed, the accused is not responsible. 1921 A. 142=65 I. C. 556.
7. When warrant is issued against a witness, he should be admitted to bail. (1905) 2 Weir 39.

2. Before Police. *S. 160, Cr. P. C.*

1. Order for attendance of witness must be in writing. (1895) 1 Weir 86.
2. If a constable verbally asks a person to accompany him, he does not act in the discharge of his duty, and an assault on constable is non-punishable under S. 353, I. P. C. 1918 N. 137.
3. Police officer has no power to arrest or detain any witness during investigation. 7 W. R. 3, (1886) 2 Weir 121.
4. The examination of a woman should be conducted at her house and not in the Thana, 9 C. W. N. 199=2 Cr. L. J. 51.
5. S. 160 applies to witnesses only and not the accused. 7 M. 274, 4 Bom. L. R. 644, 2 Weir 121, 4 R. 72=96 I. C. 145=1926 R. 116, 114 I. C. 273.
6. A Magistrate has no power to issue warrant for attendance of a person in order that he may give evidence before Police. 24 C. 320.
7. A Police officer cannot order a person to appear before Magistrate so that Magistrate may record his statement under S. 164. (1889) Rat. 468.
8. If the person disobeys an order to attend, the only course is to prosecute that person under S. 174. There is no provision of law empowering the Police to compel that person to attend. 4 Bom. L. R. 79.
9. It will not be wrongful confinement if the person is merely taken to Police Station and asked to wait till Sub-Inspector saw him. 1930 O. 505.
10. A refusal to receive notice under S. 160, Cr. P. C. is not an offence under S. 173, I. P. C. 1926 A. 304, 1886 A. W. N. 93, 40 A. 577.

ATTESTATION—FALSE. *See Forgery—13.***ATTORNEY.** *See Advice.***ATTRIBUTED REMARKS.** *See Witness—9.*

No weight is to be attached to a merely attributed remarks, the imputation generally being a mere device to supplement feeble evidence. 1929 L. 436=118 I. C. 544= 30 Cr. L. J. 941=11 L. L. J. 58.

Auctioneer.

AUCTIONEER. See Breach of Trust.

AUTHORITY.—

Authority is a legal power to do an act given by one man to another. *Wharton's Law Lexicon*, P. 84.

AUTHORSHIP.

Accused's name appearing on the title pages is not a sufficient proof of authorship. 1925 L. 569=26 Cr. L. J. 1124=88 I. C. 356=26 P. L. R. 403.

AUTREFOIS ACQUIT.—S. 403, Cr. P. C. See Previous conviction or acquittal barring trial.

1. S. 403, Cr. P. C., amplifies the well-known maxim "*nemo debet bis viare*". It does not rest on doctrine of estoppel but embodies the rule that a man may not be put twice in peril for the same offence. 29 M. 126.
2. When prosecution is withdrawn under S. 491, Cr. P. C., it bars a second trial for the same offence. 40 M. 976.
3. The doctrine does not apply to a refusal by magistrate to file complaint under S. 476, Cr. P. C. 1930 Sind. 315=1930 Cr. C. 1147.

AUTREFOIS CONVICT. See Previous conviction barring trial.

AUTOPSY. See Post-mortem.

AVOIDING SERVICE. See Absconding to avoid service, S. 172, I. P. C.

B

BAD CHARACTER. S. 54, Evidence Act. See S. 110, Cr. P. C. See good character.

1. Admissibility of evidence of.

1. Accused person's guilt is to be established by proof of facts and not his character. Such evidence only creates a prejudice. 42 C. 957, 1924 R. 91=25 Cr. L. J. 618.
2. Evidence of bad character is inadmissible except when it is itself a fact in issue. 123 I. C. 739=1930 O. 455, 15 P. R. 1888, 7 P. R. 1895, 8 P. R. 1894, 11 P. R. 1908 Cr., 46 I. C. 696, 1933 O. 355=146 I. C. 1064.
3. The fact that accused is a bad character or is reputed to be thief or habitual offender, is no evidence under S. 401, Penal Code. 13 P. R. 1914 Cr.
4. Under S. 401, the evidence of the commission of other offences than dacoity is inadmissible. 32 M. 179, 46 B. 958, 1930 Sind 211=126 I. C. 468.
5. Evidence of bad character is relevant except for the purpose of showing that the accused was of bad character and therefore likely to commit offences of the kind. 2 L. L. J. 653=59 I. C. 560.
6. Evidence of bad character to prove motive for crime or otherwise is admissible. 1926 P. 232=93 I. C. 884, 47 C. 671, 1923 B. 71.
7. In a case of defamation general bad character of the complainant may be proved. 4 L. 55=1923 L. 225=73 I. C. 805=24 Cr. L. J. 693.
8. In a charge for murder evidence of conspiracy and murder on a previous occasion is not admissible. 62 I. C. 545=22 Cr. L. J. 529.
9. Evidence of bad character is inadmissible, unless evidence has been given that he has good character. 1933 O. 355, 1928 O. 430=29 Cr. L. J. 1000 Foll. 60 I. C. 331=22 Cr. L. J. 219, 1930 A. 746.
10. Evidence that accused is under Police surveillance is evidence of bad character. 1931 P. 345=32 Cr. L. J. 1025.
11. Evidence which is otherwise relevant cannot become irrelevant merely because it incidentally shows the accused to be of bad character. 59 C. 1361=1932 C. 474.
12. In a charge of sedition if the accused pleads loyalty, evidence of previous seditious speeches become admissible. 1921 S. 199=26 Cr. L. J. 304.
13. In a riot case the evidence of a witness that he brought a case under S. 107, Cr. P. C. is admissible. 40 C. 367.

Bad Character—(contd.)**2. Admission in cross-examination of.** *See* Cross-examination—17.**3. Previous acts of cheating, defalcation, etc.** *See* similar acts.

1. Evidence of previous act of dishonesty is admissible to prevent the accused to plead that the act was committed without dishonest intention. 1927 L. 549=102 I. C. 492=28 P. L. R. 313=28 Cr. L. J. 556.
2. Evidence of defalcation prior or subsequent, whether such defalcation formed the basis of other charge or not is admissible to prove criminal intent, as also to anticipate the defence of non-existence of such intent. 97 I. C. 1041.
3. Evidence of bad character is admissible under S. 14, Evidence Act, to prove habit or association. 1928 Oudh 430, 27 C. 139, 32 M. 179, 1925 C. 872.

4. Previous Conviction.

1. Evidence of previous conviction is that of bad character and is not admissible unless accused produced evidence of good character. 60 I. C. 331, 1935 S. 115.
2. A previous conviction is relevant on the question of punishment or for applying S. 562, Cr. P. C. 39 B. 325, 52 M. 358=1929 M. 306=30 Cr. L. J. 471.
3. In a trial of substantive offence, evidence of previous conviction should not be recorded unless evidence of good character is tendered. 60 I. C. 331.
4. Evidence of previous conviction is admissible to prove habit and association under S. 14, Ev. Act. 1933 O. 355, 1928 O. 430=29 Cr. L. J. 1000.
5. Plea of autrefois acquit, can be pleaded, when accused has, on the same facts, been tried and convicted or acquitted. 7 N. W. P. H. C. R. 371.

5. Previous order under Ss. 107, or 110, Cr. P. C.

1. Prior order under S. 107, Cr. P. C. can be proved against one proceeded against under S. 110. 51 A. 275=1929 A. 650=1929 Cr. C. 346.
2. Previous conviction or order under S. 110 are admissible in a case under S. 401, Penal Code for proving habit, though not general bad character. 1930 Sind 211.

6. Report as to movement of—

It is the duty of village headman and watchman in Punjab to report the movement of a bad character. 11 P. R. 1893.

7. Security from. *See* Security for good behaviour.**8. Ticket of leave of.**

Order prohibiting bad characters from leaving the village without ticket of leave is not legal. 45 P. R. 1867 Cr.

BAD LIVELIHOOD. *See* S. 110, Cr. P. C.**BAD MANNERS.** *See* Insult to provoke breach of peace.—2.**BAD REPUTE.** *See* Security for good behaviour from habitual offender—11.**BAIL.** Ss. 496, 497, 498 Recognizance.**1. After commitment.**

Persons committed to Court of Sessions can be admitted to bail. 1935 Pesh. 101.

2. Amount of.—*See* Bail.

1. The amount of every bond under this chapter, (i.e., Ch. 39), shall be fixed with due regard to the circumstances of the case, and shall not be excessive. S. 493, Cr. P. C. 14 A. 45.
2. The intention of the law is that the accused person should be let off ordinarily on such moderate security as is suitable for his appearance in court pending inquiry. Bail of Rs. 10,000 was held to be unfair. 1918 B. 254=19 Cr. L. J. 329.
3. The bail is not to be withheld merely as punishment. The requirements as to bail are to secure the attendance of the accused at the trial. 1924 C. 476=51 C. 402=81 I. C. 230=25 Cr. L. J. 732, 1927 P. 302=102 I. C. 909=6 P. 802=23 Cr. L. J. 621.

Bail—(contd.)

4. Sufficiency of bail should be demanded by the court itself and not left to the Police in cases where the court enlarges on bail. 15 C. 455.

3. Application for.

1. Application for bail or affidavit should state clearly the grounds on which bail is asked for. 1934 A. 815.
2. Application for bail signed by Advocate only on behalf of prisoner is exempt from court-fee. 23 Cr. L. J. 121.
3. Application for bail should not contain defamatory matters or attack on trying Magistrate or Government servants which are irrelevant or improper in themselves. 15 B. 488.

4. By Additional Sessions Judge.

If the power of granting or cancelling bail is not conferred on an Additional Sessions Judge by the Local Government or the Sessions Judge of the Division, his order of granting or cancelling bail is *ultra vires*. 1930 R. 335=32 Cr. L. J. 148.

5. By District Magistrate.

1. Although District Magistrate cannot release on bail pending appeal, he may suspend the sentence pending appeal. 3 W. R. 57.
2. District Magistrate cannot cancel a bail of the accused released by Subordinate Magistrate. 4 Bur. L. T. 70.
3. District Magistrate cannot revise Subordinate Magistrate's order granting bail. 22 B. 549.

6. By High Court. See Inherent Powers—2.

1. Where accused obtained special leave to appeal to the Privy Council, High Court has jurisdiction to grant bail. 24 M. 161.
2. When petitioner has no right of appeal to Privy Council, he cannot be granted bail, simply because he proposes to apply for leave. The Court after conviction becomes *functus officio*. 50 C. 585, 15 P. R. 1908 Cr., 91 I. C. 1001.
3. High Court refused to grant bail when the application contained defamatory statements and attacks on trying Magistrate and other Government officers. 15 B. 489.
4. When Sessions Judge after considering the evidence before him grants bail, High Court will not go behind the finding and discharge the bail. 5 A. L. J. 419=1908 A. W. N. 195, 82 I. C. 755=1925 N. 228.
5. High Court alone can grant bail, when accused is committed to custody by Coroner. 31 C. I.
6. Proceedings whether accused should be admitted to bail are judicial proceedings and are revisable by High Court. 6 M. 63.
7. The extended powers given to High Court under S. 498 are not to be used to get rid of the very reasonable and proper provisions of Law. 42 C. 25.
8. High Court should not grant bail in cases punishable with death or transportation except under exceptional circumstances. 1930 R. 335=32 Cr. L. J. 148.
9. High Court can grant bail if the accused is tried under Criminal Law Amendment Act. 37 C. 439, 37 C. 412.
10. High Court is not merely to consider whether accused will abscond. 36 C. 166.
11. A person who broke his bail allowed by High Court is not entitled to have his revision application heard. 1923 A. 327=71 I. C. 704=24 Cr. L. J. 240.
12. When Sessions Judge granted bail owing to the likelihood of great delay in taking up trial, High Court declined to interfere. 1929 Sind 137=30 Cr. L. J. 845.
13. Where application for special leave to appeal to Privy Council is lodged, High Court may grant bail. 49 A. 247=1927 A. 97=27 Cr. L. J. 1377.
14. Bail was granted to an accused, who could not otherwise conduct his case properly. 81 I. C. 956=1924 O. 435=25 Cr. L. J. 1132.
15. High Court should not interfere with the discretion of Magistrate except for special

Bail—(contd.)

circumstances. 5 R. 276=104 I. C. 101=1927 R. 205=23 Cr. L. J. 773.

16. The discretion of the High Court and Court of Sessions is not limited to Consideration set out in S. 497. 134 I. C. 842. See 136 I. C. 707=1932 L. 435=33 Cr. L. J. 333.
17. If a person disappears after he is released on bail by High Court, he is not entitled to have his revision application heard. 1923 A. 327.
18. If Sessions Judge has refused bail, High Court will not interfere unless he has exercised discretion improperly. 1933 Sind 367=35 Cr. L. J. 144, 25 A. 218 and 1927 Sind 23=27 Cr. L. J. 1217 Ref.

7. By Magistrates.

1. Under the amended S. 497, Cr. P. C. Legislature has practically laid down that bail should ordinarily be granted except for offences punishable with death or transportation. 51 C. 402 (417)=1924 C. 476=81 I. C. 220, 92 I. C. 590.
2. Whether there are reasonable grounds for believing the accused guilty must be decided judicially, *viz.*, there must be evidence which if unrebutted would result in conviction. 36 C. 174, 10 C. W. N. 1093, 36 C. 166.
3. Power to admit to bail is not arbitrary. The Court has to consider the seriousness of charge, nature of evidence, severity of punishment prescribed for the offence and character, means and standing of the accused. 51 C. 402 (416)=1924 C. 476.
4. In bailable offence, bail is a right and not a favour. Detention in a lock-up is the alternative and not the original order. 32 C. 80, 36 M. 274, 20 Bom. L. R. 121.
5. It is only under S. 107 (3) and (4) that a Magistrate can detain in custody until the completion of inquiry, otherwise bail should be granted. 32 C. 80 *Cont.* 36 M. 474.
6. Provisions of S. 7 (2) of Extradition Act override S. 496, Cr. P. C. 20 Cr. L. J. 34=241.
7. Magistrate can grant bail to an accused arrested under S. 54 (7) Cr. P. C., whom he is asked to retain in custody by the District Magistrate of a Native State. 1925 B. 104=87 I. C. 100=26 Bom. L. R. 984=26 Cr. L. J. 948.
8. Magistrate can grant bail pending further Police investigation. 83 I. C. 727=1923 L. 663=23 Cr. L. J. 167.
9. A Magistrate has no power to grant bail in a case under S. 409, I. P. C. 1930 R. 335=128 I. C. 577=32 Cr. L. J. 148.
10. A person accused of murder shall not be released on bail unless the case is based on suspicion. 99 I. C. 860=28 Cr. L. J. 188, 11 Pat. 280=1932 Pat. 209.
11. If the accused is charged with contemplated offence against the Magistrate, such Magistrate should not deal with the bail application. 1935 L. 230.

8. By police.

1. Persons arrested by Police under S. 55, Cr. P. C., should always be given option of release on bail. 14 A. 45.
2. Refusal by Police in a bailable offence to grant bail is illegal. 2 P. R. 1868.
3. A bond for appearance before Police officer is void. 11 C. 77, 1925 L. 152.
4. A Police officer cannot take third party's bond for the arrested person's appearance, though he can demand bail. 1928 L. 318=109 I. C. 219=29 Cr. L. J. 491.

9. By Sessions Judge. S. 498, Cr. P. C.

1. Sessions court has unlimited discretion to grant bail to the accused during Police investigation. 8 Cr. L. J. 49, 7 Bur. L. R. 86, 5 A. L. J. 419.
2. Sessions Judge has no power to release an accused on bail after convicting him and pending appeal. 4 Bom. L. R. 55.
3. Sessions Judge has power to grant bail on a reference under S. 123 (2), Cr. P. C. 50 C. 969=1923 C. 723=24 Cr. L. J. 953=75 I. C. 537.
4. Sessions Judge can grant bail, when a person is convicted and has not appealed. 5 A. L. J. 419=1908 A. W. N. 195=8 Cr. L. J. 49.

Bail—(contd.)

5. That bail can be granted only to a person accused of non-bailable offence, is not applicable to the Court of Sessions acting under S. 498, Cr. P. C. 1929 A. 614=117 I. C. 99=30 Cr. L. J. 718.
 6. Accused convicted of non-bailable offence should not be released on bail except when there is an error or mistake of Law or fact. 1928 Sind 142=109 I. C. 118=29 Cr. L. J. 470=22 S. L. R. 435.
 7. Sessions Judge should grant bail under S. 498, if the accused could interview his counsel and have a better chance of representing his case. 51 A. 603=1929 A. 320=116 I. C. 748=30 Cr. L. J. 697=1929 A. L. J. 585.
 8. The discretion of High Court and Court of Sessions is not limited to the consideration set out in S. 497, but it has to consider all the circumstances. 1931 A. 356=1931 A. L. J. 515=32 Cr. L. J. 1271=134 I. C. 842.
 9. Mere fact that committal order has been passed under Ss. 309-149 does not in itself afford reasonable grounds to the Sessions Judge for believing the accused so committed to be guilty. Hence it is no bar to granting bail to the accused. 1935 Pesh. 101=157 I. C. 286=1935 Cr. C. 853.
- 10. Cancellation of.**
1. The Magistrate can cancel any bail, if by further evidence the case is made out against the accused. 36 C. 174, 1936 Sind 187.
 2. District Magistrate has no power to cancel a bail and order the re-arrest of a person released on bail by a Subordinate Magistrate. 1932 A. 327, 4 Bur. L. T. 70, 22 B. 549.
 3. However bad character an accused may be, he is entitled to bail if law allows it. 1932 A. 327=139 I. C. 330=33 Cr. L. J. 752.
 4. In a trial under S. 124-A, Penal Code, if adjournment is given for preparing arguments, bail should not be cancelled. 1930 L. 309=121 I. C. 425=31 P. L. R. 11.
 5. Accused released on bail by Police, cannot be committed to custody by Magistrate under S. 497 (5). 1933 Sind 331 (2) Cont. 1936 S. 187.
 6. The word by "itself" in S. 497 (5) mean by the Magistrate who commits the man to custody. It does not include any other Magistrate of the same class. 1933 Sind 331 (2).
 7. If accused after release of bail misuses concession and tries to approach witnesses in order to minimise or destroy evidence, he is liable to be re-arrested. 1936 L. 730=37 Cr. L. J. 937=164 I. C. 376.
 8. High Court has wide powers to cancel bail if the discretion by the Subordinate Court is not exercised properly. 1932 L. 433, 1923 A. 479, 1925 M. 1224, 1933 B. 492.
 9. Sessions Judge can cancel bail granted by committing Magistrate. 1934 L. 609.
 10. No other Magistrate than the one who has granted bail can cancel the same and order re-arrest. 22 B. 549.
 11. If after charge accused applies for adjournment for argument, bail should not be cancelled. 31 Cr. L. J. 266=1930 L. 309.
- 11. Demand of heavy—See Transfer (Grounds)—47.**
1. An excessive bail beyond the means or capacity of accused should not be demanded. 44 I. C. 345.
 2. Bail may be enhanced if case turns out to be more serious. 13 Cr. L. J. 474.
- 12. Grounds for and against—**
1. In case of delay in trial accused should be admitted to bail. 6 M. 63, 36 C. 166, 10 C. W. N. 163.
 2. When in the case of an accused 70 years old, there is no body to instruct counsel in going through the documentary evidence, bail should not be refused. 89 I. C. 150=26 Cr. L. J. 1286=1925 O. 489, 81 I. C. 956.
 3. In ordinary criminal trial, when the accused would prefer to face a trial rather

Bail—(contd.)

- than abscond, bail should be granted. 63 I. C. 414, 36 C. 166.
4. The principle to be deduced from Ss. 496-497 is that the grant of bail is the rule and refusal an exception. 1931 A. 356=134 I. C. 842=32 Cr. L. J. 1271.
 5. The present policy of law is to allow bail in the case of under-trial prisoner rather than refuse it. 1925 L. 510, 1933 S. 367, 51 C. 402.
 6. Accused is to be presumed innocent and he should be entitled to freedom to look after his case. 1931 A. 356=134 I. C. 842.
 7. In a case involving taking of accounts the bail should be granted to allow accused to instruct his Counsel. 32 Cr. L. J. 1175 (2)=1932 L. 16.
 8. Likelihood of the accused absconding or not is to be considered. 92 I. C. 703.
 9. Severity of sentence must be looked at not from the point of sentence which the Courts have awarded but the maximum for the offence. 1929 L. 284.
 10. The Court should consider the penal consequences of the act if proved and the nature of offence. 63 I. C. 414=22 Cr. L. J. 654.
 11. When the allegations against the accused are general and not substantiated, bail should not be refused. 1930 B. 484=129 I. C. 341=32 B. L. R. 1131.
 12. Bail should not be refused unless accused is likely to abscond or terrorize prosecution witnesses or commit similar or other serious offences. 1929 A. 614=117 I. C. 99=30 Cr. L. J. 718=1929 A. L. J. 927, 104 I. C. 101.
 13. If the Court is satisfied that there are reasonable grounds for believing that no case has been or is likely to be made out and there is no reason to believe that accused will abscond, the court should ordinarily grant bail. 33 P. L. R. 331.
 14. A person accused of murder shall not be released on bail, unless the case is based on suspicion. 99 I. C. 360=28 Cr. L. J. 181.
 15. Save in exceptional cases, persons accused of crimes punishable with long terms of imprisonment should not be released by Magistrates or Sessions Judge on bail. The richer the accused, the more easy it is for him to find bail, the less desirable it is that he should be released. 11 P. 280=1932 P. 209=33 Cr. L. J. 574.
 16. Bail was granted when accused could not otherwise conduct his case properly. 81 I. C. 956, 1931 A. 356.
 17. Bail should be granted under S. 498 by the Sessions Judge if the accused could interview his counsel and have a better chance of representing his case. 51 A. 603=1929 A. 320=116 I. C. 748=30 Cr. L. J. 697=1929 A. L. J. 585.
 18. That the accused is a Gashain and there is no body to look after his case is no ground for bail. 1934 A. 815.
 19. Likelihood of tampering with evidence is a cause that should be judged in granting or refusing bail. 1934 Sind 131, 1929 Sind 137, 1927 R. 205, 1932 P. 209 and 1927 P. 302 Rel. on. 1925 M. 1224.
 20. The following points should be considered in granting or refusing bail; (1) nature of accusation; (2) nature of evidence; (3) the severity of punishment; (4) whether accused is likely to tamper with prosecution evidence or get up false evidence in support of his defence. 1933 Sind 367=35 Cr. L. J. 144, 51 C. 402, 1929 L. 284, 1927 N. 53, 1927 P. 302, 1927 R. 205, 1926 R. 51.
 21. That one of accused should arrange for friends and defence is not sufficient ground for bail where release is likely to lead to tampering of evidence. 1933 A. 895.
 22. In case of protracted and complicated trial under S. 409 bail should be granted. 1933 B. 492.
 23. In a case under S. 307, I. P. C., bail should not be allowed if the injured person is not well enough to be subjected to identification parade. 1932 L. 433.
 24. The richer the accused and the more easy it is for him to find bail and less it is desirable that he should be released. 1932 P. 209.
 25. In India the opportunities for corruption of witnesses is so great that the risk involved cannot be exaggerated. Hence bail in murder cases should not be allowed without order of High Court. 1932 P. 209=33 Cr. L. J. 574.

Bail—(contd.)

26. Grant or refusal of bail is to be determined *judicially* having regard to the circumstances of the case. 1932 L. 16, 1924 O. 435, 1925 S. 257, 10 C. W. N. 163.
27. The Court is not called upon to conduct a preliminary trial of the case and consider the probability of accused's guilt or innocence. 1925 M. 1224.
28. If accused's character is such that if released, he will intimidate or tamper witnesses or is likely to suborn evidence, bail should be refused. 1930 B. 484, 1925 R. 51, 1934 S. 131, 1932 P. 209, 1933 A. 895, 36 C. 174.
29. If accused is likely to commit similar or other serious offences, bail should be refused. 1929 A. 614, 1928 B. 244=29 Cr. L. J. 901.
30. Where there is no likelihood of absconding or terrorizing prosecution witnesses, bail should be granted. 51 A. 603, 1931 A. 356, 33 Cr. L. J. 497.
31. The mere fact that accused is a respectable man and can afford reasonable security is insufficient for bail. 1926 N. 279.
32. The mere fact that grant of bail will prejudice the case 1925 L. 510, or that the offence is a serious one is no ground for refusing bail. 1925 O. 489.
33. In cases involving taking of account, bail should be granted to enable accused to instruct his counsel. 1932 L. 16=32 Cr. L. J. 1175.
34. Where remand is applied for the evidence of Police officer that the Police are in possession of reliable information is sufficient. 6 M. 69. But, for a further remand some direct evidence of accused's guilt is necessary. 6 M. 69, 36 C. 166. Where after remand no incriminating evidence is forthcoming, bail will be granted. 36 C. 174-166
35. During trial, accused must satisfy the court that there are no reasonable grounds that he has committed the offence. 1923 A. 479, 21 Cr. L. J. 161.
36. However bad character a man may be, he is entitled to bail if law allows it. 1932 A. 327=33 Cr. L. J. 752.
13. **In bailable offence.** S. 496, Cr. P. C.
In bailable offence bail is a right and not favour. 32 C. 80, 36 M. 274, 108 I. C. 689.
14. **Increase of.** S. 501, Cr. P. C.
1. A Magistrate is justified in increasing the amount of bail if by further inquiry the offence appears more serious than at first imagined. 66 P. L. R. 1912=4 P. W. R. 1912 Cr.=13 Cr. L. J. 474.
2. Increase of bail is no ground for transfer of case from the Magistrate. 66 P. L. R. 1912=13 Cr. L. J. 474.
3. S. 501 applies when there is a surety and not when accused is let out on his own bond. 38 M. 1088.
4. A trial Court can increase the amount of bail. 1932 A. 327=33 Cr. L. J. 752.
15. **Inherent powers of High Court to grant.** See Inherent Powers.
16. **Leniency in.** See Transfer (Grounds)—56.
17. **Pending appeal to Privy Council.** See Privy Council—4.
18. **Revision.**
1. An order of Sessions Judge granting bail can be revised by the High Court. 1925 N. 228=25 Cr. L. J. 1363, 6 M. 63.
2. Admission to bail is discretionary. When there is nothing to show that Sessions Judge has not exercised his discretion with proper care or that the case is otherwise exceptional, High Court will refuse to interfere with the discretion. 5 Cr. L. J. 49, 1925 R. 129, 6 M. 63, 1929 S. 137, 8 Bom. L. R. 430.
19. **Right to argue—application.**
Accused has no right to personally argue his bail application, although in special cases he can be permitted to do so. 1931 A. 359=32 Cr. L. J. 1271.

*Bail Bond.***BAIL BOND.** Ss. 499, 514; Cr. P. C.**1. By surety only.**

Where bond for appearance is executed by surety only and not by accused, it can be forfeited. 1934 A. 1046.

2. Construction of—.

1. It is illegal to take separate bonds from accused or sureties individually and severally exceeding the aggregate amount for which the accused is liable. 30 P. R. 1890.
2. Evidence to explain terms of bond is admissible. 55 P. L. R. 1902.
3. Bonds for appearance should be strictly construed. 36 C. 749, 2 Weir 663, 65 I. C. 420, 26 P. R. 1918, 30 P. R. 1889, 37 P. R. 1881, 20 P. R. 1878.
4. Bond was taken for appearance on Sunday only. On Monday the accused did not appear. Bail bond cannot be forfeited. 2 C. W. N. 519.
5. Bond executed by principal and sureties to be considered as one bond. 26 P. R. 1894.

3. Forfeiture of—.

1. Bail bond for a person arrested under S. 55 does not require surety to produce him for any other offence. 25 Cr. L. J. 131.
2. Failure to appear in another Court to which the case is transferred does not entail forfeiture of bond, when a specified Court is mentioned in the Bond. 30 C. 107, 36 C. 749, 2 R. 581 (585).
3. Bond becomes extinct when penalty is paid. 11 P. R. 1889.
4. Omission to record grounds of forfeiture vitiates proceedings. 3 P. L. T. 381.
5. When a bond under S. 110 is taken from a person ordered to execute a bond under S. 107, Cr. P. C., it cannot be forfeited. 42 P. L. R. 1904.
6. Where warrants to witnesses were issued in the first instance without recording reasons under S. 90, Cr. P. C., the warrant is wholly illegal or the bond given by surety cannot be forfeited. 7 P. W. R. 1918, 22 P. W. R. 1907.
7. Death of accused discharges sureties from all liabilities. 37 M. 156, 17 Cr. L. J. 393.
8. The order of forfeiture must be passed immediately. When ordering forfeiture of the bond, a Magistrate does not order forfeiture of recognizance, he cannot do so subsequently and in a subsequent proceedings. 13 P. L. R. 1913 Cr., 25 Cr. L. J. 4=1924 L. 680=26 P. R. 1904 Cr. See 15 P. R. 1917 Cont. 26 A. 202.
9. Amount in excess of the amount secured by the bond cannot be recovered. 226 P. L. R. 1911, 5 L. 448 (449)=1925 L. 228=26 Cr. L. J. 322.
10. When the amount of bond under S. 107, Cr. P. C., is recovered from the Principal, sureties are not liable. 26 P. R. 1894, 4 L. 462, Cont. 36 C. 562, See 16 Cr. L. J. 100.
11. The proceedings to realise penalty are of civil nature. 3 P. L. T. 381, and the person proceeded against can give evidence on oath. 15 W. R. 87. The proceedings are not 'trial' in the sense of the Code. 2 M. 169.
12. If the Magistrate who tries the accused is aware of security bond and does not pass any order, no other Magistrate can in subsequent proceedings forfeit the bond. 3 P. R. 1917 Cr.
13. A bond undertaking to produce the accused whenever required, but not mentioning the time and place is not illegal. 1928 C. 261.
14. Surety undertook to produce the accused in one Court and accused on his way to another Court absconded. Forfeiture of bond was upheld but the amount was reduced. 49 A. 825=1927 A. 831. Cont. 1936 N. 243.
15. Bond can be forfeited if the date is not given, when undertaking by accused and surety is in the same bond. 46 I. C. 47=19 Cr. L. J. 687.
16. Order of forfeiture not in terms of the bond cannot be sustained. 1930 P. 519.
17. Liability of surety does not terminate merely because he was under arrest for a day or two. 1931 P. 19=130 I. C. 161=32 Cr. L. J. 467=12 P. L. T. 814.

Bail Bond—(contd.)

18. Person giving security for Rs. 1,000 at Sub-Inspector's request should not on forfeiture be required to pay more than Rs. 25, nor should it be wholly recovered from the Principal. 5 P. W. R. 1918 Cr.=150 P. L. R. 1917=44 I. C. 264.
19. Surety's plea that they were not allowed to exercise proper control of accused confined in hospital guarded by Police, should be considered. It may mitigate the penalty. 1930 L. 591=125 I. C. 376=31 Cr. L. J. 869.
20. If there is room for doubt as to the date of next hearing and the accused was not produced, order of forfeiture cannot be sustained. 1929 P. 658=31 Cr. L. J. 605.
21. There should be a finding that bond is forfeited. Order of bail, bail bond and absence of accused is sufficient proof. 1929 P. 658=124 I. C. 85, 1929 P. 643.
22. Bond to a Magistrate who had no jurisdiction and was not competent to admit him to bail, for appearance before another Court, is null and void. 1929 A. 914=120 I. C. 194=31 Cr. L. J. 2.
23. Bond was executed by Supurdar to Police to produce goods before Court but he failed to do so. Court ordered him to execute another bond. The latter bond can be forfeited as it fell under S. 516-A. 1929 L. 658=30 Cr. L. J. 527.
24. Court should first issue warrant of attachment and sale. If the penalty is still unpaid then he can be imprisoned. 1928 R. 310=30 Cr. L. J. 346.
25. If the person required to execute the bond is a minor, it should be executed by surety only. 1928 L. 318=109 I. C. 219=29 Cr. L. J. 491.
26. Where the Court does not sit on the day fixed, security cannot be forfeited. 1928 L. 20=29 P. L. R. 231=106 I. C. 108=28 Cr. L. J. 1020.
27. Where in S. 107 case accused and complainant agreed not to appear, surety cannot be made to pay the penalty. See Ss. 107-514, Cr. P. C.
28. Magistrate on convicting the accused of violence should immediately forfeit the bond to keep the peace. He cannot do so subsequently. 1924 L. 680=25 Cr. L. J. 4=75 I. C. 692. *Cont.* 92 I. C. 742=27 Cr. L. J. 326=1926 Sind 180.
29. Bond should not be forfeited if accused is arrested. 4 P. 259=1925 P. 369.
30. If Court discharges accused, bond becomes cancelled. 84 I. C. 944=1925 O. 314.
31. If the case is transferred to A. D. M. bond cannot be forfeited by District Magistrate. 1925 R. 153=84 I. C. 933=26 Cr. L. J. 389, 57 I. C. 456=21 Cr. L. J. 652.
32. On conviction under S. 323 or S. 325, bond for good behaviour can be forfeited. If surety and accused, each gave a bond, only one bond can be forfeited. 4 L. 462=1924 L. 262=25 Cr. L. J. 1131=81 I. C. 955.
33. If proceeding for breach of bond under S. 107 are taken within one year from the date thereof, they are valid if completed after one year. 44 A. 657=1922 A. 503.
34. Even if original agreement is void, surety is liable. 2 L. 204.
35. Bond of surety is not forfeited if offence is committed in a Native State. 26 P. R. 1918 Cr.
36. Bond for appearance before Police under Bombay City Police Act cannot be forfeited under S. 514. 42 B. 400.
37. Bond for good behaviour can be forfeited if accused are guilty of rioting. 15 P. R. 1917 Cr.
38. If Magistrate is unaware of the recognizance, while passing sentence, proceedings under S. 514 by another Magistrate are valid. 3 P. R. 1917 Cr.
39. Accused was convicted of cheating and fined Rs. 1,000. He entered into a bond to appear on August 24. The time was again and again extended till 4th September, when his bond was forfeited. Held, that the forfeiture was illegal as he never undertook to appear on September 4. 56 B. 220=1932 B. 290=33 Cr. L. J. 628.
40. In a bond for appearance, the liability of surety does not end by the arrest or detention of accused for a day or two before the date when he was to be produced in Court. But if he escapes from such an arrest or detention and disappear, the surety is not liable. 1931 P. 19, 37 M. 156 and 1925 P. 389 Dist.

Bail Bond—(contd.)

41. Surety bond to produce accused in a certain place on a certain date is not forfeited if he is produced at a different place on different date. 1934 C. 763.
42. If a person denies the execution of a bail bond, Magistrate cannot order forfeiture of bond without taking some evidence of execution of bond. 1935 C. 336 (1).
43. If the accused absconds and is re-arrested and amount of surety forfeited is excessive and surety is unable to pay, court can remit a portion. 1935 C. 246, 1933 L. 42=145 I. C. 967 and 49 A. 825=1927 A. 831=28 Cr. L. J. 586 Rel. on.
44. If the Court is not present on the date and accused is present, sureties are not responsible for next appearance. 1934 L. 294.
45. If compromise between the parties is accepted by the Court proceedings against sureties are not justified. 1934 L. 294.
46. A Sub-Divisional Magistrate cannot hear appeal against an order under S. 514. 1934 L. 294.
47. If the case is transferred, and another surety bond is taken, the first bond was discharged under S. 134, Contract Act. 1934 Sind 152.
48. If the surety undertakes to produce accused till disposal of case, and the case is sent to another Magistrate, surety is not discharged. 1934 C. 785, 30 C. 107 and 1934 C. 101 Diss.
49. Where the bond is forfeited and accused is subsequently found, the amount was reduced from Rs. 2,000 to Rs. 500. 1933 L. 42.
50. Surety executed bond for attendance of accused. Accused absconded and surety amount was realised from accused's property. Surety is still liable. 1933 Sind 320, 1925 L. 228, 1924 L. 262 Diss. 20 A. 206 and 36 C. 562 Appr.
51. A bond to produce the accused in "Court at B till decision" is too vague and cannot be enforced. 1936 N. 243.
52. It is not for the surety to show that bond is illegal but the crown must show that it is such that can be enforced in law. 1936-1934 N. 243.
53. Surety undertook to produce accused in a particular Court. His failure to produce him in a totally different Court is not a breach of bond. 1936 N. 243, 30 C. 107 and 1925 R. 153 Rel. on.
54. S. 499 is exhaustive of conditions which can be imposed on sureties. Court cannot insert provision that surety shall undertake to produce the accused till decision. 1936 N. 243.

4. Imprisonment of surety.

If the bond is forfeited, a warrant of attachment should be issued. If it is infructuous an order for the imprisonment in Civil jail should be passed at a subsequent date. 1934 A. 1046.

5. New Surety Bond.

Execution of new surety bond does not discharge surety who had executed another bond previously. 1934 Sind 152.

6. Notice for forfeiture.

The accused and the surety are entitled to reasonable notice of the time at which the former would be required to attend. In the absence of notice, bond cannot be forfeited. 4 M. H. C. R. App. 45.

7. Revision. S. 515, Cr. P. C.

Where an appeal is not admitted, District Magistrate can himself entertain revision on order passed under S. 514. He need not send the case to High Court. 1934 Sind 152.

BALANCE SHEET.

1. False. See False evidence—12.

Issue of false balance sheet by the Manager that bank is solvent while it is not, is cheating under S. 418. 16 A. 85, 23 P. R. 1915 Cr.

*Balance Sheet—(contd.)***2. Filing of.**

1. Persons ceasing to be Directors before expiration of 12 months after registration of company are not liable for non-filing of balance sheet. 17 P. R. 1914 Cr.
2. For non-filing of balance sheet Directors as well as Managing Agents are punished. 18 P. R. 1916 Cr.
3. There is a liability of Directors inspite of resignation of position as Managing Director or Chief Secretary before the prosecution. 38 P. W. R. 1914 Cr.

BANDH CUTTING. See Right of private defence—10.

BANNS OF MARRIAGE. See Bigamy—6.

BANK MANAGER

1. Breach of trust by. See Breach of Trust—13.
2. Falsification of account by. See Falsification of account.—1.

BANK—MONEY IN—

Accused deposited stolen money in Bank. The money becomes the property of the Bank and no order under S. 94, Cr. P. C., can be passed, nor can it be attached. 58 B. 152 = 1934 B. 74. *Halsbury's Law of England, Ed. 1, Vol. 1, Art. 1192.*

BANK NOTES. See Counterfeiting Currency Notes.

BANKER. See Breach of Trust—9.

BARRISTER. See Counsel.

BEARD PULLING. See Insult to provoke breach of peace—6.

BEATING—DEATH BY. See Culpable Homicide—5.

BEHAVIOUR. See Security for good behaviour.

BELONGING TO GANG OF DACOITS. See Gang of Dacoit.

BELONGING TO GANG OF THIEVES. See Gang of Thieves.

BENCH OF MAGISTRATES. Ss. 15-16 Cr. P. C.

1. Absence of one of the Magistrates.

1. One of the Magistrates constituting the Bench did not hear the evidence and judgment was pronounced on his opinion as well. Held, that the trial was illegal. 41 A. 116, 17 A. L. J. 379, 53 I. C. 823 = 20 Cr. L. J. 823, 38 M. 304.
2. One of the Magistrates left the case early and the judgment was written by the other two, the trial is legal. 40 I. C. 749 = 18 Cr. L. J. 749.
3. Absence of some Magistrates at the time of judgment is immaterial, when they were present at the earlier stages. 38 M. 797, 21 M. 246, 20 C. 870. *Cont.* 44 B. 400.
4. If one of the Magistrates is attending to some other work, when the case is being heard, accused is prejudiced. 1922 O. 21 = 23 Cr. L. J. 696.
5. If there were different Magistrates at different hearings, retrial was ordered. 1923 O. 163 = 76 I. C. 566 = 25 Cr. L. J. 198.
6. It is certainly wrong that a Magistrate who was absent during part of trial should express an opinion on the evidence. 1921 B. 44 = 22 Cr. L. J. 615.
7. If one of the Magistrates was competent to try alone and he tried and passed judgment alone, the trial is legal. 1924 A. 674.

2. Change in the constitution of—S. 350-A., Cr. P. C.

1. Where a Bench of three Magistrates constituted under the rules commenced trial and heard the Prosecution evidence, but afterwards one member of the Bench was absent and the remaining two Magistrates went on with the trial and convicted the accused. Held, that the trial was void. 44 B. 400, 2 L. 237.
2. Where one of the Magistrates constituting Bench was absent on two important hearings but joined the others later and signed judgment the trial was vitiated. 1932 N. 95 = 15 N. L. J. 11 = 138 I. C. 175 = 33 Cr. L. J. 559.
3. Where one of the members of the Bench did not hear the statement of the witnesses

Bench of Magistrates—(concl'd.)

for the complainant in examination-in-chief, S. 350-A was held not complied with and the order of acquittal was set aside. 1932 A. 191=33 Cr. L. J. 835.

4. The presence of all the Magistrates constituting the Bench on all the hearings is indispensable for the valid trial of a case pending before it. If one of them is absent on some occasions when witnesses were examined, the trial is illegal. 1932 A. 127.
5. S. 350 does not apply to cases tried by Benches of Magistrates. 2 L. 237.
6. S. 530-A applies only to cases where one or more members drop out altogether and the remaining Magistrates were present throughout. If a Magistrate who was not present throughout pronounces judgment, the defect is curable under S. 537, Cr. P. C. 1934 A. 144=152 I. C. 158.
7. Three Magistrates tried the case, one was absent when evidence was recorded. All joined in deliberations and signed judgment and unanimously found the accused guilty. Conviction was set aside. 1934 A. 144=152 I. C. 153, 1933 A. 355=34 Cr. L. J. 701, 1932 A. 191=54 A. 413. Expl. and Dist. 1932 A. 127=33 Cr. L. J. 200 Ref.
8. Evidence heard on several occasions by one member of Bench makes the trial illegal. 1934 O. 85=147 I. C. 1209.
9. Out of three Magistrates, two were present throughout and signed the judgment. Held, that trial was not illegal. 1933 A. 355=24 Cr. L. J. 701.

3. Difference of opinion.

1. In case of difference of opinion about the guilt, the benefit of doubt should be given to the accused. 27 I. C. 177=16 Cr. L. J. 113.
2. Though under rules 9 and 10 of the rules of Bombay Government, the opinion of chairman prevails yet the dissenting judgment of the other Magistrate should form part of the record. 1927 B. 630=106 I. C. 209.
3. In a case where the President of the Bench is in a minority as to conviction or acquittal, the judgment should be written by some member of the majority. 51 M. 338=1928 M. 197=106 I. C. 799=29 Cr. L. J. 207.

BENEFIT OF DOUBT. See Evidence 15, Murder—16.

1. Benefit of doubt is given.

1. When prosecution evidence is unsatisfactory. 19 Cr. L. J. 689, 17 Cr. L. J. 9.
2. When there is a material discrepancy in prosecution evidence. 12 I. C. 217.
3. When accused is not mentioned in F. I. R. 33 P. W. R. 1911 Cr., 34 P. R. 1914.
4. When the theory of guilt and innocence are both likely. 1925 O. 676=87 I. C. 962=26 Cr. L. J. 1042, 14 Cr. L. J. 251, 1930 S. 99=31 Cr. L. J. 117.
5. When a *prima facie* case is not made out. 1925 S. 289=88 I. C. 7.
6. When a Police Officer refuses to refer to diary. 1935 P. 131=26 Cr. L. J. 738.
7. When accused's action is open to two constructions—honest and criminal. 1924 M. 876=82 I. C. 149.
8. When there is a doubt in identification. 5 L. L. J. 317.
9. When the deceased himself makes no mention in F. I. R. when alive as to the guilt of accused and majority of eye witnesses mentioned in the F. I. R. are not produced. 1922 L. 28=3 L. L. J. 585.
10. When it is doubtful if accused was at all present at the scene. 1923 L. 195.
11. When evidence on both sides is evenly balanced and accused has been offering satisfactory explanation in respect of accusation. 117 I. C. 212=30 Cr. L. J. 727.
12. Where part assigned to any particular accused is falsified by medical evidence, and locality and motive for fight are not established. 1927 L. 617=28 Cr. L. J. 685.
13. Where the incriminating article was found in a joint family house. 1928 C. 264, 67 I. C. 338=1922 A. 83.
14. Where a person is charged under Arms Act and Opium Act and is acquitted the latter on the ground that opium might have been placed by his servant

Benefit of doubt—(concl'd.)

was a *badmash*. Held that his conviction under Arms Act should be set aside on the same ground. 97 I. C. 743=27 P. L. R. 651=27 Cr. L. J. 1159.

15. When there are discrepancies between the F. I. R. and the subsequent evidence. 172 P. L. R. 1914, 188 P. L. R. 1915, 92 I. C. 209.
16. When prosecution evidence is interested. 26 P. L. R. 816.
17. When two persons are charged and only one is guilty and there is a difficulty in affixing responsibility. 10 L. L. J. 369.
18. Where witnesses mentioned in first information report are not produced at the trial. 1922 L. 28=3 L. L. J. 535.
19. When the case is entirely on confession and the manner in which confession is obtained is uncertain. 1930 L. 88=119 I. C. 420=30 Cr. L. J. 1080.
20. In case of discrepancy between vernacular and English record of evidence in the statement of a principal witness on a materia point, the accused gets the benefit of doubt. 24 Cr. L. J. 624.
21. Where different constructions can be placed on an accident, it is right to put the construction that is most favourable to the accused. 1931 O. 385=132 I. C. 270=32 Cr. L. J. 851, 54 M. 931.
22. If a witness does not implicate one of accused in his previous examination in the absence of accused, the benefit of doubt should be given to him. 1934 L. 211 (1).
23. When accused was mere spectator. 1933 O. 123.
24. When direct evidence is not convincing and assessors give a unanimous verdict of not guilty. 1933 L. 714.
25. If the prosecution evidence is unsatisfactory, accused must be given the benefit of doubt without considering the weakness of defence. 1933 O. 457=147 I. C. 111.

2. Meaning and scope.

1. Benefit of doubt means benefit of a real and reasonable doubt in the mind of the Court. 1924 A. 511=84 I. C. 548=26 Cr. L. J. 324.
2. Suspicion is no substitute of proof. 1923 L. 4, 43 P. W. R. 1913 Cr.
3. It is much better that a guilty man should be acquitted than that an innocent man should be wrongly convicted. 1931 C. 752=134 I. C. 1191=54 Cr. L. J. 244=33 Cr. L. J. 85=1931 Cr. C. 1016.
4. It is better that ten guilty men should escape than that one innocent man should suffer. 2 Hale P. C. 289.
5. No man can be convicted when the theory of his innocence is as likely as that of his guilt, and he should be given the benefit of doubt. 15 Bom. L. R. 315=14 Cr. L. J. 251, 1923 L. 537=25 Cr. L. J. 424.
6. But the doubt of which a benefit is given to the accused must be such as reasonable men may reasonably entertain and not the doubt of a weak and vacillating mind. 31 Bom. L. R. 515, 56 M. 231.

3. Omission of—in a charge to Jury.

When the evidence is so weak as to make guilt of accused doubtful, omission to direct Jury to give benefit of doubt to accused may be misdirection prejudicing accused. 1935 C. 31=154 I. C. 110=36 Cr. L. J. 480, 4 Cr. L. J. 502.

BESTIALITY. See Unnatural offence—3.

BETROTHAL.

Buying a wife is not criminal. 19 P. R. 1867 Cr.

BHUNGA. S. 215, I. P. C. See Gift to recover stolen property.

BID BY PUBLIC SERVANT. Ss. 169—185, I. P. C. See Public Servant—7.

BIGAMY. S. 494, I. P. C.

1. Abetment of.

1. The priest who officiates at a bigamous marriage intentionally aids it but not the

Bigamy—(contd.)

persons present at the celebration or who permitted it in the house. 6 B. 125, 10 M. 218.

2. A man may be guilty of abetment although the girl may be from want of intelligence or age or knowledge, incapable of committing this offence. 6 C. W. N. 343, 21 A. L. J. 187.
3. Where a Mahomedan guardian of a married female infant, caused a marriage ceremony to be gone through in her name with another man, but without her taking any part in the transaction, he is not guilty of abetment. 4 C. 10.
4. It must be proved that accused knew that the person he married was the wife of another. 1931 L. 194 = 32 Cr. L. J. 1210, 1934 A. 589 = 35 Cr. L. J. 1053.
5. The Court while acquitting the accused of the offence of kidnapping directed the District Magistrate to take action under Ss. 494—109, I. P. C. 7 P. R. 1894.
6. Where a person marries a woman unaware of her prior secret marriage, he is not guilty of abetment. 1933 L. 164.

2. Absence of husband.

1. Absence of husband for 4 years does not validate marriage under Mahomedan Law. 27 P. R. 1878 Cr.
2. Absence of husband for 7 years justifies second marriage. 1 P. R. 1900 Cr.

3. Apostacy of a Christian.

1. A European lady became convert to Hinduism and married in accordance with the Hindu rites, her marriage is valid. 52 M. 160, 1922 B. 32.
2. A Christian cannot by embracing Mahomedanism marry a second time during the life time of his first wife. (1871) 14 M. I. A. 309—324.
3. Accused a Christian woman who had married a Christian according to Christian rites, became a Mahomedan during the life time of her husband and married a Mahomedan. Held, she was guilty of bigamy. 5 P. R. 1919 Cr.
4. A Hindu Christian convert relapsing into Hinduism and marrying a Hindu woman, cannot be convicted of bigamy on the ground that he has another wife living whom he married while he was Christian. (1866) 3 M. H. C. App. 7 (1886). 1 Weir 563, 33 M. 371, 1932 L. 116 *Cont.* 30 M. 550.
5. Whether a change of religion made honestly after marriage with the assent of both spouses, will have the effect of altering rights incidental to the marriage is an important question which has not been decided as yet. 25 C. 537.
6. A Christian marriage is not dissolved by the apostacy of one of the parties. 5 P. R. 1919 Cr., 18 C. 264, 49 P. R. 1907 Cr. Foll. 33 M. 371 Dist.
7. A Hindu male marrying a Christian woman in England in Christian form and subsequently marrying a Hindu female in Hindu form during the life time of his wife, is not guilty of bigamy. 1932 L. 116 = 136 I. C. 262, 33 M. 371.

4. Apostacy of a Hindu.

1. Apostacy of Hindu wife cannot affect dissolution of marriage. 32 P. R. 1870 Cr., 49 P. R. 1907 Cr., 152 P. R. 1890, 1925 A. 474 = 85 I. C. 459.
2. Conversion of Hindu wife to Mahomedan religion does not dissolve marriage. 49 P. R. 1907 Cr.
3. Conversion to Islam of a Chamar does not dissolve her marriage. 1 L. 440.
4. A Hindu woman who having a husband living marries a Mahomedan even after becoming Mahomedan commits bigamy. 4 B. 330, 1 L. 440, 110 P. W. R. 1907, 18 C. 252-264.
5. A Hindu woman who having a husband living marries a Christian even after becoming Christian commits bigamy. 10 M. 218.
6. A Hindu marriage is not dissolved by conversion of one or both of the parties to Christianity. 18 C. 264, 32 P. R. 1870, 49 P. R. 1907.

5. Apostacy of a Mahomedan.

1. The marriage of a Mahomedan is dissolved by embracing Christianity or Hinduism.

Bigamy—(contd.)

1923 L. 954=111 I. C. 160, 33 A. 90, 39 C. 409, 85 P. R. 1906 Cr., 33 A. 90, 1924 L. 397, 132 P. R. 1884, 61 P. R. 1899 Cr., 85 P. R. 1906 Cr.

2. Marriage of a Mahomedan woman after apostacy of her first husband but before expiry of *iddat* is invalid. 39 C. 409.
3. Adoption of Ahmadyan faith is no apostacy from Islam and second marriage by his wife is bigamy. 45 M. 986.

6 Attempt at.

Where a man having a wife living, caused the hanns of marriage between him and a woman to be published, he was not guilty of attempt to marry again under S. 494. 1 A. 316.

7. Bona fide belief about the annulment of first marriage.

A married Mahomedan girl on attaining puberty brought a suit to have the marriage declared void, as she wished to repudiate it and obtained *ex-parte* decree, which was set aside and suit withdrawn. She then married accused. It was found that accused did not know that *ex-parte* decree had been set aside. He was not guilty as by mistake he married her. 31 P. W. R. 1918 Cr.

8. Complaint of. S. 198, Cr. P. C.

1. In a case of bigamy husband is the only "aggrieved" person to make a complaint. 26 C. 336, 14 I. C. 204.
2. The brother of a lunatic husband is not a person aggrieved by the wife's bigamy. 10 B. 340. See 3 C. L. J. 38.
3. Father of the husband is not an aggrieved party. 32 A. 78, 13 Cr. L. J. 204.
4. Brother of the husband cannot complain. 25 A. 132, 11 O. C. 148.
5. A minor husband can lodge complaint. 1922 L. 168=68 I. C. 837.
6. A complaint of husband is necessary for a charge of abetment of bigamy. 1926 A. 189=91 I. C. 533=24 A. L. J. 155=27 Cr. L. J. 101.
7. The complaint may not contain the section of the Code. It is sufficient if it lays down matter, which if proved, would warrant commitment under S. 494. 25 A. 209.
8. The mere fact that complaint is written at the suggestion of Police is immaterial. 5 P. R. 1919 Cr.
9. Complaint is necessary for cognizance of offence of bigamy. 7 P. R. 1894 Cr.
10. Trial of offence of bigamy is not competent on a complaint under S. 498, I. P. C. 5 P. R. 1879 Cr., 19 P. R. 1882 Cr.
11. Conviction under S. 498 is legal on a complaint under S. 494. 5 P. R. 1879 Cr.
12. If a complaint is dismissed on the ground that the complainant failed to prove his marriage with accused, a fresh complaint cannot lie. 1929 L. 544.

9. Concealment of former marriage in. S. 495, I. P. C.

1. A woman who contracts second marriage sixteen months after the first marriage without disclosing the fact or ascertaining the whereabouts of the first husband. 4 W. R. (Cr.) 25.
2. But where the accused was only 10 years old and marriage was negotiated by her mother, she was given the benefit of S. 83. *Ratan Lal* 876.

10. Custom as defence.

1. *Bona fide* belief that the consent of the caste made the second marriage valid is no defence for bigamy. 1 B. 347 *Cont.* 17 M. 479.
2. There is nothing immoral in a caste custom by which divorce and re-marriage are permissible on mutual agreement by paying the expenses of marriage and getting divorce. 17 M. 479.
3. A custom of Talpade Koli caste that wife can remarry during her husband's life time is illegal. (1864) 2 B. H. C. 117. 17 Bom. L. R. 584.
4. Husband went to Africa and did not write to his wife nor sent her money. She got from the caste people a release (*fargati*) dissolving marriage and married again.

Bigamy—(contd.)

Held, she was guilty. 19 Bom. L. R. 56. See 14 Cr. L. J. 468.

5. Calcutta High Court has upheld a custom which allowed the wife to undergo a *Nikah* or *Sagai* marriage after she was relinquished by her husband. 19 C. 627.
6. Evidence of custom should be allowed by the Court. (1896) 1 Weir 568.
7. A custom of *Sagai* marriage during the life time of husband though a valid defence must be strictly proved in the particular case and in the particular area. 1925 P. 346—96 I. C. 115—27 Cr. L. J. 497.
8. A custom of Mahomedan sect that a woman can marry again after the absence of her husband for four years is not covered by exception to S. 494. 18-27 P. R. 1873.
9. Custom of second marriage during life time of husband without annulling marriage is offence, which cannot be obliterated by subsequent divorce. 1932 M. 561=33 Cr. L. J. 647. 2 Bom. H. C. R. 117, 7 Bom. H. C. R. 133 and 22 I. C. 697 Foll. 1 B. 347; 4 B. 330; 6 B. 124. 10 M. 218; 17 M. 470 and 19 C. 627 Dist.
10. Polygamy is not permitted to women by General Hindu Law.
11. Defence for.
 1. If the accused *bona fide* believed that the earlier marriage was set aside by the court, he would not be guilty. 31 P. W. R. 1918 Cr.
 2. Ignorance of law is no defence under S. 494. 1 B. 347—47, 6 B. 126.
 3. The doctrine of certain Mahomedan Divine that a wife can remarry if her husband is absent for four years is no defence. 27 P. R. 1878 Cr.
 4. Mistake of fact about first marriage is no defence under S. 79. I. P. C., in a case of bigamy. 45 M. 986=1923 M. 171=24 Cr. L. J. 17.
12. Essentials and Evidence.
 1. Where in the first marriage the giving of the bride was with the consent of the legal guardian who was in jail, the second marriage constituted bigamy. 1923 P. 375=111 I. C. 762=9 P. L. J. 397.
 2. A marriage tainted by fraud is voidable and is not rendered invalid until set aside by court. It can sustain an indictment of bigamy. 2 L. 238.
 3. Making of report to Police to prevent second marriage is a strong corroboration of evidence of first marriage. 1923 A. 329=21 A. L. J. 187.
 4. It must be proved that accused had already been married to some one. 4 P. R. 1874 Cr., 27 P. R. 1878 Cr., 17 P. R. 1893 Cr.
 5. Marriage in S. 494 means going through a form of marriage whether marriage should in fact prove legal or not. 45 C. 641.
 6. Where a child of 10 years married again during the life time of her husband and the marriage was negotiated by her mother, she was not guilty. Cr. R. 55 of 1896. Unrep. Cr. C. 876.
 7. A Hindu male contracted his first marriage with a Christian woman in England in Christian form, and subsequently married for a second time, while his first Christian wife was living, a Hindu woman in Hindu form. Held, he was not guilty of bigamy. 1932 L. 116=136 I. C. 262=33 P. L. R. 339=1932 Cr. C. 96.
 8. If the second marriage takes place in the life time of the first husband without annulling first marriage, the offence is complete and the subsequent divorce is of no avail. 1932 M. 561=138 I. C. 518=33 Cr. L. J. 647.
 9. In the case of Mahomedan girl it must be shown that she acquiesced in or ratified the first marriage, to convict her of bigamy. 1936 S. 189, 19 C. 179 Ref.
13. Fresh complaint.

Where a complaint under S. 494 was dismissed on the ground that the complainant failed to prove his alleged marriage with the accused, another complaint by him cannot be entertained. 1929 L. 544=11 L. L. J. 197=1929 Cr. C. 87.
14. Jurisdiction.

The offence of bigamy and its abetment is triable in a place where the second marriage or abetment took place and not in the District in which the woman is enticed away. 1924 L. 732=85 I. C. 365=26 Cr. L. J. 525.

Bigamy—(contd.)

7. A caste punch having no authority to grant *farghkhathi* is not effective to dissolve marriage. 39 I. C. 308=18 Cr. L. J. 468.
8. Marriage of a Mahomedan woman after apostasy of her first husband but before expiry of *iddat* is invalid. 39 C. 409.
9. A marriage of a Hindu tainted by fraud is a voidable transaction but is binding unless set aside by competent court. 2 L. 288.
10. In the first marriage, the bride was given with the consent of her legal guardian in jail the second marriage constituted bigamy. 1927 C. 480=28 Cr. L. J. 327.
11. For S. 494 Anand marriage by a Hindu professing Sikhism is a valid marriage. 1925 L. 168=82 I. C. 277.
12. Accused knew the former marriage of the woman and argued that marriage with him was only invalid and not void under Mahomedan Law, there is no bigamy. Held, that accused was guilty. 110 I. C. 333=1928 L. 844 (1)=29 P. L. R. 533.
13. Remarriage in *Sagai* form during the life time of first husband though a valid defence, the custom must be strictly proved. 1925 P. 346=96 I. C. 113, Dist. 19 C. 627.
14. It is not necessary for the validity of a marriage by a Khatri widow that all usual ceremonies which have to be performed on the first marriage of a Khatri girl, should be gone through and their subsequent living as husband and wife constitutes valid marriage. 1926 L. 31=90 I. C. 1056=26 P. L. R. 744.
15. A Hindu marriage is not invalidated for want of guardian's consent. 1924 L. 570=79 I. C. 451, 2 L. 288, 20 P. R. 1916.
16. The marriage of a Brahman with a Dharala woman of the Sudra caste is valid in Hindu Law. 32 Bom. L. R. 1348=1931 Bom. 89=130 I. C. 17.
17. If there had been a marriage in fact, there would be presumption in favour of there being marriage in law. 43 C. 926, 98 I. C. 669, 48 A. 126.
18. The marriage by *Chadar Andazi* ceremony with his maternal aunt by an Arora governed by Hindu Law cannot be legal. 1928 L. 165=107 I. C. 98.
19. European lady convert to Hinduism married in accordance with Hindu rites, her marriage is valid. 52 M. 160, 1922 Bom. 32.
20. An illegitimate son of Sonar father and a Sudra woman cannot marry a Bania girl. 48 A. 670, 28 A. 458.
21. Marriage between a Bengali Kayasth and a Dom (Sudra) is valid. 51 C. 488.
22. A Burmese Buddhist woman cannot marry a Shia unless converted to Islam. 117 I. C. 561=1929 R. 35.
23. A Hindu male contracted his first marriage with a Christian woman in England in Christian form, and subsequently married second time when his wife was alive, a Hindu female in Hindu form. Held, he was not guilty of bigamy. 1932 L. 116=136 I. C. 262=33 P. L. R. 339.
24. Validity of marriage must be proved. 1934 A. 589.
25. A minor Mahomedan girl was given in marriage by a relation other than the father. Girl marrying another on attaining puberty amounts to repudiation. 1934 A. 589=35 Cr. L. J. 1053.

22. Void marriage.

The word 'void' appearing in S. 494 is not used in the technical sense in which it is used in Mahomedan Law. Penal Code make no distinction between void and invalid marriage. 1931 L. 194=134 I. C. 589=32 Cr. L. J. 1210, 1928 L. 844.

BIRTH—CONCEALMENT OF. See Concealment of birth.

BITING BY DOG. See Hurt—3.

BLANDISHMENT. See Enticing away married woman—2.

BLANK SIGNED PAPER. See Forged document, using as genuine—3.

BLOOD POISONING. See Murder—25.

Blood.

BLOOD.

1. Age of.

1. If the blood has not yet dried, it can be identified even by ordinary unskilled observer due to its peculiar colour, consistence and general appearance. If arterial it is bright red, if venous it is more purple changing to red. After about twenty-four hours or so it changes to reddish brown owing to the formation of methaemoglobin. The naked eye appearance coupled with the spectroscopic indication of a greater proportion of methaemoglobin to oxyhaemoglobin gives some idea of the age of the stain. *Lyon's Med. Jur. 1904, P. 102.*
2. After a period of five or six days, it is scarcely possible to determine even conjecturally the date of a stain from its appearance. *Taylor's Med. Jur. 1928, P. 502.*

2. Evidentiary value of—Stains.

1. A and B were named as assailant and subsequently C was substituted for B, the conviction of C is not proper although clothes of all the three were found blood stained. 14 P. W. R. 1913 Cr.
2. Blood stains on a Zamindar's clothing is valueless as evidence of guilt. 171 P. L. R. 1913, 67 P. L. R. 1913.
3. Discovery of blood stains on an Indian shirt is not material corroboration of approver's story. 1925 L. 526=86 J. C. 811.
4. Discovery of blood in convict's house and on his finger nails and his suspicious conduct on the day of murder furnish an adequate corroboration. 1921 L. 392=4 L. L. J. 405.
5. Blood stains on accused and production of spear from a field by the approver are not sufficient corroboration. 1927 L. 78=28 P. L. R. 39=28 Cr. L. J. 193.
6. Blood stained garments found in a Zemindar's house does not necessarily connect him with murder. 1934 L. 171=1934 Cr. C. 349.
7. It is not contrary to experience that a murderer continues to wear blood stained articles. 1933 P. 100=34 Cr. L. J. 427.
8. Opinion of Imperial Serologist is entitled to great weight. 1933 O. 265.
9. The fact that accused's clothes are stained with the blood is insufficient. But failure of accused to give explanation makes such evidence corroborative evidence. 1933 N. 352=35 Cr. L. J. 213, 1925 L. 526 Appr.
10. The discovery of blood stain is insufficient for conviction. Its value is very great when used to corroborate other evidence. 1936 L. 335=16 L. 995.
11. A number of small spots of human blood on a Dhoti and a Lungi belonging to the accused have slight probative value. 1936 R. 468.
12. A cloth was discovered from accused's house stained with blood. There was no proof that it was human blood. Held, no presumption could be made against him. 1934 O. 373=35 Cr. L. J. 1265, 1934 O. 388=35 Cr. L. J. 1154.
13. Blood stains on clothes of accused and extra judicial confession to the wife are insufficient to sustain a charge of murder. 1935 O. 33=36 Cr. L. J. 246.

3. Is it from Assailant or Victim ?

For this question it is important to note which side of garment has most blood on it. Thus an accused person who is also wounded, if he exhibits most blood on the outside of his clothes it would falsify his tale that the blood was his own. *Lyon's Med. Jur. 1904, P. 102. Taylor's Med. Jur. 1928, P. 505.*

4. On accused. Sec—2.

1. The presence of spots of blood on articles of clothing, knives, etc., taken from the person of those accused of murder, may be quite consistent with innocence. *Taylor's Med. Jur. 1928, Vol. I, Pp. 418-420.*
2. The coarse clothing worn by labourers may acquire blood spots from a variety of accidental circumstances which the accused may not be able to explain. *Ibid.*
3. When an attempt has been made to wash out the stains, or the accused admits that

Blood—(contd.)

they are there, and shows great anxiety to give some explanation of their presence, as that he assisted in killing a pig, rabbits etc., or that he was carrying game about him, there may be ground for suspicion.—*Ibid.*

4. Due allowance should always be made for the accidental presence of blood.—*Ibid.*
 5. It is very common, but erroneous idea that no person can commit murder in which blood is effused without having his person or clothes more or less covered with blood The flowing or spurting of blood upon his clothes will depend upon his position in relation to the deceased at the time of inflicting the wound, and this must always be a matter of pure speculation. *Ibid.*
 5. On Zamindar's clothing. See—2.
 6. On weapon. See Weapon—1.
 - 7 Opinion of Serologist.
- Opinion of Imperial Serologist is of great weight. 1933 O. 255.
8. Tests of blood.
- Chemical.

Cold water dissolves the stain, yielding a reddish solution, of which take one portion and heat. It then coagulates and loses its red colour, while the coagulum is soluble in weak ammonia, giving a dichroic solution, red by reflected light and green by transmitted. This reaction is due to *haemoglobin* being soluble in cold water, while its albuminous part is coagulated by heat, which precipitates also the *haematin*. Of the original red solution take a few drops in a watch glass and add a drop of strong *nitric acid* on the side of the watch glass a dirty-white ring of coagulated albumen will form at the point of contact and the red colour is discharged. If the blood stain is old and cold water does not dissolve the stain, add a weak solution of ammonia. Dragendroff recommends a cold saturated solution of borax to dissolve old stains. *Lyon's Med. Jur. Ed. 1901, Pp. 93-94; Taylor's Med. Jur. Ed. 1928 P. 481.*

B. Microscopical.

1. By Microscopical examination it will not be possible to say whether the blood is human or not, but merely whether it is mammalian or not. *Lyon's Med. Jur. 1904, P. 95.*
2. The Microscopical test of blood consists in the discovery of two substances. (a) The red corpuscles of blood, (b) Crystals or chloride of hæmin. *Taylor's Med. Jur. 1928, P. 483.*

C. Spectroscopical.

1. This is the most delicate and trustworthy of all the tests for blood stains, but it does not distinguish human from other vertebrate blood. *Lyon's Med. Jur. 1901, Pp. 98-99.*
2. If the red liquid owes its colour to recent or oxidised blood, two dark absorption bands will be seen breaking the continuity of the coloured spectrum. *Taylor's Med. Jur. 1928, Vol. I, P. 489.*
3. In the course of an hour in warm weathers and after a day or two in cold weather, the blood in the tube undergoes a change. It loses its scarlet and acquires a purple colour. *Ibid.*
4. When a solution containing blood is exposed to the air for sometime it loses its blood-red colour and assumes a brownish tint. *Ibid.*

9. Test of human blood.

1. Once human blood has become dried, it cannot be so readily distinguished from the blood of many other animals of the mammalian class. An opinion on this point founded on the size of the corpuscles, is not reliable. *Lyon's Med. Jur. 1901, Pp. 96-100.*
2. The antiserum for human blood causes a precipitate only with human blood and with no other blood, not even with that of monkeys (which latter gives only a faint cloudy reaction) provides a specific test for human blood of great delicacy, and one

Blood—(contd.)

which has been found applicable to blood stains which had been dried for three months. *Ibid.*

3. Human blood is detected by presence of human blood filaria. *Ibid.*

4. Stains of menstrual blood on linen, etc., cannot be distinguished from stains of other blood. *Lyon's Med. Jur. 1901, P. 102; Taylor's Med. Jur. 1928, Pp. 493—500.*

10. Test of Mammalian and non-Mammalian blood.

To distinguish mammalian and non-mammalian blood, the shape and size of the red blood corpuscles have to be noted. The *shape* of the disc in human blood and in all mammalia, except the camel tribe, is circular and biconcave. In the camel tribe they are oval and biconcave. In birds, reptiles and fishes, they are oval and nucleated. The size of the disc varies in the same animal and in average size in different animals. In man they range in diameter from $1/2800$ to $1/4000$ of an inch, averaging $1/3200$. *Lyon's Med. Jur. 1901, P. 96.*

11. Whether it is of living or dead.

The question whether the blood was shed during life is answered thus: If there is evidence of spitting and of any small clot of fibrin, this is absolute proof that it came from a living and not a dead person. *Lyon's Med. Jur. 1904, P. 102; Taylor's Med. Jur. 1928, P. 504.*

12. Whether Paternity can be proved from—.

By means of study of blood groups it cannot be proved that a given man is the father of a given child, but that it can be proved in certain cases that a given man could not possibly have been the father of a given child. *Taylor's Med. Jur. 1928, P. 507.*

BONA FIDE CLAIM. See Theft—6, Mischief—1, Criminal Trespass—4.

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BOYCOT.

1. Of court by lawyers. See Legal Practitioners' Act. Ss. 13—6.

2. Of English goods. See Sedition—2

3. Threat to. See Criminal intimidation—16.

BRANCHES OF TREE—CUTTING OFF. See Mischief—2.

BREACH OF PEACE. S. 107, Cr. P. C.

1. Amount of security.

Once a Magistrate has passed an order directing security for breach of peace in certain amount, he cannot increase that sum afterwards. 51 I C. 470.

2. Appeal against. See Appeal—6.

3. Applicability and object.

1. The object is not to bring pressure on a party to give up his right over property. 25 C. 798.

2. The object of S. 107 is the prevention and not the punishment of offences. 9 C. W. N. 898, 11 C. W. N. 223, 31 C. 350

3. Where offences have been committed, there should be regular trial for those offences and no security proceedings. 9 C. W. N. 898, 6 P. 1=100 I. C. 967=1927 P. 126, 11 C. W. N. 472. *Cont.* 44 I. C. 38.

4. If complainant is out of possession and there is no danger of breach of peace unless he attempts to resume possession, his remedy lies under S. 145, Cr. P. C. or Civil Court only. 1923 N. 54=68 I. C. 407.

Blood—(contd.)

they are there, and shows great anxiety to give some explanation of their presence, as that he assisted in killing a pig, rabbits etc., or that he was carrying game about him, there may be ground for suspicion.—*Ibid.*

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BREACH OF PEACE. S. 107, Cr. P. C.

1. Amount of security

Once a Magistrate has passed an order directing security for breach of peace in certain amount, he cannot increase that sum afterwards. 51 I. C. 470.

2. Appeal against. See Appeal—6.**3. Applicability and object.**

1. The object is not to bring pressure on a party to give up his right over property. 25 C. 798.

2. The object of S. 107 is the prevention and not the punishment of offences. 9 C. W. N. 898, 11 C. W. N. 223, 31 C. 350

3. Where offences have been committed, there should be regular trial for those offences and no security proceedings. 9 C. W. N. 898, 6 P. 1=100 I. C. 967=1927 P. 126, 11 C. W. N. 472. *Cont.* 44 I. C. 38.

4. If complainant is out of possession and there is no danger of breach of peace unless he attempts to resume possession, his remedy lies under S. 145, Cr. P. C. or Civil Court only. 1923 N. 54=68 I. C. 407.

Breach of peace—(contd.)

5. Security proceedings against persons discharged in a murder case are regular, when dispute was the same in both. 1922 O. 273, 41 M. 246 Dist.
6. Section applies to one who enforces a claim through an armed servant. 38 I. C. 735.
7. A Magistrate cannot keep S. 107 proceedings pending on the ground that it tends to preserve peace. 64 I. C. 137 = 22 Cr. L. J. 745.
8. The object of S. 107 is the security of Public Peace and not to help a party to recover possession of immovable property. 144 P. L. R. 1917.

4. Arbitration.

A Magistrate cannot delegate his power to make an order under S. 107 to arbitrators. 1931 P. 92 = 130 I. C. 810.

5. Bail.

1. A person arrested under Cl. (3) should be admitted to bail unless there are special circumstances. 32 C. 80, 1923 P. 527 = 74 I. C. 857, *Cont.* 36 M. 474.
2. A Magistrate cannot refuse bail to a person arrested under S. 114, Cr. P. C. 32 I. C. 669, 1933 R. 164-165.

6. Breach of bond for keeping peace.

1. A bond to keep peace will be forfeited only by commission of offences likely to cause breach of peace. A conviction for theft, wrongful confinement, extortion, abduction or attempt to poison will not entail forfeiture of bond. 6 P. R. 1906, 22 P. R. 1914, 66 I. C. 179.
2. It is immaterial whether accused committed the act with his own hands or instigated it. 2 M. 169, 11 W. R. 52.
3. Filing of civil suit is not a wrongful act entailing forfeiture of bond. 1 L. 310.

7. Civil dispute going on—

If a civil dispute is going on for sometime and there is no likelihood of breach of peace, proceedings under S. 107 are uncalled for. In any case only one party cannot be bound down. 1934 Pesh. 21 = 35 Cr. L. J. 963.

8. Concurrent Proceeding under S. 107 and S. 145, Cr. P. C.

1. Proceedings under S. 107 are bad when injunction is issued under S. 144 with regard to the possession of land. 44 I. C. 391.
2. There can be concurrent proceedings under S. 107 and S. 145. 37 I. C. 481, 39 C. 469, 36 M. 315, 74 I. C. 719 Dist., 32 C. 966, 34 A. 449, 26 M. 471, 39 C. 150, 24 C. W. N. 1075.
3. It is very undesirable to continue proceedings under S. 107 and S. 145, and to act against both parties under S. 107. 27 I. C. 907.
4. When civil suit is pending, proceedings under S. 145 should not be started. 59 I. C. 643.

9. Consent of accused to be bound down.

1. There must be evidence on record to show that there is likelihood of the breach of peace. Mere consent of accused to be bound down is not sufficient. The order passed on mere consent is illegal. 54 I. C. 784, 54 I. C. 411, 24 P. R. 1915, 27 P. R. 1917, 65 I. C. 639 (2) = 1922 M. 349, 57 I. C. 672, 48 I. C. 985, 81 I. C. 198, 23 Cr. L. J. 175, *Cont.* 1927 A. 579 = 102 I. C. 897, 46 A. 109.
2. Consent of the party to be bound down does not debar him from applying in revision. 54 I. C. 411, 35 C. 674, 12 A. L. J. 1262.
3. Accused said that he was poor man and agreed to be bound down. Held, it was insufficient, where no evidence was recorded. 35 C. 674.
4. The question put to the accused was "Are you willing to execute the bond or want further inquiry." They replied that they would execute the bond. Held, it was not sufficient for an order under S. 107. 34 M. 139.
5. It is illegal to place a person on security merely on his consent. 1925 L. 135 = 25 Cr. L. J. 710, 24 P. R. 1915, 27 P. R. 1917.

Breach of peace—(contd.)

6. The Magistrate is bound to inquire whether the information which prompted him to issue notice, is correct. If the accused says it is correct or is prepared to break the peace, it amounts to plea of guilty and Magistrate can make the order absolute. 1935 Pesh. 116=36 Cr. L. J. 1212=157 I. C. 735, 1928 A. 270=50 A. 599=30 Cr. L. J. 6 Rel. on, 24 P. R. 1915 Cr., 27 P. R. 1917 Cr., 1925 L. 135=25 Cr. L. J. 710 Diss. from.
7. In order that a mere consent to execute bond may be a plea of guilty, the plea should be explicit, detailed, embodying that accused admits all the facts mentioned in the notice. 1935 Pesh. 116=36 Cr. L. J. 1212=157 I. C. 735, 50 A. 599 Foll. 24 P. R. 1915, 27 P. R. 1917, 1925 L. 135 Diss. from.

10. Dispute about land.

1. The fact that there was dispute about land does not oust the Magistrate's jurisdiction under S. 107. 39 C. 150, 27 I. C. 835, 65 I. C. 555, 60 I. C. 336, 47 I. C. 65.
2. If complainant is out of possession and there is no danger of breach of peace and unless he attempts to resume possession, his only remedy is under S. 145, Cr. P. C. or Civil Court and not under S. 107. 1923 N. 54=68 I. C. 407.
3. S. 107 applies to a case of undisputed possession. When possession is in dispute S. 145 should be invoked. 62 I. C. 590, 1922 P. 435, 25 C. 798, 133 I. C. 161.
4. In case of dispute about land, it is not proper to proceed against one party under S. 107. 1931 P. 347=131 I. C. 161=32 Cr. L. J. 1014.

11. Essentials and Evidence.

1. Mere bad feelings between two sections of a population is not sufficient to bind them. 126 P. L. R. 1911=43 P. W. R. 1911 Cr.
2. Magistrate must have some tangible evidence that a wrongful act is contemplated which if committed is likely to cause breach of peace. 56 I. C. 437.
3. An order under S. 107 is proper, if there is a probability of public peace being disturbed. 35 I. C. 173, 12 Cr. L. J. 493.
4. Proceedings under S. 107 are not bad merely because there was no overt act for six months before they began. 44 I. C. 122
5. Security cannot be demanded from a person inducing others to commit breach of peace. 4 P. R. 1912=125 P. L. R. 1912
6. Uttering Amen aloud in mosque at the time of worship is not sufficient to bind down a person under S. 107. 62 I. C. 830.
7. One party should not be bound down to give advantage to the other in a dispute of civil nature. 49 I. C. 642, 1927 P. 781=102 I. C. 781, 59 I. C. 374.
8. Order on extra judicial knowledge is bad. 36 I. C. 164, 56 I. C. 671.
9. An order under S. 107 without any enquiry is bad. 37 A. 30=26 I. C. 153, Dist. 46 A. 109=1924 A. 269=81 I. C. 238, 1927 A. 579=102 I. C. 897, 92 I. C. 882.
10. Where there is no evidence on the record to show that petitioner is likely to commit breach of peace, order under S. 107 will be set aside on revision. 195 P. L. R. 1912
11. The Court can consider previous relations, threats of parties and antecedent and existing circumstances. 9 I. C. 594.
12. Order under S. 107 cannot be based on hearsay evidence. 56 I. C. 864.
13. An order based upon vague evidence of generalities is bad. 3 L. L. J. 480, 1922 P. 209, 6 A. 25, 41 M. 246.
14. If dispute about claim to weigh grain in market is likely to cause breach of peace, S. 107 would apply. 1922 A. 430 (1)=68 I. C. 836.
15. Where a rival cattle market was intended, action under S. 107 is illegal, as they were doing a legal thing in their own land. 44 I. C. 965.
16. When object is lawful, the order under S. 107 is improper. 37 A. 33.
17. Tenants, who were merely boycotting the Zamindar's servant, cannot be bound down. 19 I. C. 334.

Breach of peace—(contd.)

18. Blowing conch in a religious place is lawful, but in any other place with a view to wound the religious feelings of Mahomedans is an act likely to provoke breach of peace. 33 A. 775.
19. Persons instigating the infliction of public thrashing must be bound down. 1922 N. 180=67 I. C. 346, 64 P. R. 1887.
20. Where wrongful acts are committed or threatened by a number of individuals, all are liable under S. 107. 59 I. C. 374.
21. Wrongful act means act forbidden by law. 56 I. C. 437.
22. Criminal courts cannot reopen the question of possession when given by Civil Court to auction purchaser. 1922 P. 197 (2)=66 I. C. 817.
23. If the person is doing a lawful act in lawful manner the fact that it injures the susceptibilities of persons of different faith is not sufficient under S. 107. 1932 L. 101.
24. Accused was arrested for having raised objectionable shouts in an excited crowd, collected in connection with picketing and there was nothing to show that breach of peace was likely. Held, that mere mental excitement is not sufficient under S. 107. 1931 L. 184=131 I. C. 205=32 Cr. L. J. 693 (2), 21 P. R. 1888 Cr.
25. A proceeding under S. 107 should contain definite particulars and not vague recitals borrowed from the words of the section. 1931 P. 347, 10 P. L. T. 639.
26. Holding on one's land *Hat* on the same day as rival *Hat* does not fall under S. 107, Cr. P. C., unless there is wrongful act. 1934 P. 104=35 Cr. L. J. 1057=150 I. C. 118, 11 C. W. N. 79=4 Cr. L. J. 433, + C. W. N. 226 and 13 Cr. L. J. 511 and 1922 C. 569 Ref.
27. Competition in trade unless illegal methods are adopted is not a wrongful act. 1934 P. 104=35 Cr. L. J. 1057.
28. S. 107 does not apply when a person attempts to take peaceful possession. 1934 O. 179. *Case law reviewed.*
29. Threats of Sahukars to get the Zumundars imprisoned, as they would not pay their debts, is not sufficient for S. 107. 1933 L. 36=33 Cr. L. J. 915.
30. S. 107 is not to be used to prevent people from ventilating their legitimate grievances to the authorities or to debar them from collecting their debts or to prevent them from criticising the acts of public servant or to stop a propaganda which is not likely to lead to breach of peace. 1932 L. 101, 7 L. 482=1926 L. 683, 32 A. 571, 1929 L. 138 and 1931 L. 191=12 L. 457 Ref.
31. The information must be of clear and definite kind directly affecting the accused. It should disclose tangible facts and details, so that he may come prepared to meet. 1922 P. 97, 6 A. 26, 1921 P. 440 and not only a vague recital from the section. 1929 P. 67.
32. It must be proved by definite evidence of facts that a person is likely to do any acts specified therein. 1921 L. 183-184, 1926 L. 689, 1925 L. 135, 12 L. 457, 1920 N. 203.
33. Mere opinion of witnesses that accused is likely to do such acts is not sufficient. 1926 L. 689.
34. Mere use of threat of violence to the opposite party or having committed diverse acts of oppression is not sufficient. 1922 P. 209, 7 C. W. N. 32, *Cont.* 31 C. 350. *See* 1929 N. 328, 12 Cr. L. J. 104.
35. Mere existence of ill-will or enmity between parties is no ground. 1924 L. 243, 1922 C. 97, 1 Cr. L. J. 696.
36. The fact that there has been dispute and litigation between the parties, 17 Cr. L. J. 484, or they have been bringing false cases against each other or that they took different sides in Municipal election is not sufficient under S. 107. 4 Cr. L. J. 429, 1928 L. 863, 1922 C. 97.
37. All persons interested in the dispute cannot be bound down indiscriminately. *Case* against each person must be proved. 1922 C. 97, 9 A. 432, 34 A. 463, 49 I. C. 682.
38. Where a civil dispute had been going on for sometimes between the parties and there

Breach of peace—(contd.)

- was no likelihood of breach of peace, security proceedings are uncalled for. 1934 Pesh. 21.
39. Proceedings can be drawn up against persons who are likely to be abettors. 6 A. 26, 38 I. C. 758, 11 Cr. L. J. 719, 1922 N. 80.
 40. In case of civil dispute, only one party cannot be bound down. 1934 Pesh. 21.
 41. Where wrongful act is threatened to be committed by a number of persons, all are liable. 59 I. C. 374=1920 P. 687.
 42. A person cannot be bound over merely because his agents, servants or partisans are likely to break the peace. 10 C. L. R. 430, 11 Cr. L. J. 719, 1 Cr. L. J. 696.
 43. Mere fact that accused and others had quarrelled among themselves and assaulted each other is not enough. 1884 A. W. N. 54.
 44. Accused instigated the throwing of stone at a theatre. Held, he should be prosecuted. But presumption as to future conduct cannot always be drawn (1897.—1901) 1 U. B. R. 16.
 45. An order under S. 107 should not be made when all fears of breach of peace is over when the order is to be made. 7 Cr. L. J. 232, 1927 P. 231.
 46. Mere fact that a person was likely to commit breach of peace in the past is no ground. 1927 P. 231, 26 A. 190 (1876) 2 Weir 49, 1884 A. W. N. 54.
 47. Court should take into consideration the utterance of threats by a party on different occasions, as well as the previous relations of parties and antecedents and other existing circumstances. 12 Cr. L. J. 104, 31 C. 350. See 1929 N. 328.
 48. A *rightful* act cannot be made the subject of proceedings under S. 107 although it may provoke a breach of peace. S. 107 is to be used to protect persons exercising lawful rights and not to interfere with them. 1932 L. 101, 1934 O. 179, 1934 P. 105, 34 C. 935, 14 B. 25, 7 A. 461, 1926 L. 695, 39 I. C. 480, 25 I. C. 989.
 49. Wrongful acts mean act forbidden by law. 1920 P. 550, 1928 C. 438, 35 A. 775, 1934 O. 179, 37 A. 33.
 50. *Bona fide* exercise of the right to go in procession or blowing of a conch in connection with a ceremonial act does not fall under S. 107. 37 A. 33, 7 Cr. L. J. 504, 13 Cr. L. J. 170.

12. Fresh Proceedings.

1. Fresh proceedings are not competent on same facts which resulted in the discharge. 41 M. 244=31 I. C. 990.
2. A court passing an order of discharge cannot re-open the same case but there is no bar to second case. 1923 A. 332 (2)=71 I. C. 696=24 Cr. L. J. 232.

13. Joint trial.

1. Joint trial of two hostile factions is bad. 33 I. C. 645.
2. There must be definite evidence in case of every man charged under S. 107. 38 A. 468=35 I. C. 832.
3. It is highly unfair to proceed against persons jointly unless it is quite clear that they form a gang. The case of each person has to be considered separately and this is not effectual if trial is joint. 1924 A. 195=81 I. C. 600.
4. A joint trial of two persons not being contending parties, is legal. 1923 A. 476.

14. Jurisdiction.

1. Temporary residence is sufficient to give jurisdiction to Magistrate for acting under the section. 59 I. C. 413, 23 B. 32, 39 A. 139.
2. A casual visitor can be bound down. 36 M. 96, 24 C. 344, 39 A. 139, 98 I. C. 109=1927 Sind 59, 49 I. C. 165, 43 C. 153, 35 I. C. 495. *Cont.* 27 C. 993 and 12 P. R. 1901.
3. Persons living outside the limit cannot be bound down. 6 A. 26 (F. B.), 14 A. 49, 23 B. 32, 11 C. 737, 12 C. 133, 1922 C. 97=71 I. C. 694, 59 I. C. 413, 64 I. C. 666, 1922 Pat. 209=77 I. C. 417, 26 M. 592.

Breach of peace—(contd.)

4. A person who left the jurisdiction of Magistrate before issue of notice cannot be bound down. 14 P. R. 1889, 6 A. 26 F. B. See 1922 A. 337 (1)=67 I. C. 348.
 5. A Magistrate cannot order a man to leave a village under threat of prosecution. L. R. 2 A. (Cr.) 165.
 6. It is only the Chief Presidency Magistrate or District Magistrate who can take proceedings when either the person informed against (who left the place) or the place where breach of peace is apprehended is not within Magistrate's jurisdiction. 68 I. C. 407=1923 Nag. 54.
 7. Magistrate cannot pass orders under S. 107 when proceedings were instituted under S. 145. 36 I. C. 495.
 8. A first class Magistrate at Headquarters has jurisdiction over entire district, unless restricted to particular local area. 29 C. 389, 37 C. 91, 63 I. C. 873.
 9. A Subordinate Magistrate who has no local jurisdiction can try a case sent by a superior Court before whom it was instituted. 31 C. 350 (354) 24 A. 151, 29 C. 389, 37 A. 20. *Cont.* 41 M. 246.
 10. But the case cannot be transferred before legally initiated. 41 M. 246, 47 I. C. 377, 1923 M. 188=69 I. C. 433, 1922 P. 209=77 I. C. 417, 1925 M. 189.
 11. Jurisdiction under Chapter XII (S. 145) is no bar to proceedings under S. 107. 39 C. 150 (F. B.), 32 C. 966, 34 A. 449, 28 A. 406, 26 M. 471, 24 M. 364, *Cont.* 35 C. 117, 25 A. 537, 25 C. 559.
 12. A Magistrate has jurisdiction to carry on proceedings started by his predecessor. 4 C. L. 452, 29 C. 389.
 13. It cannot be said that a person is within the local limits of the Magistrate's jurisdiction only because he is present in Court, when the Magistrate draws up proceedings under S. 112, having appeared in obedience to summons issued by a Magistrate. 136 I. C. 72=1932 A. 162=33 Cr. L. J. 230=1932 A. L. J. 211.
 14. A sub-divisional officer has no jurisdiction to start proceedings under S. 107 against a person residing outside his jurisdiction. 1935 P. 131 (1)=154 I. C. 873, 6 A. 26, 11 C. 737, 12 C. 133 and 23 B. 32 Ref.
 15. If the person proceeded against and the place of apprehended breach are within the jurisdiction, the proceedings are legal. 1934 M. 255=35 Cr. L. J. 626.
- 15. Master's Liability.**
1. Where a dispute exists between two Zamindars, their servants cannot be bound down only because they are interested in their masters. 24 Cr. L. J. 230.
 2. Where a Panda sends his armed servants to procure pilgrims and this led to contest with rival Pandas, action under S. 107 is justified. 1 P. L. J. 361, 38 I. C. 758.
 3. A non-resident Zamindar cannot be bound down, merely because his local agents are committing acts likely to cause breach of peace. 10 C. L. R. 430.
- 16. Nature of Proceedings.**
1. A person proceeded against under S. 107 is not an accused person. 6 P. R. 1911 Cr., 149 P. L. R. 1915.
 2. S. 350 (1) Proviso (a) applies to a case under S. 107. 43 M. 511=56 I. C. 50.
 3. Order requiring security is not a conviction. 1921 P. 74=59 I. C. 905.
 4. Compensation under S. 250, cannot be awarded to the person against whom proceedings have been dropped. 25 B. 48, 16 P. R. 1893, 33 P. R. 1902, 36 A. 382.
 5. The proceedings under S. 107 are preventive and not punitive. 1932 L. 101, 12 L. 457.
 6. An application under S. 107 is not a complaint. 53 A. 146=1931 A. 53.
- 17. Notice.** See Security for good behaviour. S. 110., Cr. P. C.
- 18. Preliminary inquiry.**
1. There is no provision for making preliminary inquiry under Chapter VIII, Cr. P. C., by the Police. The case can be started on credible information from a Police officer or private person. 1932 B. 196=34 Bom. L. R. 258=33 Cr. L. J. 797.

Breach of peace—(concl'd.)

2. In case of preliminary investigation, the accused had the right to obtain copies of statements of witnesses. 34 Bom. L. R. 258=1932 B. 195=33 Cr. L. J. 797.

19. Procedure.

1. In case of landed proprietors, their personal security is sufficient. If both sides are dangerous they should be bound down. 63 I. C. 829.
2. Omission to set forth substance of information in an order under S. 112 is mere irregularity. 64 I. C. 666.
3. A case under S. 107 is triable as summons case and the deposition must be read over. 43 I. C. 585=(1918) P. 13.
4. District Magistrate cannot order re-enquiry in a case under S. 107 or 145, when dismissed by a Magistrate. 39 I. C. 328, 24 C. 391.
5. Proceedings under S. 107 can be transferred by the High Court. 41 C. 719.
6. Proceedings initiated by District Magistrate can be transferred by him to some other Magistrate. 45 I. C. 160, 31 C. 150, *Cont.* 41 M. 244, 13 C. W. N. 80.
7. But cannot transfer it to a 2nd Class Magistrate. 37 A. 20.
8. Proceedings under S. 107 transferred to some other District, it is the District Magistrate of the latter District that can act under S. 125. 50 I. C. 817=23 C. W. N. 958.
9. Possession of disputed property cannot be taken under S. 107. 1934 N. 142.

20. Revision.

1. When the Magistrate has discharged the accused under S. 107, Cr. P. C., Sessions Judge has no jurisdiction to set aside an order of discharge and direct further inquiry. He can only report the case to High Court under S. 438, Cr. P. C. 53 A. 148=1931 A. 53=32 Cr. L. J. 570.
2. In an appeal against an order under S. 107, *denovo* trial cannot be ordered. 1934 M. 202 (1)=34 Cr. L. J. 947.

21. When opposite party does legal thing.

When a party creates a disturbance in consequence of his opponent doing a legal thing and there is some difficulty in finding as to which party is at fault, the party appearing to be in default should be restrained under S. 107. Promulgation of an order under S. 144 will leave the dispute likely to recur in some aggravated form after some time 1935 P. 461.

BREACH OF TRUST. Ss 405 to 409, I. P. C.

1. Abetment.

1. When an offence of embezzlement was completed a subsequent help to conceal it is no abetment. 1928 L. 382=112 I. C. 850.
2. A treasurer put in his *gomashita* D. in his place with the consent of the bank and continued to receive pay from the bank. D misappropriated certain monies and absconded. The treasurer also received one of those sum. Held, that he was guilty of abetment of the act of his servant. 30 P. R. 1868 Cr.
3. Where the accused to whom a thing was not entrusted, was present and helped the other accused in pledging a pledged property, knowing that other person had no right to pledge it, was guilty of abetment of criminal breach of trust. 23 M. L. J. 722=12 M. L. T. 203=15 I. C. 85.

2. Accounts. See—41.

1. Mere wrong account and wrong entry do not by themselves prove criminal breach of trust. 1930 O. 324=125 I. C. 684=32 Cr. L. J. 1031.
2. Appropriation of money drawn from Bank for payment of a particular bill, towards payment of another bill due to the same person is at the most violation of account rules and is no offence. 1930 O. 324=31 Cr. L. J. 1031.

3 Acts constituting trust—"Entrustment."

1. A trust is an obligation annexed to the ownership of property and rising out of confidence reposed in and accepted by the owner or declared and accepted by him

Breach of trust—(contd.)

- for the benefit of another or of another and the owner. S. 3, Indian Trust Act, II of 1882.
2. It includes persons whose position is analogous to those of trustees, e. g., Partners. 21 W. R. 59, 35 C. 1103, 10 P. R. 1903 Cr., 1920 M. W. N. 346.
 3. Complainant left his flock of sheep with accused to prevent their attachment in execution, some of which were misappropriated. Held, that illegality of trust offered no defence to this charge. 1 Weir 463.
 4. Money paid to accused to purchase paddy to be sold at the market rate on the date of delivery and misappropriated by accused is not a trust but was only an advance. 17 I. C. 824, 19 I. C. 145, 23 I. C. 492, 24 I. C. 332.
 5. Where the relation between the parties are that of banker and customer, there is no trust. 32 P. R. 1901 Cr., 95 P. R. 1885.
 6. But where Banker enters into a contract of special nature to keep a certain sum intact and distinct from his capital in trade, it is trust, e. g., defalcation of Government money by Battery Shroff. 19 P. R. 1903 Cr.
 7. A Booking Clerk recovered in excess of legal charge but did not credit to Railway. Held, not guilty as there was no trust. 1923 L. 295 (1) = 24 Cr. L. J. 879.
 8. Complainant paid off a debt due to accused on condition that accused will return the bond, who subsequently denied payment, held, that there was no trust. 49 I. C. 343 = 22 C. W. N. 1005.
 9. Where goods were delivered to person for sale and accepted, there is no question of trust and the denial of the receipt of goods does not make him guilty under S. 406. 1924 M. 516 = 72 I. C. 172.
 10. Prosecution must prove that a trust had been created and accused violated trust. 1923 L. 321 = 85 I. C. 839.
 11. In a case of theft the original taking is without honesty and without the consent of the owner, but in a criminal breach of trust the original taking is with honesty and with the consent of the owner, while in cheating the taking is dishonest but with the consent of the owner and in criminal misappropriation the taking is honest but without the consent of the owner. 106 I. C. 678.
 12. If prosecution failed to prove how accused came by that money, it cannot be said that he was entrusted with money. 65 I. C. 1004 = 25 C. W. N. 838.
 13. A person taking loan is not entrusted with property. 32 P. R. 1901 Cr.
 14. Goods were entrusted to the accused to sell and obtain money. Held, that although accused did not receive money from the complainant, yet he was "entrusted with" it within the meaning of S. 405. 1928 B. 521 = 114 I. C. 399.
 15. Money advanced to broker for supply of articles is a trust. 15 Cr. L. J. 452.
 16. Where money was paid for a particular purpose to a person, who on the purpose failing appropriated the sum towards a debt due to him, no offence is committed. 1926 A. 298 = 92 I. C. 895.
 17. This section does not apply to misappropriation of sale proceeds of a property entrusted to an auctioneer. 41 C. 844. See 1932 Sind 169.
 18. Property means moveable property. 23 C. 372, 1930 R. 158 = 8 R. 13, 1925 A. 673.
 19. A Municipal Water Works Inspector has dominion over the water belonging to Municipality, and as such if he misappropriates water for his own use is guilty. 35 A. 361.
 20. Where money was advanced in pursuance of a contract, and no entrustment of a fiduciary form, breach of contract would be of civil nature. 96 I. C. 501.
 21. Taking jewellery on approval on understanding that accused can retain them if he pays full value, the subsequent disposing it off without payment is a criminal breach of trust. 1924 C. 816 = 51 C. 796 = 82 I. C. 163.
 22. It is not necessary that accused should have taken some tangible property, say cash. It is sufficient if amount is transferred from the account of another to his. 1926 L. 385 = 93 I. C. 599 = 27 Cr. L. J. 1383.

Breach of trust—(contd.)

23. Accused took advance from a firm on promise to buy only partly and supply it to the firm and the value to be credited to the loan held that it was a loan and not a trust. 14 I. C. 653.
24. Commission paid to a Vice President for ordering goods for Municipality is not a trust. 1926 R. 171=4 R. 125=97 I. C. 64=27 Cr. L. J. 1055.
25. Trust may not be in furtherance of lawful object, e.g., stake holder. 1927 N. 225=101 I. C. 890=28 Cr. L. J. 506.
26. The word "entrusted" is used in its legal and not figurative sense and means that the money remains in the possession and control of accused as a bailee to be restored to the prosecutor or applied in accordance with his instructions. 1928 Sind 106=108 I. C. 663, 1936 M. 353=37 Cr. L. J. 637.
27. The section does not apply when right to property is disputed and claimed by third person. 29 C. 362.
28. Entrustment of goods creates trust on sale proceeds as well. 1932 Sind 169=34 Cr. L. J. 51=140 I. C. 647. See 41 C. 844.
29. It is immaterial how accused became entrusted with the property, viz., whether by cheating or by consent. 1936 M. 353=37 Cr. L. J. 637 (*case law discussed*). 1923 M. 597, 13 Cr. L. J. 15 Foll. 1936 M. 1=37 Cr. L. J. 142.
30. "Entrustment" is handing over possession for some purpose without any proprietary right. 1936 M. 1=37 Cr. L. J. 142.
31. When goods or property is delivered under trust, the sale proceeds of property entrusted are also subject of the trust. 1932 Sind 169, 1928 B. 521 and 1928 M. 597 appx. 41 C. 844, 1927 R. 140, 1928 Sind 106 and 15 Cr. L. J. 452 Diss.
32. "Entrusted" is not used in the technical sense of trust. 1930 O. 401.

4. Breach of contract or trust.

1. Where a public servant being entrusted with money for buildings, obtains material gratis and appropriates sums as price of the material, he is guilty. 1925 P. 414=4 P. 488, 86 I. C. 459.
2. If a person pledges the property pledged to him, he is guilty. 13 Burma L. R. 286 but not in the absence of contract. 71 I. C. 58=1922 O. 280.
3. Retention of money by Pleader is not in every case a criminal breach of trust, retaining money for free which is time barred is no offence. 1924 N. 47.
4. Misappropriation may be effected by mere mental act to be proved by some overt act 36 P. R. 1889.
5. Refusal to allow removal of a box by the complainant left with the accused unless a debt due to the latter was cleared up is no offence 17 M. L. J. 413.
6. Disposing of article purchased on hire-purchase system without paying the last instalment is criminal breach of trust. 45 A. 588, 17 B. L. R. 670, 24 I. C. 161, 30 I. C. 649. But not after the decree of Civil Court. 40 I. C. 728.
7. Where the agreement in question was by way of wager, conviction under S. 406 in violation of an express or implied legal contract is not maintainable. 1927 M. 425=100 I. C. 989. See 1927 N. 225=101 I. C. 890=28 Cr. L. J. 506.
8. But trust may not be lawful. A stake-holder cannot say that there was no legal contract to pay the stakes over to the winner. 1927 N. 225=101 I. C. 890=28 Cr. L. J. 506.
9. Mere breach of contract is not criminal. 6 L. B. L. 62, 7 L. B. R. 16.
10. Where in a scheme suit, accused who was accountable to certain sum of money was ordered to pay the amount, he is not guilty of the breach of trust. 1926 M. 535.
11. If there is a contract that accused is to render account at a particular place and fails to do so, he is guilty. 1925 C. 613=85 I. C. 213=26 Cr. L. J. 725.
12. When a person is bound to account for money received and does not, he is guilty. (1909) U. B. R. P. C. 21.

Breach of trust—(contd.)

13. Where accused was entrusted silver to make silver ornaments and introduced copper, he was guilty under S. 406. 4 B. II. C. 16.
14. Deterioration of turban by use, being not a loss of property to the owner, constituted no offence. 10 Bur. L. R. 249.
15. Criminal breach of trust with regard to one's own property can be committed. 72 I. C. 612=1923 M. 597. *Cont.* 24 I. C. 332.
16. Where a Sapurdar was entrusted with property attached in execution, did not produce it at the time of sale and evaded notice was not guilty under S. 406. 47 I. C. 875.
17. Mere failure to account is not sufficient. L. R. 2 A. (Cr.) 50, 1926 M. 535.
18. A person obtaining property for one purpose, and using it for another, is guilty under S. 406. 51 I. C. 173 *Cont.* 23 I. C. 492.
19. Prosecution is not bound to prove mode of misappropriation. 16 Cr. L. J. 665.
20. A broker appropriating a part of money entrusted to him for payment to a firm, in lieu of brokerage, is not guilty. 38 I. C. 997.
21. Tenant paid Rs. 90 as rent, and the landlord appropriated Rs. 25 for *abwab*. No offence is committed. 15 I. C. 656.
22. When Agent is entitled to adjust collections towards remuneration and no period is fixed for deposit of balance in treasury, mere retention is no criminal breach of trust. 56 I. C. 669.
23. A person receiving a sum of money and not paying it to the person authorized to receive them for over a year, must be presumed to have converted it to his own use. 1923 L. 566, 40 I. C. 303.
24. If the accused has some claim to the property held by him, is not guilty, even if the claim is not sustainable in law, unless it is a pretence. 28 C. W. N. 831.
25. Money paid for a particular purpose and on purpose failing, accused appropriated it towards a debt due to him, there is no offence. 1926 A. 298=27 Cr. L. J. 383.
26. Mere delay in making remittance to Head Office is not conversion to one's use. 106 I. C. 862.
27. Goods were entrusted to accused under a contract to sell and held money for owner but failed to account. Held guilty. 114 I. C. 399=1928 B 521, 41 C. 844.
28. Property entrusted for a particular purpose, is converted to one's own use. Offence under S. 406 is clear. 1928 O. 277=112 I. C. 103=29 Cr. L. J. 983.
29. *Bona fide* return of property to the brother of depositor does not come under S. 406. 1929 Sind 119=117 I. C. 157=30 Cr. L. J. 735.
30. Accused sold jewellery taken on approval without paying the sum due on it to the firm, is guilty under S. 406. 51 C. 796=1924 C. 816=25 Cr. L. J. 1235.
31. The sum misappropriated must be definite sum. 1925 C. 26=82 I. C. 369.
32. Mere retention of money or failure to return does not raise a presumption of dishonest misappropriation. 1930 P. 209, 1930 O. 321, 1930 M. 507.
33. A person was entrusted with the management of property and get 3/5 for himself and to spend 2/5 for charities. If it can be proved that he converted to his own use any portion of 2/5 he is guilty. 126 I. C. 395=1930 O. 401.
34. Accused setting up a claim that the property alleged to be entrusted to them was their own, are guilty under S. 406. 29 I. C. 671=16 Cr. L. J. 543.
35. Transfer of certain amount from another's account to one's own constitutes the offence. 1926 L. 385=27 Cr. L. J. 1383=98 I. C. 599.
36. Mere breach of contract is not synonymous with criminal breach of trust. The property must be held in trust. 17 I. C. 824=13 Cr. L. J. 888.
37. Accused got money on condition that he would buy a car, sell it and return money with half profit. But he used it on other purpose. He is guilty under S. 406. 23 I. C. 492=15 Cr. L. J. 284.
38. If a person obtains property for one purpose and uses it for another, he is guilty under S. 406. 51 I. C. 173=20 Cr. L. J. 413.

*Breach of trust—(contd.)***5. Burden of Proof.**

1. Where a property is entrusted to a servant, it is the duty of the servant to give a true account of what he does with it and if he cannot give account reasonable inference is that he misappropriated it. 2 R. 478=84 I. C. 331=1925 R. 47.
2. The accused may not be able to prove that he got cows from complainant's son on a letter or by sale, yet the burden of proof of trust is on the prosecution. 1923 L. 321=26 Cr. L. J. 615=85 I. C. 839.
3. Burden of proving the manner of misappropriation is not on the prosecution. 30 I. C. 649.
4. The onus is on prosecution to prove that money was paid in trust and that it was not so applied. 1928 L. 382=112 I. C. 850=30 Cr. L. J. 18, 1933 C. 800.
5. The initial burden is on prosecution to prove receipt of amounts by accused and then it is for accused to show that he has not converted it for his own use. 1927 C. 409=101 I. C. 597=45 C. L. J. 207=23 Cr. L. J. 469.
6. Accused admitting receipt of money but pleading payment to proper persons, the onus of proving misappropriation or non-payment is on prosecution. 1934 Sind 22. 1928 L. 382 and Rat. Un. Cr. C. 872. Rel. on.
7. Accused's failure to prove the case set up by him relieves prosecution of its duty to prove entrustment. 1923 L. 321=26 Cr. L. J. 615.
8. Prosecution is bound to prove how accused got money. 65 I. C. 1004.
9. Entrustment and misappropriation of definite sum must be proved by prosecution. 42 A. 522.

6. By accountant.

Accused an accountant in the Municipality, put up a cheque drawn to himself for the Chairman's endorsement who was ignorant of English and persuaded him that they were for contractors, and drew money from the sub-treasury. Held, he was not guilty under S. 409 as he was not entrusted with the Municipal funds. 1931 M. 439=131 I. C. 461=32 Cr. L. J. 756=1931 M. W. N. 399.

7. By Agent.

1. Where agent was entitled to deduct his remuneration from collections and no period was fixed for payment into treasury, no offence is committed. 56 I. C. 669.
2. A person making purchases for a firm on commission is a servant within the meaning of S. 408. 51 I. C. 673.
3. The agent of the landlord was incharge of Court cases and had to deposit land revenue in treasury. He misappropriated part of money sent to him for paying land revenue. He is guilty under S. 409. 22 C. 313.
4. A manager of a temple is an agent of the Deity and as such punishable under S. 409 for breach of trust of temple property. 1 Weir 432.
5. Accused entrusted with jewellery for sale, pledged it to a money-lender. The Court on conviction of the accused, cannot order the return of the jewellery to the complainant. 65 I. C. 1000, 1932 R. 68 (1)=138 I. C. 831.
6. Where a charge of criminal breach of trust is made against an agent of a trader, with general authority to expend the monies, it is in rare cases in which it is sufficient to charge him for net balance. It is a civil matter. 42 A. 522.
7. If there is running account between the principal and agent and no final settlement has taken place, a prosecution for general deficit does not lie, though it can be with regard to a particular, specified and certain sum. 9 Mys. L. J. 385, 29 Cr. L. J. 407 Dist.
8. If it be the duty of agent to keep the collections he makes for his master separately from his own moneys, expending thereout moneys on his master's behalf, and handing over balance, he is guilty if he converts money to his own use. And where a landowner permits the agent to mix collections with his own moneys and if he applies money to his own use and falsifies account, the agent is criminally liable. 3 N. W. P. H. C. R. 30.

Breach of trust—(contd.)

required the same to collect money from the debtors with the aid of which he would pay cash to the complainant. The accused disposed of the notes in violation of this contract. Held, he was guilty. 45 M. L. J. 133=1923 M. W. N. 213.

4. Where the accused to whom the thing was not entrusted was present and helped the other accused in pledging it knowing that he had no right to pledge, was guilty of abetment. (1871) 6 M. H. C. app. 28. 13 B. L. R. 286.
5. Accused entrusted with certain jewellery for sale, pledged it to a money-lender, the Magistrate convicting him ordered the return of jewellery to the complainant. Held, that the order was illegal. 65 I. C. 1000.
6. Accused who was entrusted with some ornaments about 4 years previously pawned them. The owner never took any interest in them for that period. Due to quarrel she demanded back the ornaments. Held, that no offence under S. 406 was proved. 1935 R. 361.
7. If a Railway servant to whom water proof is supplied on condition that it will be renewed if damaged or lost, pawns it, he is guilty under S. 408 if he pawns it. 1934 R. 41=35 Cr. L. J. 788, 6 L. B. R. 62 Dist.
8. A pledgee of turban is not guilty if he wears it. 3 M. H. C. Ap. 6=1 Weir 460. (Dist. 6 C. W. N. 203).
9. Neither sub-pledge in the absence of contract to the contrary nor denial of pledge in the statement proves dishonest intention. 1922 O. 280=24 Cr. L. J. 10.
10. Complainant pawned ornaments with accused. He returned money but accused promised to return ornaments next day but refused. Held, guilty. 1936 C. 673.

22. By Postal servants.

1. Where a postman did not pay money to the payee of money order and put his own thumb impression on the receipt but after two months when enquiries were made, he paid the money and took receipt of the payee. Held, he was guilty under S. 409. 50 M. 462=1927 M. 696=27 Cr. L. J. 1251.
2. A sub-postmaster took V. P. P. addressed to him and also the Railway Receipt and obtained delivery of goods, but in order to pay off payment manipulated the Register, a sentence of one year's rigorous imprisonment and a fine of Rs. 100 was adequate. 52 M. 534=1929 M. 447=118 I. C. 496=30 Cr. L. J. 929.
3. A post office clerk delivered some V. P. Ps. and receiving money therefrom kept it for more than a week with him and gave a false explanation that money was received till then. He made entries that the articles were still not delivered, long after they had been delivered. Held, it amounted to denial of the receipt of money, and amounted to criminal breach of trust. 5 P. 578=94 I. C. 355=1926 P. 299.
4. Where a postmaster handed over a V. P. letter to the addressee without getting payment on 20th October 1925 and then altered his register to show that he only handed over the letter on 24th October 1925. The accused was guilty under Ss. 409—477-A. 1927 M. 626=102 I. C. 488=28 Cr. L. J. 552.

23. By President, Co-operative Society.

1. A President of Co-operative Society drew money and instead of paying to Society retained it himself with the consent of other members. It is doubtful if offence is committed. 12 L. L. J. 165=1930 L. 1045=129 I. C. 286.
2. A treasurer of the Co-operative Credit Society satisfied a decree against him by making a deposit entry in favour of his creditors. Held, that the fraudulent action of the decree holder did not earmark the money and nothing was misappropriated. 1934 L. 843.
3. A supervisor of a society debited Rs. 2 as the pay of a sweeper woman by taking thumb impression of his nephew and certified it to be that of the sweeper and appropriated the amount himself. Held, he was guilty under Ss. 408, 467 and 477-A. 1935 I. 30=36 Cr. L. J. 522, 1932 B. 545=56 B. 488 and Cr. Appeal No. 525 of 1930 (Bombay) Ref.
4. Chairman of Co-operative Society is not a public servant. 36 Bom. L. R. 1133.

24. By President, Municipal Committee.

A President of Municipality purchasing some articles for the Municipality and taking

Breach of trust—(contd.)

brokerage from vendor is not guilty under S. 409, Cr. P. C. 4 R. 123=97 I. C. 64.

25. By Public servant. S. 409, I. P. C. Sec—27.

1. Intention to restore money negatives dishonesty. 39 P. L. R. 1902.
2. A public servant entrusted with money for building purposes obtains material gratis and appropriates the price of material is guilty. 1925 P. 414=4 P. 488=86 I. C. 459=26 Cr. L. J. 811.
3. Mere retention of money by a Revenue Patel in the absence of dishonesty is no offence. 10 B. 256, 127 I. C. 237, 1930 M. 507, 1930 P. 209=31 Cr. L. J. 249.
4. Police constable entrusted with protection of money by a traveller, is guilty if he misappropriates. 24 P. R. 1876 Cr.
5. Commission paid to Vice-President for ordering goods for Municipality is no offence under S. 409, for there is no trust. 1926 R. 171=4 R. 123=97 I. C. 64.
6. Parcel clerk denying receipt of money for V. P. article and making false entry in Register is guilty under S. 409. But the postmaster initialling the same is not. 1926 P. 299=94 I. C. 355=5 P. 578=27 Cr. L. J. 611.
7. Non-payment of money collected by an Amin for a long time amounts to misappropriation. 1925 M. 727=95 I. C. 943=27 Cr. L. J. 863.
8. If a public servant does not include money received by him in the Cash Register and does not hand over money to the successor is guilty under S. 409. 1926 O. 398=94 I. C. 205=27 Cr. L. J. 589.
9. Postmaster handing over V. P. letter without getting payment and then altering account after 4 days is guilty under Ss. 409 and 447 (a). 1927 M. 626=102 I. C. 488=23 Cr. L. J. 552=50 M. 462.
10. Government servant failing to remit money in treasury, no proof of personal advantage. No offence without dishonest intention. 1923 B. 205=111 I. C. 730=29 Cr. L. J. 922.
11. If property under the control of public servant disappears and his conspiracy is proved, conviction is legal. 1925 O. 469=26 Cr. L. J. 1217.
12. If a public servant does not hand over to his successor money in his hands due to Government, as shown in Register that is a strong *prima facie* proof of embezzlement. 23 L. W. 718. 1926 O. 398=27 Cr. L. J. 598.
13. A head constable finding stolen property entered into an agreement with the accused and entered the case as untraceable. Held, he was guilty under S. 409. 1935 N. 139=36 Cr. L. J. 867, 1931 R. 294, 37 M. 55 and 39 M. 781 Ref.
14. Breach of regulation by superior officer is no defence in a charge of breach of trust by public servant. 1934 L. 677. 1923 A. 480 Rel. on.
15. Accused was in charge of goods. Shortage in goods and falsification of account was proved. Held, he was guilty. 1933 A. 356=55 A. 426.
16. Court will not be strict in matter of bail in case under S. 409, though punishable with transportation. 1933 B. 492.
17. The mere act or intention to deprive the master of his property for sometime is the gist of offence. 1936 P. 350, 1930 P. 209; 1925 L. 411 Ref. 8 Bom. L. R. 951 Foll.
18. A Sanitary Inspector appropriating sale proceeds of unauthorised sale of night soil is guilty under S. 409. 45 A. 261=1923 A. 480.
19. A public servant omitting to enter receipt of money in the office account is guilty. 1926 O. 398=27 Cr. L. J. 589.
20. Accused can be convicted under S. 409 on proof of deficiency in account. 18 A. 116.
21. It is not necessary to prove in what manner money was misappropriated. 1934 C. 522=35 Cr. L. J. 1279=151 I. C. 22.
22. A chairman of Co-operative Credit Society is not a public servant. 36 Bom. L. R. 1133.
23. Manager, Court of Wards, cannot be prosecuted without the sanction of Court of Wards. 1931 P. 86=32 Cr. L. J. 555.
24. It is not open to accused to put a defence that the prosecution have failed to prove

Breach of trust—(contd.)

embezzlement of particular sum with which he is charged, although they have succeeded in proving other sums. 1936 L. 907.

26. By Sapurdar regarding attached property.

1. Where a Sapurdar was entrusted with property attached in execution and did not produce it at the time of sale and evaded notice, he was not guilty under S. 406. 47 I. C. 875.
2. A deliberate refusal to produce the property attached and given to him for safe custody amounts to repudiation of trust and he is guilty under S. 406. 1935 L. 31 = 152 I. C. 513 = 36 Cr. L. J. 119, 47 I. C. 875 = 19 Cr. L. J. 975 Ref.
3. If there is no refusal but the Sapurdar simply evaded service, he is not guilty under S. 406. 47 I. C. 875 = 19 Cr. L. J. 975.
4. Where attached property is entrusted to a custodian, the mere existence of sapurdama of a stipulation that on failure to produce the property he will be liable to pay a stated sum as price does not necessarily absolve him from criminal liability for misappropriation. 48 A. 288 = 1926 A. 302 = 27 Cr. L. J. 297 = 92 I. C. 585.
5. Where the Sapurdar brought the cattle to Tahsil and was willing to produce them, he was not guilty. 1933 L. 235 (1), 19 Cr. L. J. 975 = 47 I. C. 875.

27. By Servant or Clerk. S. 408, I. P. C.

1. Where a clerk in the service of an estate is authorised to receive money on its behalf and to pay in the Treasury, and is misappropriation by him, he is guilty. 58 I. C. 824.
2. Water-tax Inspector misappropriating water for his own use and for his tenants, is guilty of offence under S. 408. 35 A. 361.
3. Person employed by a Station Master to mark and load goods and paid out of allowance by the Company is not guilty under S. 408 if he recovers an overcharge and misappropriates it. 40 A. 565 = 47 I. C. 367.
4. A servant of the firm getting money from the Manager on the pretence that it is required for coolies is guilty under S. 408 if he misappropriates it. 13 I. C. 108.
5. Retention of money by servant or clerk for 15 months throws doubt on his *bona fides*, though it is not conclusive evidence of misappropriation. 40 I. C. 303.
6. A person working on commission is a servant. 51 I. C. 673 = 20 Cr. L. J. 513.
7. A servant cannot in order to defraud him set up breach of his master's regulations in his own favour. 1923 A. 480 = 76 I. C. 971 = 25 Cr. L. J. 299.
8. Postmaster paying less than due under cash certificate and appropriating the balance is guilty under S. 409, I. P. C. 42 A. 204 = 55 I. C. 476, 10 B. 256 N. P.
9. A booking clerk received in excess and did not credit it to Railway. Held not guilty. 1923 L. 295 (1) = 75 I. C. 79 = 24 Cr. L. J. 879. 40 A. 565.
10. A Railway Claim Inspector selling goods to a claimant and not crediting it to Railway is guilty under S. 403 and not S. 408. 99 I. C. 593.
11. Servant failing to apply the sum, entrusted to him by the master, as directed, is guilty under S. 408. 1928 B. 557, 114 I. C. 399.
12. If a servant fails to return the property or account for it or gives a false account, he is guilty. 1925 R. 47 = 2 R. 476 = 26 Cr. L. J. 267.
13. A tonga driver used to pay the daily earning to the master every day but drove the Tonga 40 miles away to deprive him of it, is guilty under S. 408. 1925 L. 411 = 88 I. C. 461 = 6 L. 257.
14. Presumption of criminal misappropriation can be raised against a servant failing to properly account for money under Ss. 106/114, I. E. Act. 1925 R. 47 = 84 I. C. 331.
15. A servant was authorised to receive money for his employer and to account to him the same evening. He received three sums on three different days but neither accounted for nor paid them over. Held, he was guilty although he never denied receipt of them. 5 P. 578 = 1926 P. 299 = 27 Cr. L. J. 611 = 94 I. C. 355.
16. It is not necessary that money should be followed in the hands of the servant or to prove where he spent it. Mere failing to pay to master or to his account is sufficient.

Breach of trust—(contd.)

- 136 I. C. 810=33 Cr. L. J. 343=1932 O. 145=9 O. W. N. 216.
17. Retention of money by servant in lieu of his pay is not punishable as he is entitled to do so under S. 221, Contract Act. 1935 A. 922.
 18. If a Railway servant to whom a water proof is supplied pawns it, he is guilty under S. 408. 1934 R. 41=35 Cr. L. J. 788, 6 L. B. R. 62 Dist.
 19. A working partner with no contribution in partnership business is clerk or servant within S. 408, I. P. C., and can be guilty of misappropriation. 1934 Sind 22, 1932 B. 57 Rel. on, 35 C. 1108, 1933 C. 582, 13 Beng. L. R. 307 Ref.
 20. Proof of non-payment of money collected must be given by prosecution. 1934 C. 425=35 Cr. L. J. 715.
 21. If an employee when leaving service submits his account but withdraws certain amount due to him for security, he is not guilty, though his act was not legal. 1936 C. 520.
 22. When a master entrusts servant with money for the payment of an open account which had not been checked and servant accepts a present and the transaction amounts to taxation of the bill, it is a criminal breach of trust. But where the master has himself settled the account the servant is not liable for accepting the present. 8 A. 120.
 23. If the court is not able to come to finding as to the definite sum misappropriated, conviction under S. 408 is improper. 1925 C. 260=26 Cr. L. J. 532.
 24. If a Railway servant pawns his uniforms, he is guilty under S. 408. 1931 R. 41=35 Cr. L. J. 788 (2).
 25. A supervisor of a society debited Rs. 2 as the pay of a sweeper and got the thumb-impression of his nephew against the debit entry Held, he was guilty. 36 Bom. L. R. 1120.
- 28. By Stake-holder.**
- A stake-holder who misappropriates to his own use stakes deposited with him for a wager, is guilty of criminal breach of trust. 2 L. B. R. 216, 10 Bur. L. R. 249, 1927 N. 225=28 Cr. L. J. 506, *Cont.* 1927 M. 425=28 Cr. L. J. 381.
- 29. By Trustee.**
- A manager of a temple, appointed by the committee is a trustee of the temple property and is guilty under S. 409 if he misappropriates it. 1 Weir 432, 6 M. L. J. 14.
- 30. By Wife.**
- A woman has a joint possession of her husband's property and cannot be guilty of criminal breach of trust for disposing of it in any way (1864) Weir (3rd Edition) 266.
- 31. Charge.** Ss. 222 (2), 234, Cr. P. C.
1. The charge should specify the gross sum in respect of which the offence is committed, without specifying particular items or exact dates. The dates between which the offence is committed should be specified, provided the time included between the first and the last item does not exceed one year. 17 A. 153, 18 A. 116.
 2. If the accused is charged with misappropriating an aggregate sum, the mere fact that the items composing such aggregate sum within a period not exceeding one year or more than three in number, will not render the charge illegal. 24 A. 254, 1927 C. 409.
 3. If the charge not only specifies the gross sum but also sets out items composing such gross sum, the charge is not defective rather it is favourable to accused. 1930 C. 717.
 4. Accused was employed to receive from his master cheques in respect of certain amounts due on bills. He had to cash these cheques and pay the sum out of it. He was charged with criminal breach of trust in respect of specific sum of money during a certain period. Held, that the charge was legal. 53 B. 119=1928 B. 557.
 5. Charge may relate to gross sum, yet the prosecution must decide what amount they are prepared to prove. To convict him definite sums must be traced to accused. 42 A. 522.

Breach of trust—(contd.)

6. Where accused is charged with more than four offences in a trial, the trial is vitiated. 25 M. 61 (P. C.), 52 M. 999.
 7. A conviction for criminally misappropriating 26 different sums amounting to Rs. 91-2-0 between the 1st of August 1921 and 12th January 1922 cannot be upheld. 1923 A. 483 = 70 L. C. 651 = 25 Cr. L. J. 220.
 8. One charge was framed with regard to four sums of money said to have been embezzled. The Magistrate convicted the accused but passed sentence for each embezzlement and directed that sentence should run concurrently. Held, that there was no misjoinder of charges and though the sentences are invalid, it did not prejudice the accused to tender the conviction liable to be set aside. 1930 A. L. J. 1130 = 1931 A. 267.
 9. Accused was charged on three counts. Each count specified the sum misappropriated on a particular day but in two of three cases, the total sum consisted of three separate items in each instance. Held, that charge was not defective under S. 234. 27 A. 69.
 10. A single charge with regard to three sums is not illegal. 32 C. 1055.
 11. Accused was charged for committing breach of trust in respect of some deeds but at the trial he was convicted of embezzling not the deeds but the amount obtained by dealing with those deeds. Held, that conviction was bad. 12 C. W. N. 577, 41 C. 844.
 12. Criminal breach of trust in respect of three items of collection taxes within one year constitute single item of Municipal property and charge in respect of gross sum is sufficient. 1934 P. 232 = 148 I. C. 990, (*Large Law discussed*).
 13. A joinder of charges under Ss. 409 and 477-A for three different items is not covered by Ss. 234-235, Cr. P. C. It is an illegality vitiating trial. 1933 N. 327 = 34 Cr. L. J. 673, 44 A. 540 = 1922 A. 214, 39 A. 219, 49 B. 892 = 1926 B. 110, 30 M. 328, 41 C. 722 Rel. on, 1925 M. 690 = 49 M. 74 Dist.
 14. Accused cannot be convicted regarding indefinite sum. 42 A. 522.
 15. If the charges do not mention even approximately the dates between which the misappropriation was committed, but only refers to date when it was discovered, it is bad for vagueness. 1936 B. 379.
- 32. Civil Dispute.**
1. It is not for criminal courts to usurp the functions of Civil Courts, in recovering goods from persons who did not sell according to instructions. 65 I. C. 100, 96 I. C. 501, or denied receipt of goods. 1924 M. 516 = 72 I. C. 172, 1924 C. 893 = 82 I. C. 131, 1930 P. 221 = 125 I. C. 513 = 31 Cr. L. J. 802, 55 I. C. 469.
 2. Advance from a firm on promote for buying paddy for it does not come under S. 406. 14 I. C. 653.
 3. Penal Code cannot be altered by agreement of parties to make S. 405 applicable to a transaction, which is really a loan. 24 I. C. 332.
 4. A Criminal Court should not investigate whether a transaction is *benami* or not. 1924 C. 908 = 81 I. C. 829 = 25 Cr. L. J. 1053.
 5. When right to property is disputed and claimed by third person, S. 406 does not apply. 28 C. 362.
 6. Where a charge of criminal breach of trust is made against a general agent of a trader with general authority to expend the moneys, the cases must be rare in which it is sufficient to charge a net balance having been misappropriated. The use of criminal court to litigate a civil claim must be condemned. 42 A. 522.
 7. An agreement between prosecutor and accused that money embezzled should be refunded, is no bar to prosecution. (1886) 1 Weir 462, (1885) 1 Weir 465.
 8. Returning deposit to depositor's brother is one of civil liability. 1929 Sind 119 = 30 Cr. L. J. 735 = 117 I. C. 157.
 9. The fact that during trial a civil suit has been filed by another to recover the sum claimed is a complete answer to charge of criminal breach of trust. 28 C. 362.

Breach of trust—(contd.)

10. Accused purchased gramophone on instalment basis. Held, that mere non-payment of instalment and non-production of machine cannot be considered as criminal offence. 1936 C. 674.

33. Complaint of—

1. A complaint under S. 406 is barred by previous order of discharge, although irregular. 33 P. R. 1894 Cr. Dissented from in 10 P. R. 1911 Cr. (F. B.)
2. Complainant cannot be allowed to resurrect a case under S. 408 dropped long ago. 1926 L. 213=96 I. C. 388=27 Cr. L. J. 432.
3. A Criminal Court cannot take cognizance of a complaint against an administrator appointed under Probate Act without the sanction of the High Court. 1921 C. 431=60 I. C. 791.
4. Complaint after considerable delay should not be proceeded with. 1926 L. 213=27 Cr. L. J. 932.

34. Debt or trust.

1. On a charge of criminal breach of trust accused pleaded that the amount claimed by the complaint was due to them as debt but having sustained losses in business they were unable to pay, held not guilty. 32 P. R. 1901, 95 P. R. 1885.
2. The accused agreed to use the complainant's money advanced to him for solely buying paddy. He also signed a demand promissory note for the amount of advance. Accused failed to carry out the arrangement. Held, he was not guilty, as there was no trust but a loan. 6 B. L. R. 46=62, 7 L. B. R. 16, 14 I. C. 653.

35. Delay in remittance.

1. Mere delay in remittance to the treasury when there is no particular obligation to pay it at a certain date does not amount to criminal breach of trust. 1930 M. 507=58 M. L. J. 649=127 I. C. 238=31 Cr. L. J. 1198, 20 Cr. L. J. 90.
2. If there is delay in remittance to the treasury there is a great dereliction of duty in not seeing that rules are not observed. But, for the offence under S. 409 it should be proved that accused had the intention of wrongfully keeping the Government money. 1928 B. 205=111 I. C. 730=29 Cr. L. J. 922, 11 P. R. 1908 Cr., 12 M. 49.
3. Mere delay in making remittance to head office is not conversion to one's use. 106 I. C. 862, 1934 C. 532.
4. Retention for a sufficient long period raises presumption of dishonest intention. 35 Cr. L. J. 1279=1934 C. 532, 41 C. 844 and 1925 C. 613 Rel.

36. Disputed or bona fide claim.

1. The accused was employed by the complainant's firm to sell paddy, who alleged that accused withheld some money. There was dispute about the number of bags and some other person brought a suit for the recovery of price of some of those bags. Held, that accused was not guilty. 28 C. 362
2. Where the accused still retains property and has some claim to it, even it turns out not to be sustainable in law, there is no offence, unless it is merely a pretence and not *bona fide*. 28 C. W. N. 831=1924 C. 908=81 I. C. 829.
3. Accused setting up claim to property entrusted to them are guilty under S. 406. 29 I. C. 671=16 Cr. L. J. 543.

37. Dominion over property.

1. If an accused in charge of distribution of water from Municipal water-tax, misappropriates water for his own use, without paying any tax and without giving information to his employers, he is guilty under S. 406, as he had "dominion over" it. 14 Cr. L. J. 415=20 I. C. 239.
2. The accused hypothecated to the complainant all his claims as contractor in respect of work done and materials supplied to the Executive Engineer and undertook to make over all cheques to him. In violation of this written contract, he cashed two cheques and misappropriated the sum. Held, he was guilty under S. 406. (1908) U. B. R. 13 (P. C.)

Breach of trust—(contd.)

3. If a mortgagor in possession makes wilful default and causes the property to be sold for arrears of land revenue and purchases it *benami*, he is guilty under S. 406. (1866) 5 W. R. 230 (Cr).

38. Entrustment. See—3.**39. Essential and Evidence.**

1. In the absence of evidence of misappropriation, conviction is illegal. 1929 P. 506 = 117 I. C. 632 = 30 Cr. L. J. 812.
2. Prosecution is not bound to prove mode of misappropriation. 30 I. C. 649, 1930 P. 209 = 121 I. C. 321 = 31 Cr. L. J. 249.
3. In case of substitution of worthless property for valuable one, it must be proved that packages contained valuable property. 1925 C. 501 = 86 I. C. 38 = 23 Cr. L. J. 662.
4. Finding as to definite sum traced to accused is necessary. 1925 C. 260 = 85 I. C. 372.
5. When offence under S. 408 is committed in respect of several items the Jury should be asked to give a general verdict. 1930 C. 717 = 129 I. C. 359 = 32 Cr. L. J. 321.
6. Mere wrong entries in books of account cannot be basis of conviction. 1930 L. 408 = 129 I. C. 298, 1930 O. 324 = 126 I. C. 684 = 31 Cr. L. J. 1081.
7. Failure to account for money is a mere piece of evidence and is not conclusive. 1930 P. 209 = 121 I. C. 321 = 31 Cr. L. J. 249.
8. Evidence of defalcation prior or subsequent, is admissible to prove criminal intent as also to anticipate the defence of non-existence of such intent. 97 I. C. 1041 = 1927 Sind 28 = 27 Cr. L. J. 1217 = 21 S. L. R. 55.
9. Loss to principal or some other person is not an ingredient of offence. 32 Bom. L. R. 1195 = 1930 B. 490 = 129 I. C. 385.
10. In a case of misappropriation, it is generally impossible for the prosecution to follow money in the hands of the accused or to prove that he spent money in a particular manner. The prosecution must stop when it is proved that the accused has received the money, has acknowledged the receipt and has failed to pay it to his master or show in his master's accounts. 1932 O. 145, 1936 P. 350 = 15 P. 108.
11. If ornaments are given to goldsmith for melting and he does not return the melted gold, he is guilty. But if property in ornaments passes to him, he is not guilty. 1936 A. 691.
12. Fraud or deceit is no ingredient of the offence. 1936 P. 350 = 15 P. 108.
13. Loss is no ingredient of the offence. 1930 B. 490, 46 B. 641, 9 R. 338.
14. Evidence as to history and dealings between accused and owner is relevant under S. 14, Evidence Act, and the dishonest intention can be deduced from it. 1936 P. 350 = 15 P. 108.
15. Criminal breach of trust can be committed in respect of property obtained by cheating. 1936 M. 1 = 37 Cr. L. J. 142, 1923 M. 597 and 13 Cr. L. J. 15 Rel on. 1936 M. 353 = 37 Cr. L. J. 637.
16. Transfer of certain amount from another's account to one's own is enough to constitute the offence. 1925 L. 385 = 27 Cr. L. J. 1383.

40. Explanation by accused.

1. If the accused gives credible and probable account of the disappearance of property, he need not show what exactly has become of it. 1934 R. 42 = 35 Cr. L. J. 849.
2. If the account given by accused is false and incredible, he is guilty. 1925 R. 47 = 26 Cr. L. J. 267 = 2 R. 476.
3. Merely because accused makes use of false testimony or makes false defence, he is not deprived of presumption of innocence. 1934 Sind 22.

41. Failure to account. See—2.

1. If a property is entrusted to a servant, it is his duty to give a true account of what he does with it. If he fails to return the property or to account or gives an account which is shown to be false, it is a reasonable inference that he has criminally misappropriated it. 1925 R. 47 = 26 Cr. L. J. 267 = 2 R. 476, 22 C. 313.

Breach of trust—(contd.)

2. Failure to account or giving false account for money is a mere piece of evidence and is not conclusive. 1930 P. 209=31 Cr. L. J. 249, 1926 M. 535, 9 A. 666.
 3. The position of a shroff of a Battery with reference to the custody of Government money entrusted to him being that of a cashier, his failure to produce the entire amount of balance of cash entrusted to him amounts to criminal breach of trust. 19 P. R. 1908 Cr.
 4. It was the duty of the servants authorised to receive money for his employer to account for and pay over the same evening. He received moneys on three different days but neither accounted for nor paid them over. Held, he was guilty. 5 P. 578.
 5. If a public servant does not hand over to his successor the money in his hands due to Government as shown in the Register, it is a *prima facie* evidence of embezzlement. 1 Luck. 345, 23 L. W. 718.
 6. A conviction for criminal breach of trust with regard to deficiency of running account can be had according to the amendment of S. 222 (2), Cr. P. C. 136 I. C. 810=33 Cr. L. J. 343, 29 C. W. N. 54.
 7. The mere failure to account at a place is not the same thing as dishonestly using or disposing of money at that place and the offence cannot be tried there. 1931 C. 521=133 I. C. 703, 134 I. C. 929=32 Cr. L. J. 1249. See 134 I. C. 433.
 8. In case of non-accounting, failure to account may itself be taken as evidence of intention to misappropriate and the place where account is to be rendered gives jurisdiction. 1934 C. 392=35 Cr. L. J. 734, 1925 C. 613 Expl.
 9. If the prosecution proves receipt of money by accused and entrustment, it is for the accused to prove his defence. 1934 C. 532=35 Cr. L. J. 1279.
 10. Retention for sufficient long time may justify presumption of dishonest intention. 1934 C. 532=35 Cr. L. J. 1279.
 11. Complainant called upon accused to produce certain documents who evaded. He produced them at the time of cross-examination of complainant. Held, cross-examination could not be refused. 1933 C. 65=60 C. 341.
 12. Where the master was in debt to servant for a sum exceeding Rs. 300, mere failure of servant to give account of Rs. 32 is not dishonest. 3 I. C. 285.
- 42. Hire-purchase agreement.**
1. If a person gets an article under hire-purchase agreement and subsequently sells it without making payments in full to the person from whom he hired it, he is guilty under S. 406. 7 B. L. T. 222, 45 A. 588, 24 I. C. 161, 30 I. C. 649, 51 C. 796.
 2. The accused hired a motor car of the complainant under a hire-purchase system, which provided that until car was fully paid for by the accused, the car was to remain the absolute property of the company and he agreed during hiring not to "assign, underlet or part with possession" of the car in any way. He pledged it to three different persons. Held, he was guilty. 17 Bom. L. R. 670=30 I. C. 649.
 3. Accused got car under hire-purchase system. The complainant brought a suit for the recovery of price still remaining due under the agreement and got a decree. In contravention of original hire-purchase agreement accused sold the car after the decree. Held, that he was not guilty under S. 406. 18 Cr. L. J. 728=40 I. C. 728.
 4. Accused got a lorry under hire-purchase agreement, that he would be "hirer" and would not deal with it unless he paid all the instalments. In contravention of this agreement he sold the lorry before the instalments were paid, he was guilty of criminal breach of trust. 45 A. 588=1923 A. 598.
 5. If a purchaser of lorry commits default in payment of instalment under the hire-purchase agreement, the Vendor Company has right to recover possession through court and not by force. 1934 O. 103=35 Cr. L. J. 740=148 I. C. 696, 15 Cr. L. J. 232, 1923 P. 124 and 1924 P. 143 Relon.
 6. If purchaser is given option to terminate contract of hire by paying hire due on such date and returning goods the transaction is not out and out sale. 1934 O. 133=148 I. C. 793, 1925 B. 18=49 B. 172 and 54 B. 381 Ref.
 7. Owner forcibly took possession of the lorry from the purchaser on hire-purchase

Breach of trust—(contd.)

system, for breach of contract. Purchaser asked for search warrant and made a complaint. Held, that the Magistrate's order returning lorry to purchaser is legal, although he dismissed the complaint. 1933 C. 149=34 Cr. L. J. 676. 1931 C. 455=132 I. C. 902 Dist.

8. Accused purchased gramophone on instalment system but failed to pay monthly instalment and to produce the machine. Held, it was only a civil dispute. 1936 C. 674.

43. Intention.

1. It is the intention which is essential and not the loss or gain that is actually caused. 38 M. 639, 30 P. R. 1879, 9 A. 666, 1923 R. 209=74 I. C. 74=1 R. 56, 1923 L. 487, 52 I. C. 480=20 Cr. L. J. 654.
2. Criminal intent at the time of receipt of money is not essential. 22 M. L. J. 112.
3. Misappropriation may be committed by some mental act, which should be proved by an overt act. 36 P. R. 1887.
4. Intention to pay back money negatives dishonesty. 39 P. L. R. 1902.
5. The criminal intention in a charge under S. 409 is a matter of inference from proved facts. 87 I. C. 962.
6. Intention can be deduced from history and dealings between parties. 1936 P. 350.
7. The section does not include an intention to appropriate at future date. 1934 L. 843.
8. Intention to deprive owner of the use of property for some time and secure use of it for one's own benefit for a time is sufficient. 1936 P. 350=15 P. 108, 8 Bom. L. R. 951 Foll.

44. Joint Trial under S. 406 and S. 477-A. I. P. C.

1. It is illegal to try a person on a charge which alleges three distinct acts of criminal breach of trust and three distinct acts of falsification of account though in respect of the same items. 49 B. 892, 30 M. 328, 41 C. 722, 32 B. 221 Dist.
2. Joinder of charges under S. 408 and S. 477-A. (falsification of account to conceal the defalcation) vitiates the trial. 44 A. 540, 32 A. 219. 1931 P. 349.

45. Jurisdiction. S. 181 (2), Cr. P. C.

1. Complainant a resident of "A" appointed agent to sell goods at "D" who misappropriated sale proceeds. Court of A has no jurisdiction. 39 M. 576, 1924 L. 663.
2. If there is a contract to render account at a place, the offence under S. 406 is committed at that place. 1925 C. 613=86 I. C. 213=26 Cr. L. J. 725, 47 I. C. 92, 1922 C. 46 (1)=71 I. C. 241, 1926 L. 119=96 I. C. 212=27 Cr. L. J. 900.
3. Accused was agent at Calcutta of a firm carrying on business at Ahmadabad. The offence under S. 409 is cognizable by Calcutta Courts only. 1924 C. 893=82 I. C. 131. *Cont.* 19 A. 111, 26 C. W. N. 175.
4. It would not give jurisdiction to British Courts merely because the offence is committed in the course of journey. 52 M. 61=1928 M. 1136.
5. Jurisdiction of Magistrate in a case of criminal breach of trust is, where balance is payable. 2 P. R. 1902 Cr.
6. The offence is triable where dishonest use or disposal took place and not where loss ensued to the complainant. 44 C. 912, 1 R. 56, 74 I. C. 74, 1925 C. 613, 23 Cr. L. J. 743, 1925 C. 107, 40 I. C. 293, 86 I. C. 213, 38 M. 639, *Cont.* 35 A. 29, 46 B. 641, 32 A. 397, 2 P. R. 1902, 24 P. R. 1901, 19 A. 111, 38 M. 779, 1924 L. 663=77 I. C. 490, 1922 C. 46, 9 R. 338.
7. Servant embezzled money at Rurki. Only Rurki Court had jurisdiction. 22 P. R. 1915 Cr.
8. S. 179 does not apply to question of jurisdiction for offences of criminal breach of trust. 83 I. C. 699, 1924 L. 663, 9 R. 338.
9. The offence may be inquired into either where the offence was committed or where consequence ensued. 1926 A. 466=96 I. C. 659, 1925 C. 107, *Cont.* 39 M. 576.
10. The Court in whose jurisdiction the property was received or retained has jurisdiction. 51 B. 101

Breach of trust—(contd.)

11. The accused hired a cycle at Poona for 6 hours but instead of returning it he took it away by yeola and deposited it with D. as security for advance of Rs. 6. Held, that Poona Magistrate had jurisdiction. 51 B. 101=1927 B. 38=28 Cr. L. J. 44.
12. Where the money was received in Calcutta and misappropriation took place there, only Calcutta Court had jurisdiction. 77 I. C. 425=1924 C. 107=25 Cr. L. J. 377.
13. The complainant carrying on business at Lyallpur employed accused his agent to sell goods at Karachi. The agent was to send the sale proceeds and accounts to Lyallpur. Held, that Lyallpur Court had no jurisdiction to entertain a complaint under S. 408, 1924 L. 663=77 I. C. 490. See 1925 C. 613, 1926 L. 119=96 I. C. 212.
14. One of the consequences of criminal breach of trust, if committed by an agent, would be the loss to the person to whom the property belonged and therefore the Court where loss occurred has jurisdiction to try the case. 46 B. 641. *Cont.* 74 I. C. 74.
15. In case of criminal breach of trust by carrier, the Magistrate in whose jurisdiction the goods are to be delivered has jurisdiction. 52 M. 61=1928 M. 1136.
16. Accused can be tried at a place where the money which is the subject matter of the offence was received by him. 1932 A. 26=135 I. C. 228=33 Cr. L. J. 127.
17. The mere failure to account at a place does not give jurisdiction to the Court of that place. 1931 C. 521, 133 I. C. 703, 134 I. C. 929. See 134 I. C. 433.
18. Accused acknowledged the receipt of Railway receipt but failed to send money. Held, that the Court within whose jurisdiction accused resided had jurisdiction. 1932 A. 367=1932 A. L. J. 269=139 I. C. 159=33 Cr. L. J. 711.
19. Accused were entrusted with ghee in Kashmir for conveyance to Rawalpindi. They must be given the benefit of doubt if it is doubtful whether the offence was committed in British India or outside. 1923 L. 487=24 Cr. L. J. 579.
20. Residence of complainant or one who suffers wrongful loss does not determine jurisdiction. 1934 A. 127=35 Cr. L. J. 934, 1921 A. 12=60 I. C. 996 Dist.
21. Complainant, a resident of Jhansi, opened a branch at Calcutta. Accused was in charge of Calcutta Branch and had to submit accounts at Jhansi. Held, Jhansi Courts cannot entertain complaint under S. 406. 1934 A. 127=35 Cr. L. J. 934, =149 I. C. 402, 34 A. 487 Rel. on.
22. Accused manager at Dehra Dun of Tea Estate belonged to a State. Amounts were received and accounts maintained at Dehra Dun. Held, that offence was committed there and the extradition warrant was illegal. 1934 A. 148=35 Cr. L. J. 1296.
23. Non accounting is itself an offence. Place of accounting is the place of offence. 1934 C. 392=35 Cr. L. J. 734, 1925 C. 613 Expl.
24. Accused received money honestly at N. but misappropriated at R. Held, he could be tried at N. or R. 1933 L. 559=34 Cr. L. J. 902, 1923 R. 81=25 Cr. L. J. 371 Dist. 1925 L. 171=26 Cr. L. J. 136, 108 I. C. 901, 1926 L. 119, 1925 C. 613 and 1931 C. 532 Ref.
25. The Court at a place where accused is required to render account has jurisdiction. 1936 A. 193=37 Cr. L. J. 284. (*Case law discussed.*)
26. If breach of trust is committed at a branch office of firm, the Court at Head-quarters has jurisdiction. 35 A. 29.

46. Loss. See—45.

Loss is no ingredient of the offence of criminal breach of trust. 32 Bom. L. R. 1195=1930 B. 490=129 I. C. 385, 46 B. 641, 9 R. 338.

47. Marriage Brocade Contract.

1. Where the parent of the girl are not seeking her welfare but give her to a husband otherwise ineligible in consideration of a benefit it is opposed to public policy and is not enforceable. 23 A. 495.
2. An agreement to pay money to the parent or guardian of a minor in consideration of his giving the minor in marriage is void as opposed to public policy. 22 B. 658, 13 B. 126, 15 C. W. N. 447, 32 M. 185, 112 P. R. 1892, 128 P. R. 1889, 116 P. R. 1880, 106 I. C. 803, 5 P. 646.

Breach of trust—(contd.)

3. Agreement to pay money to a stranger, hired to procure wife for a man is opposed to public policy. 17 M. 9, 13 B. 131.
4. Money paid for arranging for marriage can be recovered if contract is not one of brokerage. 1923 N. 296=74 I. C. 107.
5. Agreement to pay money for persuading woman to marry person paying is opposed to public policy. 50 I. C. 551.

48. Paying back embezzled money.

1. The mere fact that on account of sheer timidity or on account of desire to avoid running the risk of disgrace of a criminal trial and of dismissal, the accused or some one on his behalf paid back half of amount said to have been embezzled, to the person to whom it was due, does not furnish any proof of guilt, although when once the crown has established the guilt of the accused by the evidence of the prosecution witnesses, then such subsequent conduct may be utilized as furnishing further proof of the correctness of the conclusions as to the guilt of accused, drawn from prosecution evidence. 1930 O. 324=126 I. C. 684=31 Cr. L. J. 1081.
2. Intention to pay back money negatives dishonesty. 39 P. L. R. 1902.
3. Court should not assume guilt if repayment is made on demand. 1927 Sind 23=27 Cr. L. J. 1217.

49. Procedure.

1. A magistrate cannot grant bail under S. 409. 1930 R. 335 *Cont.* 1933 B. 492.
2. Where a person receives money for the express purpose of using it for his master's benefit in particular way he is entrusted with money. A conviction for misappropriation of a large sum of money made up of various items—more than three in number—on false pretences is not illegal. 22 M. L. J. 112=12 M. L. T. 120.
3. There must be a definite finding of a certain definite sum traced to the accused in order to form the basis of his conviction. 1925 C. 260=26 Cr. L. J. 532.
4. A trial of embezzlement for a gross sum between two dates is no bar to an embezzlement of a certain specified sum in that period. 53 A. 411, 1923 C. 654, 32 I. C. 158.
5. Prosecution against manager, Court of Wards, does not lie without sanction. 1931 P. 86=130 I. C. 543=32 Cr. L. J. 555=12 P. L. T. 421.
6. An agreement between the Prosecutor and the accused to refund the embezzled money is no bar to prosecution. (1886) Weir 462 (1883) Weir 465.
7. Appellate court can alter conviction from one of cheating to one of criminal breach of trust. 1933 P. 26=34 Cr. L. J. 419, 12 B. H. C. R. 1.
8. Accused was tried under S. 420 and 406 on the same facts. Charge of cheating was compromised and accused was acquitted. Held, it was no bar to conviction under S. 406. 1936 M. 353=37 Cr. L. J. 637.

50. Property—Moveable.

1. A cancelled cheque falls within the term property. The question of the value of the property in respect of which the breach of trust is committed is except so far as S. 95 is concerned, quite immaterial. 27 A. 28.
2. S. 405 refers only to moveable property. 8 R. 13=1930 R. 158, 23 C. 372, 125 I. C. 271=31 Cr. L. J. 799, 36 C. 758, 1926 L. 478.
3. A cheque is property within the meaning of S. 408. 1930 A. 449=31 Cr. L. J. 865.
4. A paper was handed to another for being read. An offence under S. 406 was committed. 1905 A. W. N. 9=2 Cr. L. J. 94.

51. Scope.

1. S. 405 refers only to moveable property. 8 R. 13. 23 C. 372, 36 C. 758.
2. S. 405 does not apply if contract in respect of which money was received by the accused was a wagering contract. 100 I. C. 989=1927 M. 425=52 M. L. J. 179=28 Cr. L. J. 381.
3. The trust contemplated by S. 405 need not be in furtherance of lawful object. 101 I. C. 690=1927 N. 225=28 Cr. L. J. 506.

52. Sentence.

1. A Postmaster took V. P. and Railway Receipt and falsified the Register. Sentence of one year was adequate. 52 M. 534=1920 M. 447=30 Cr. L. J. 929.
2. A severe punishment is necessary for misappropriation of public money. 106 I. C. 337.
3. A sentence of imprisonment is obligatory under S. 409. 1926 L. 350=94 I. C. 130.
4. S. 62 I. P. C., does not apply to S. 406 and hence in a sentence under S. 406 the Court cannot order that the rents and profits of the property of the accused should be forfeited to the Government, during the period of his imprisonment. 29 A. 25.
5. Magistrate, on conviction with regard to embezzlement of four sums of money, sentenced accused on all the four counts, although one charge was framed and ordered that the sentences should run concurrently. Held, that the sentences though invalid, did not prejudice the accused to render the conviction liable to be set aside. 1930 A. L. J. 1130=1931 A. 267=32 Cr. L. J. 155=52 A. 941.
6. Usually imprisonment should be given under S. 408. When accused was released under S. 562 but Revision was filed after long delay the order was not set aside. 1928 L. 926=107 I. C. 775, 19 P. W. R. 1910 Cr., 1925 B. 192.
7. A clerk of many years' service committed breach of trust of a large amount. Held, five years' rigorous imprisonment was not too severe. 1934 A. 173, 148 I. C. 218.
8. If a head constable finding stolen property enters into agreement with the accused and reports the case untraceable, he is guilty under S. 409 and deterrent sentence is called for. 1935 N. 139=36 Cr. L. J. 867.
9. The offence cannot be condoned on the ground of negligence of those who were bound to control his actions. 15 L. 331=1934 L. 667.

53. Similar acts

1. Evidence of defalcation prior or subsequent whether such defalcation formed the basis of other charge or not is admissible to prove the criminal intent, as also to anticipate the defence of non-existence of such intent 1927 Sind 28=97 I. C. 1041.
2. Accused was charged for embezzling three specific sums. Held, that the evidence of collateral offences in respect of other sums was not admissible. 1928 L. 382.
3. Accused was charged for misappropriation by defalcation of accounts made in 1925 and 1926. Evidence was adduced by prosecution of similar acts done by accused in 1924. Held, that the evidence was admissible to rebut the probable plea of mistake or innocent condition of the mind of the accused. The evidence was that there was a common link between the acts of 1924 and those of 1925. 1928 L. 880=111 I. C. 387=29 Cr. L. J. 835, 42 C. 957, 6 C. 655 Ref.
4. Accused pleaded payment to wrong persons under misapprehension. Evidence of other transactions of conversion of money to personal use is not admissible. 1933 C. 136=34 Cr. L. J. 294.

54. Wrongful gain or loss.

1. Wrongful gain includes wrongful detention and wrongful loss includes being wrongfully deprived of property. 1936 P. 350=15 P. 108, 22 C. 1017 and 1929 P. 429 Foll.
2. Loss is no ingredient of the offence under S. 406. 1930 B 490; 46 B. 641; 9 R. 338.

BREAKING OF LOCK. See Criminal force—1.

BREAST DEVELOPMENT. See Age, Virginity.

BRIBE. S. 161, I. P. C.

1. Abetment of—(offer) Ss. 107, 109, 116, I. P. C.

1. Accused successfully interceded with an officer to get contract for his cousin and then offered him Rs. 5,000 to be given to charities as thanksgiving. Held he was not guilty. 1923 B. 44 (2)=67 I. C. 818=23 Cr. L. J. 466.
2. Offering of bribe to a Police officer to withdraw the case, after the accused had been discharged is no abetment. 64 I. C. 369=23 Cr. L. J. 1.
3. A person handing over money to Magistrate to show favour to an accused is guilty,

Bribe—(contd.)

though his motive may be to expose a corrupt Magistrate. 42 I. C. 989.

4. A person responding to the call of public servant by payment of bribe is an abettor. 38 I. C. 439=18 Cr. L. J. 327.
 5. Offering bribe to an Inspector in the Finger Print Bureau in order to make him give favourable evidence is offence under Ss. 161/116, I. P. C. 69 I. C. 445.
 6. Patient was ordered to be discharged from Hospital. An offer of bribe to retain him for a longer period is an offence under Ss. 161/116. 1930 M. 671=31 Cr. L. J. 1088, 1929 M. 756 Dist.
 7. Offer of currency notes for obtaining employment is an offence under S. 161. 6 L. 98, 1925 P. 48=83 I. C. 679=3 P. 647. See 9 P. R. 1898.
 8. Persons who actually pay bribe or co-operate or are instrumental in payment are abettors and as such accomplices. 30 Cr. L. J. 311=114 I. C. 457=1929 N. 215, 14 B. 331, 26 B. 193, 27 C. 144, 14 B. 115, 3 Cr. L. J. 452.
 9. Where a person is accused of abetment of bribing a head constable, the first part of S. 116 is applicable and not the second part, as the offence is not cognizable by Police and is not one, the commission of which it is the duty of the head constable to prevent. 1928 L. 840=109 I. C. 681=10 L. L. J. 364=29 Cr. L. J. 601.
 10. A person who with knowledge that bribe has to be paid, advances money is clearly an abettor. 1929 N. 215=114 I. C. 457=30 Cr. L. J. 311, 14 B. 331, 26 B. 193, 27 C. 144, 38 I. C. 429, 53 B. 479=1929 B. 296.
 11. The giver of bribe is guilty under Ss. 161/116. 30 Cr. L. J. 1055, 1929 M. 756.
 12. Abortive attempt to give bribe is an offence under Ss. 161/116, I. P. C. 1935 Pesh. 26=154 I. C. 910=36 Cr. L. J. 626.
 13. In a departmental inquiry a public servant was summoned as witness. Accused offered him Rs. 100 as illegal gratification for rendering him service by not giving evidence against him or by so shaping it as not to injure him or generally by influencing the Divisional Forest Officer. Held, he was guilty of abetment. 1935 Sind 7=1935 Cr. C. 48, 1927 M. 1011=51 M. 86=28 Cr. L. J. 1005, 1923 B. 44=67 I. C. 818=23 Cr. L. J. 466 and 1933 A. 513=55 A. 654=34 Cr. L. J. 623 Ref.
 14. Abetment of abetment of bribery is punishable under S. 108. Explanation, 4 I. P. C. 1934 Pesh. 110.
 15. The fact that bribe was solicited at most renders the abetment less culpable than it would otherwise be. 1933 A. 513=34 Cr. L. J. 623=38 I. C. 439 Foll.
 16. Bribe givers are not exonerated merely because Judge takes money without any guilty intention. 1933 A. 513=34 Cr. L. J. 623.
 17. Inciting persons to instigate Magistrate to accept bribe is an offence under S. 161. 4 C. 607. See 22 C. W. N. 1045.
 18. Persons who lend money or are merely present when bribe is given are not accomplices. 33 C. 649, 27 C. 144, 27 C. 925.
- 2. Abetment of taking gratification to influence public servant.—S. 164, I. P. C.**
 Certain persons accompanied another who was entrusted with and carried money intended to be given as bribe to their knowledge. Held, they were accomplices and their evidence should be viewed with suspicion. 2 C. W. N. 672. Dist. 27 C. 144.
- 3. Accepting donation.**
1. A public servant accepting a donation for charity in which he is interested, as a motive for showing favour is guilty. 67 I. C. 818.
 2. Taking 300 rupees for repairing a temple for restoring a suspended person to office is bribe. 21 R. 517, 24 Bom. L. R. 334.
- 4. Accomplice in offering. See—1.**
1. A person who offers bribe to a public officer is an accomplice. Persons who actually pay or co-operate in such payments or are instrumental in the negotiations for the purpose are also accomplices. 1929 N. 215, 14 B. 331, 26 B. 193, 27 C. 144.
 2. A person paying bribe under the orders of his master is guilty. 26 M. 1.

Bribe—(contd.)

5. Allegations of taking.

1. Where it is proved that the complainant had notoriously bad reputation as bribe taker, the imputation made as to his having taken bribe on a particular occasion, even if false, could not damage his reputation as he had none to lose. 4 L. 55.
2. Statement that Government servant worked for money in favour of a candidate at an election is not charging him with bribery. 6 P. 224=101 I. C. 506.

6. Attempt to.

1. Mere offer to pay illegal gratification is an attempt to bribe. Actual money need not be produced at the time of offer. 3 P. 647=83 I. C. 679=1925 P. 48.
2. A mere asking is sufficient to constitute offence. 2 A. 253.
3. Prosecution need not show how the illegal gratification came to be demanded or obtained, so long as it can be proved that it was obtained. 15 A. L. J. 127.
4. The asking for bribe may be in implicit or explicit terms. 2 A. 253. 24 Bom. L.R. 534.
5. A demand of money by a Court peon as a reward for serving summons on his witnesses without an identifier is an attempt to bribe. 32 C. 292.
6. B, a clerk in the Pension Department, in an interview with A who was an applicant for a pension, after referring to his influence in the Department, gave two instances in which he got the pensions increased and said that anything might be effected by money. The overture being rejected, he declared that A. would repent the rejection of it. Held, B was guilty of attempt. 2 A. 253.

7. Charge.

Where a bribe was collected from certain villagers and was handed over to the recipient in a lump sum. Held, that he could not be charged under S. 161 for collecting the lump sum but that he should be charged for not more than three items constituting the total collection. 24 A. W. N. 223. See 25 M. 61, 3 Bom. L. R. 540, 32 P. W. R. 1911 Cr., 11 P. R. 1911 Cr.

8. Essential and Evidence.

1. A Patwari who took grain for showing favour to the giver in the discharge of his functions was guilty under S. 161. 2 N. W. P. H. C. R. 148.
2. Where a constable entered a house and arrested some persons as gamblers but released them on payment of bribe, was guilty (1866) 5 W. R. 49 (Cr.)
3. A public servant accepting a donation to a charity in which he is interested, as a motive for showing favour to the donor in his official acts is guilty under S. 161. 1923 B. 44=67 I. C. 818=23 Cr. L. J. 466
4. S. 161 does not require any particular criminal intention in the mind of the giver or receiver of the bribe. 22 M. L. T. 373.
5. Where the complainant did not willingly offer the bribe, but was forced by Police officer to do so, his evidence, though of an accomplice, requires very little corroboration. 14 B. 331, 26 B. 193, 27 C. 925.
6. The testimony of a bribe-giver must be corroborated in material particulars. 63 P. L. R. 1918, 30 Cr. L. J. 311. See 3 Bom. L. R. 694.
7. Raising money for the purpose of giving bribe and the merits of the case to decide which in favour of the bribe-giver a Judge accepts the illegal gratification are sufficient to corroborate the former who is really an accomplice. 3 P. W. R. 1918 Cr.
8. The principal witnesses in bribery cases are abettors, so that their evidence is that of accomplices. 38 I. C. 429=18 Cr. L. J. 317, 114 I. C. 457.
9. A public servant taking money as a motive or reward, only for the purposes mentioned in the section is guilty. 39 I. C. 805, 1923 M. 851, 89 I. C. 455.
10. Actual discharge of public function, when receiving bribe, is not required. 15 P. R. 1918 Cr.=96 P. L. R. 1918=26 P. W. R. 1918 Cr.
11. A chaprasi receiving Rs. 20 for payment to Clerk of Court who is to register the candidate is guilty. 9 P. R. 1917 Cr.=39 I. C. 650.
12. In a charge of bribery the evidence must be conclusive. 26 P. W. R. 1911, Cr.

Bribe—(contd.)

13. A charge under S. 161 need not be in respect of every item received by the accused from several persons for a common object useful to all. 11 P. R. 1911 Cr.
14. Demand of money for registering a Vakalat is no offence. 18 Cr. L. J. 37.
15. A convict warder in Jail is a public servant and his taking a rupee for smuggling a newspaper in Jail is an offence. 1924 B. 385=83 I. C. 342=25 Cr. L. J. 1382.
16. Effect of bribe on receiver's mind is immaterial. 1925 N. 313=89 I. C. 1035.
17. If a person erroneously represents that the particular act is within his official duty and takes bribe he is guilty. 1928 A. 752=30 Cr. L. J. 67=113 I. C. 179.
18. Unconnected instances of receiving bribe from the same firm in subsequent years is inadmissible. 6 C. 655, 34 A. 93, 28 B. 129.
19. Gratification in S. 161 is not restricted to pecuniary one or gratification estimable in money. 1923 B. 44=67 I. C. 818=23 Cr. L. J. 466.
20. Mere knowledge that a bribe was to be given would not make a person who has knowledge, a participator in the giving of bribe. 53 B. 49=1929 B. 296.
21. No favour need be shown to the briber as a fact. It would be sufficient if he was led to believe that the matter would go against him if he did not pay the bribe. 1925 B. 261=86 I. C. 72=26 Cr. L. J. 696.
22. Offer of currency notes to an officer for obtaining employment is an offence under S. 161. 6 L. 98=1925 L. 401=88 I. C. 857.
23. It is not necessary that the gratification need actually be produced. 51 M. 86=1927 M. 1011=28 Cr. L. J. 1005=105 I. C. 829.
24. A statement by a witness that he heard A say, in the absence of the accused that he had paid a sum of money to the accused as a bribe, is hearsay and is not admissible. 2 C. W. N. 672.
25. Money paid for obtaining release of a person wrongfully confined by Police officer is not illegal gratification but as money extorted. 27 C. 925.
26. Statement "X wished to pay you Rs. 5,000" to public servant may constitute instigation. 1923 B. 44=23 Cr. L. J. 466=67 I. C. 818.
27. Expression of opinion conveyed to public servant that a suitor was willing to give him bribe, does not amount to an offence. 1933 A. 513=34 Cr. L. J. 623.

9. Exercise of official duty.

1. If a person erroneously represents that a particular act is within the exercise of his official duty and takes bribe he is liable under S. 161. 51 A. 467=1928 A. 752.
2. S. 161 is not confined to cases in which gratification is taken for doing an official act. It is an offence if a public servant accepts a reward for rendering or attempting to render any service to any one with any public servant as such. 51 M. 86.
3. Motive of accused must relate to official act. What is departmentally reprehensible merely is distinct from what is criminal. A Karnam taking bribe for getting darkhast commits no offence. 1924 M. 851=84 I. C. 940=47 M. L. J. 662.
4. Where it was not within the powers of the public servant to show any favour to the person offering the bribe, the latter is not guilty under S. 161—309. 1921 C. 344=64 I. C. 369.
5. A public servant taking money as a motive or reward for purposes mentioned in the section, is guilty. 39 I. C. 805, 1925 N. 313.
6. If a man in the vain hope of getting a public servant to reconsider a question, as to which that public officer is *functus officio* offers a bribe, he commits no offence. 1929 M. 756=119 I. C. 315=30 Cr. L. J. 1055=1929 M. W. N. 695.
7. Statement that Government servant worked for a candidate at an election for money is not charging him with bribery, as such work is not in the discharge of his duties. It is on the contrary prohibited. 6 P. 224=27 Cr. L. J. 1090.
8. Offence is committed in giving bribe to a finger print expert to make him give favourable evidence. 28 Cr. L. J. 717=69 I. C. 445.
9. It is necessary to prove that public servant possesses power to show favour. 1921

Bribe—(contd.)

C. 344=23 Cr. L. J. 1=64 I. C. 369.

10. Receiving money for doing an unofficial act would not bring the case within S. 161. Thus where a chawkidar discovered a widow in the company of a man under suspicious circumstances at night and he purchased his silence. 1883 A. W. N. 179.
11. Plea of taking gratification for public object or charity is no defence. 1925 N. 313 = 20 Cr. L. J. 1467, 21 B. 517.

10. In election. See Election.

11. In kind.

1. Gratification in S. 161 is not restricted to pecuniary gratification or gratification estimable in money. 1923 C. 44=67 I. C. 818.
2. A Patwari taking grains as consideration for showing favour to the giver in discharge of his official function, is guilty. 2 N. W. P. H. C. R. 148.
3. A Subordinate Judge went in company with a litigant who had a case in his court to a cloth shop and accepted a present of cloth which was paid for by the litigant to gain favours with the Judge in his suit, the Judge was guilty of taking bribe. 27 Bom. L. R. 120, 29 Bom. L. R. 996, 18 Bom. L. R. 266.

12. Offer of. See—1.

1. If a public servant allows illegal gratification to be delivered, merely for completing the evidence of the bribe, the giver is guilty of abetment. 18 P. R. 1918 Cr.
2. A person offered a bribe to a Magistrate by thrusting currency notes into his hands. His defence was that he did so with a view to lay a trap to expose the Magistrate who was corrupt. Held, he was guilty. 22 M. L. T. 373.
3. The distinction between offer and an invitation for offers as recognized by Contract Act applies to Criminal law as well. 24 Bom. L. R. 534.
4. Where the accused offered Rs. 500 to a Railway goods clerk deputed to assist the Police in enquiring into frauds in the goods office, was guilty of abetment. 9 P. R. 1898 Cr.
5. The accused—a taxi-driver—was discharged. On the following day he offered Re. 1 to a Police officer as a bribe to withdraw the charge, which the Police officer had brought against him. Held, he was not guilty of abetment. 33 C. L. J. 379.
6. Where accused offered Rs. 200 to the officer for getting an employment, he was guilty of abetment. 6 L. 98=1925 L. 401=88 I. C. 857=26 Cr. L. J. 1241.

13. Procedure.

Where accused receives bribe on two different days, he should be separately convicted for the offences. 5 C. W. N. 332.

14. Public servant. (*Functus officio*). See Public Servant—6.

1. If a man in the vain hope of getting a public officer to reconsider a question, as to which that public officer is *functus officio*, offers a bribe, he commits no offence. 1929 M. 756=119 I. C. 315=30 Cr. L. J. 1055, 1921 C. 344=64 I. C. 369=23 Cr. L. J. 1, 1935 Pesh. 26=36 Cr. L. J. 626.
2. A convict warder accepting illegal gratification for smuggling certain papers in the jail is guilty. 1924 B. 385=83 I. C. 342=25 Cr. L. J. 1382.
3. A person who *defacto*, though wrongly discharges the duties of an office through which he figures as a public servant, may be tried for getting bribe. (1871) 16 W. R. 27 Cr., 8 A. 201.
4. "Any other person" in S. 161 may or may not be a public servant and therefore wholly unconnected with the official act. 31 B. 335.
5. Offering bribes to a Doctor to retain patient for a longer period falls under S. 161, as he is not *functus officio*. 1930 M. 671=126 I. C. 603.
6. Unpaid apprentice if public servant. 15 C. W. N. 319=9 I. C. 698.

15. Public servant obtaining presents. S. 165, I. P. C.

1. After a case was decided a Police officer received from the prosecutor some money

Bribe—(concl'd.)

not as a reward but as Dasturi. He was guilty under S. 165. 1 A. 530.

2. Evidence of similar transactions is inadmissible. 6 C. 655.
3. S. 165 does not prohibit a sale or purchase by a public servant at a fair price to or from a person transacting business. *Stokes*, Vol. 1 P. 151.

16 Sanction. See *Prosecution of Judges or Public Servants—2.*

1. Where President of a Panchayat court is charged for bribery, sanction of Government is necessary for prosecution. 1922 M. 62=65 I. C. 612.
2. Excise Officer in U. P. is removable by the Excise Commissioner and hence sanction for prosecution of bribery is not necessary. 48 A. 264=1926 A. 271.
3. A District Munsif cannot be prosecuted without sanction. 9 M. 439.
4. A Police Patel can be prosecuted without sanction. 4 B. 357.
5. A member of Municipal Corporation can be prosecuted without sanction. 3 C. 758.
6. If a Judge has not done any act in the capacity of a Judge, no sanction is necessary. 32 M. 255.

17. Sentence.

1. A simple order to refund bribe is quite inadequate to the gravity of the offence under S. 161 (1871). 16 W. R. 74 Cr.
2. The sentence for taking bribe should be deterrent. Mere fine is inadequate. 1925 N. 321=86 I. C. 469=26 Cr. L. J. 821.
3. A Civil Court peon refused to serve the summons without payment of Dasturi. Held, six months' imprisonment was not too severe. 32 C. 292.

18. Similar acts.

The evidence of similar acts of bribery is not admissible. 6 C. 655.

19. Taking gratification to influence public servant. Ss. 162.—163, I. P. C.

1. A person, who accepts for himself or for some other person, a gratification for inducing, by corrupt or illegal means, a public servant to forbear to do a certain official act, is punishable under S. 162, I. P. C. 63 P. L. R. 1918, 3 W. R. 19, even if he did not actually influence him. 3 W. R. 10.
2. To admit solicitation of a bribe by a third person without the privity or connivance of the public servant concerned, as an excuse for giving a bribe to such public servant is an absolute absurdity. (1895) 1 U. B. R. 158.
3. A conviction under S. 162, I. P. C., cannot be had if the evidence does not show the person or persons from whom the gratification was obtained or the public servant, to be influenced. (1865) 3 W. R. 69 Cr.

20. Unvoluntary.

1. Where the payment of bribe has not been voluntary, very slight corroboration is sufficient to make the evidence of accomplice admissible against the receiver. 1935 B. 230=156 I. C. 615=36 Cr. L. J. 968.
2. Money paid for obtaining release of person wrongfully confined by Police is not bribe but is extortion. 27 C. 925.

BRIDGE.—INJURY TO. S. 431, I. P. C. See *Mischief—8.*

BRIEF.—NON-ACCEPTANCE OF. See *Legal Practitioners' Act*, S. 13.—XXI.

BRITISH INDIA. See *Jurisdiction—11.*

1. Arrest outside. Ss. 54, 82, Cr. P. C.

1. Police in British India can arrest without warrant a British subject committing outside British India any of the offences enumerated in the first schedule of Extradition Act. 7 Bom. L. R. 463.
2. An arrest in British India by Police of a Native State of a person suspected to have committed crime in the Native State is illegal. 29 A. 377.
3. The arrest of a person at a Railway Station in a Native State (Gawalior) on a charge of an offence committed in British India is illegal. 1 L. 406, 25 C. 20.

2. Jurisdiction.

1. Aden and Laccadive islands are within British India. 13 M. 353.
2. Andaman and Nicobar islands are within British India. 9 B. 244.
3. Ajmer and Mewar are within British India. 9 B. 244.
4. Native States and tributary Mahals are not within British India. The Criminal Procedure Code does not apply to Rajkot. 10 B. 186, or to Civil Station of Wadhwan. 37 B. 152, or to Movurhhung. 8 C. 985, or to Keonjhar. 16 C. 667 or to the lands occupied by Hyderabad State Railways. 25 C. 20.
5. British Courts have jurisdiction to proceed with the trial of an offence committed in a territory which was British India at the date of the offence and of the commitment but was transferred to Native State before the case came on for trial. 34 A. 118, 34 A. 451.
6. British appellate courts have jurisdiction to hear appeal if the transfer of territory took place after a conviction. 33 A. 578.

BROKER.

1. Breach of trust by. See Breach of Trust—10.

2. Misappropriation by. See Criminal misappropriation—3.

BRUISES. See Wound—137.

BUGGERY. See Unnatural offence.

BUILDING. See 442—380, I. P. C.

1. A courtyard bounded by walls with no door is not building. 1924 L. 623=771 I. C. 809, 1925 L. 279 (2)=84 I. C. 863, 11 P. W. R. 1919, 18 P. R. 1905 Cr.
2. A courtyard with walls around and a door which is secured is a building. 29 Cr. L. J. 875=1929 Sind 17 (2), 1926 L. 28, 35 P. R. 1879, 1925 L. 117 foll. 57 P. R. 1887, 28 P. R. 1905, 24 P. R. 1914 Cr., 11 P. W. R. 1919 Cr. Dist.
3. A fencing which is a means of merely preventing ingress or egress is not a building or house. 1927 M. 343=100 I. C. 120=23 Cr. L. J. 248.
4. A *wchra* used for custody of property is building. 1925 L. 117=86 I. C. 337, 35 P. R. 1879, 10 P. R. 1879. A courtyard enclosed by low walls on three sides only is not a building. 84 I. C. 863.
5. A thatch hut built for residence is a building used as a human dwelling. 36 I. C. 584, 1 P. R. 1881.
6. The determining factor to find out whether a place is a human dwelling or not is the nature of structure and the purpose for which it is intended to be and was used. 1930 L. 414=121 I. C. 427=31 Cr. L. J. 268, 1929 Sind 17=111 I. C. 459.
7. Cattle enclosure having a wall on one side and thorn hedge on other sides is not "building." 24 P. R. 1914; 57 P. R. 1887. 2 A. W. N. 224. But if it is walled all round, it is "building". 6 N. W. P. H. C. R. 307.
8. A Railway carriage or brake van is not building. 1 Weir 436, 10 P. R. 1879. See 23 A. 806.
9. Entering cattle pen is not a house trespass. 28 P. R. 1905 Cr.
10. An unrooted '*wara*' with a small gate locked, adjoined the room occupied by accused and was an integral part of the house, is a "building". 6 L. 463=1926 L. 28, 35 P. R. 1879 foll. 208 P. L. R. 1915 and 56 P. L. R. 1919 Dist.
11. Open space adjoining a house, surrounded by thorns, with no door to prevent entry is not a building. 1928 A. 607=29 Cr. L. J. 766, 14 P. R. 1876.

BUILDING LIKELY TO FALL. See Public Nuisance—6.

BULL. See Animal.

1. Sacred bull liberated according to Hindu usage is movable property, capable of being subject of 'mischief'—S. 425, I. P. C. 34 P. R. 1888.
2. The sacred bull is not in "possession" of owner to make him liable under S. 289, I. P. C. 32 P. R. 1889, 5 P. R. 1904.

Bund.

BUND.—FIGHT OVER. See Right of private defence—10.

In case of fight over the bund, when one party wanted to protect it and the other to cut down and death is caused from injuries to several assaults while protecting the bund, the offence falls under S. 320, I. P. C., 1929 P. 321.

BURDEN OF PROOF. See 102—106, I. E. Act.

1. On accused. See Explanation to accused—1.

1. Accused must prove the plea of insanity. 1924 A. 186 (2), 59 I. C. 901.
2. Accused should prove exceptions on which he relies. 1 P. R. 1888, 27 P. R. 1887, 4 P. R. 1889, 1923 A. 327 (2) = 45 A. 329, 3 I. L. 141, 1922 I. L. 3, 1923 N. 58 = 105 I. C. 820, 1928 I. L. 162 = 30 P. L. R. 371 = 104 I. C. 189.
3. Burden is on accused to establish circumstances justifying exercise of right of private defence. 41 P. R. 1884, 1927 I. L. 786 = 104 I. C. 451. It may be established from prosecution evidence. 1923 A. 327 (2) = 45 A. 329 = 71 I. C. 659.
4. Where an accused is found at midnight in the house of another, the onus is on him to prove that he went there with honest intentions. 37 A. 303, 40 A. 221.
5. Accused must prove loss of power of self-control before claiming benefit of exception (1) to S. 300, I. P. C. 33 P. R. 1884, 1924 I. L. 733 = 81 I. C. 717.
6. Where all circumstances went to show that accused's intention was to employ a girl of prostitution, the onus is on him to prove that she intended to wait till the age for majority. 1922 C. 539 = 71 I. C. 232.
7. The onus is on accused to give explanation when the alternative theory of his guilt is a remote possibility. 43 I. C. 605.
8. The burden of proving facts within the knowledge of a person that a parcel of cocaine was believed to be one of toys is on that person. 20 I. C. 600.
9. In criminal breach of trust when receipt of money by accused is proved, the onus is on him to show that he has not converted it for his own use. 1927 C. 409 = 101 I. C. 597 = 28 Cr. L. J. 469.
10. The onus that it was a game of skill is on the accused. 23 I. C. 484.
11. Accused is not bound to prove his defence. 74 P. L. R. 1900, 121 P. L. R. 1904, 21 P. R. 1890, 28 P. L. R. 1906, 90 P. L. R. 1909, 7 P. L. R. 1911.
12. Where from the prosecution, an exception is proved, accused need not prove it. 81 I. C. 901 = 1925 N. 37 = 25 Cr. L. J. 1077.
13. Although the onus of establishing an exception is on the accused, it does not follow that the circumstances together with the accused's statement cannot be sufficient to establish the exception. 1927 A. 119 = 27 Cr. L. J. 1395.
14. Where a thief was killed with a *lathi* blow, the onus is on the person giving blow that death was justifiable homicide. 1930 O. 408 = 32 Cr. L. J. 44.
15. Where a property is entrusted to a servant, it is the duty of servant to give a true account of what he does with it and if he cannot give account, reasonable inference is that he misappropriated it. 26 Cr. L. J. 267 = 1925 R. 47.
16. Where a set of facts is proved from which only one reasonable inference can be drawn, the accused must, if he wishes to escape the consequence of that inference, offer an alternative inference which can compete with the other. 10 P. 590 = 1931 P. 384 = 33 Cr. L. J. 111 = 12 P. L. T. 864 = 133 I. C. 81.
17. If evidence is unreliable, the accused is under no obligation to suggest any other way in which the deceased might have met his death. 1930 M. W. N. 1211.

2. On Prosecution.

1. The onus of proving the guilt of accused beyond reasonable doubt is on the prosecution. 56 I. C. 849.
2. Prosecution must exclude all explanation of facts reasonably consistent with innocence of accused. 1 P. R. 1914 Cr., 11 P. R. 1913 Cr., 136 P. L. R. 1909.
3. The onus of proving everything essential to the establishment of charge against the accused lies upon the prosecution. Every man is to be regarded legally innocent

Burden of proof—(concl'd.)

until the contrary is proved and criminality is never to be presumed. 4 M. 393, 9 M. 387, 7 M. 436, 17 B. 573.

4. Where intent is expressly stated as part of the definition of the crime, the onus of proving guilty intention is on the prosecution. 11 C. W. N. 91.
5. Best available evidence must be proved to discharge the burden. 1932 P. 215=11 P. 523.
6. Onus of proving age is on prosecution. 1931 L. 401=32 Cr. L. J. 1041.

3. Of Exceptions. S. 105 Evidence Act. See Right of private defence.

1. Burden is on accused to prove exception. But he can rely on facts brought out in the case even though not found in his statement or defence evidence. 1936 N. 119, 1925 N. 37=25 Cr. L. J. 1077 and 56 C. 1013=1929 C. 346 Rel. on, 1934 O. 485=35 Cr. L. J. 1489, 1933 L. 1055, 1933 R. 142=34 Cr. L. J. 783, 45 A. 329, 4 C. 124.
2. Accused must prove right of self defence. 154 I. C. 697, 8 C. W. N. 714, 1933 R. 142=34 Cr. L. J. 783, 1927 L. 786=28 Cr. L. J. 838.
3. Burden of proving grave and sudden provocation is on accused. 20 B. 215, 30 I. C. 113.
4. Accused must prove insanity. 1924 A. 186, 50 I. C. 991.
5. When an act is *prima facie* murder, accused must prove that it is only culpable homicide. 1930 O. 408, 25 Cr. L. J. 1005, 52 I. C. 224. See 1933 L. 1055, 1933 R. 142=34 Cr. L. J. 783.
6. Accused can set up alternative plea of *alibi* and self defence. 21 Cr. L. J. 799=58 I. C. 527, 40 A. 284, 52 I. C. 485=20 Cr. L. J. 661, 30 I. C. 113.
7. It is not necessary that exception should have been specifically pleaded or accused should have produced evidence to establish it. 58 I. C. 527=21 Cr. L. J. 799, 1930 C. 442=127 I. C. 263.
8. If the task of proving an exception has already been performed by the prosecution for the accused, it is not necessary for the accused to do it all over again. 1925 N. 37=25 Cr. L. J. 1077, 11 C. L. R. 232. See 1933 L. 1055=147 I. C. 722.

4. Of facts within the knowledge of accused. S. 106 Ev. Act.

1. An accused is entitled to hold his tongue, but where the only alternative theory to his guilt is a remote possibility, it is for him to prove it. 43 I. C. 605=19 Cr. L. J. 189.
2. When a person acts with some intention other than that which the character and circumstances of the act suggest, the burden is on him of proving that intention. 22 C. 164.
3. In a lurking house trespass by night accused must show that he had some lawful intention. 40 A. 221 See 22 C. 391.
4. When a property is entrusted to a servant, it is his duty to give true account of what he does with it and his failure to do so raises a presumption that he misappropriated it. 1925 R. 47=26 Cr. L. J. 267.

BURGLAR. See House breaking—6. Right of private defence—1.

BURIAL PLACE. S. 297, I. P. C. See "Trespass on burial place", Religion.

BUTCHER. See Cantonment Act, S. 213.

BUTCHER SHOP.

Opening a butcher shop is lawful but when unnecessarily or designedly offensive to a section of community it is a public nuisance. 18 P. R. 1867.

BUYING AND SELLING MINOR. See Prostitution, slave.

BUYING WIFE. See Betrothal.

BYELAW. See Local or Special Law—1.

BYSTANDERS. See Facts forming part of the same transaction. S. 6, Ev. Act.

1. Bystanders not rescuing the injured person, the presumption is that they did not see the fight. 132 P. L. R. 1915.

Bystanders—(concl.)

2. Witness went to spot after the occurrence and heard bystanders saying that four men have murdered 'A', is inadmissible. 1925 L. 578=91 I. C. 812.
3. A statement by a bystander (alleged eye witness) made to a person who came to the scene of occurrence after the murderers had left cannot be proved against the accused for showing that they were mentioned as murderers. 226 P. L. R. 1915=34 P. R. 1914 Cr.
4. Hearsay evidence of the statement of a bystander as to an occurrence would be admissible if it was made during transaction or shortly before or after it as to form part of the same transaction. 4 C. W. N. 265, 10 C. 302 Dist.
5. Statement of the raped girl to her mother, after the accused left is not relevant under S. 6. 1930 C. 132=50 C. L. J. 524, 1930 L. 337=32 Cr. L. J. 63.
6. Evidence of a witness who was not present at the occurrence but only deposed to circumstances after occurrence is not admissible to prove facts relating to it. 1925 L. 578=26 P. L. R. 674=91 I. C. 812=7 L. L. J. 408.
7. What a witness tells at the time of the occurrence in respect of the occurrence itself is *res gestae* under S. 6 but a statement with regard to an event which took place a year ago is not. 1921 L. 258=4 L. L. J. 491.

C.

CANAL WATER—FIGHT OVER.—*See* Right of private defence—10.

CONTONMENT ACT (II OF 1924).**S. 118.**

1. The giving of offence by the exposure of the person is not a necessary ingredient of the offence under S. 118. The offence is complete if the exposure is wilful or indecent and in a public place. 1926 A. 263=91 I. C. 539=27 Cr. L. J. 107.
2. A "Takhtposh" or moveable wooden platform cannot be held to be "earth or material of any description or any offensive matter or rubbish" within the meaning of clause (c), S. 118 (1). 1927 L. 647=93 I. C. 411=28 Cr. L. J. 683.

S. 184.

It is not proper to substitute a conviction under S. 268 for one under S. 184. 1934 O. 29.

S. 213.

A butcher who has no licence, actually imported meat in large quantities for more than could be required for his personal use and distributed it, is guilty even if there was no evidence that he actually received any money. 1929 Sind 150.

S. 236.

1. Where executive officer was not the person importuned, complaint by him is bad. 1933 L. 590.
2. A Magistrate can convict a male of the offence of loitering for the purpose of prostitution under S. 236 (1). 1926 B. 227=93 I. C. 1051=27 Cr. L. J. 555.

S. 268.

S. 268 Provides for penalty for continuing or contravention. 1934 O. 29.

CAPITAL SENTENCE. *See* Murder—78.**CARBON COPIES OF STATEMENT.** *See* Evidence—42.**CARRIER.** *See* Breach of trust—11.**CASH.** *See* Disposal of property—3.

Cash has no earmark and cannot be identified, when theft is committed with respect to it. 1926 Sind 17=89 I. C. 259=26 Cr. L. J. 1315.

CASHIER.

The position of cashier is that of a trustee. 19 P. R. 1903 Cr.

CASTE. *See* Cheating by personation—4. Defamation—40.

1. Excluding complainant from caste owing to religious differences is not punishable

Caste—(concl'd.)

under Ss. 290, 500, I. P. C. 3 P. R. 1883 Cr., 1923 M. 587, 1923 R. 16.

2. Telling a Hindu that he is outcaste amounts to defamation. 26 I. C. 460.

CASTE PEOPLE. See Witness—11.

CASTOR OIL. See Poison—5.

CATTLE-PEN. See Building.

Entering a cattle-pen is not a house trespass. 28 P. R. 1905 Cr.

CATTLE TRESPASS.

The liability of owner for cattle trespass does not depend upon his absence or presence at the time of trespass but lies expressly or impliedly permitting the cattle to trespass. 16 P. R. 1905 Cr.

CATTLE TRESPASS ACT (1 of 1871).

S. 10.

1. A lessee is the occupier of land under S. 10 and can seize cattle. 50 I. C. 1006, 32 I. C. 654, 3 P. R. 1916 Cr.
2. A person in exclusive possession of land is "occupier." 3 P. R. 1916, 32 I. C. 654.
3. Watchman can seize cattle under general instructions of the cultivator. 1922 P. 317, 31 I. C. 372.
4. Seizing of cattle for getting arrears of rent for grazing is illegal and amounts to attempt to commit theft. 41 I. C. 817, 22 C. 1017.
5. The right to seize cattle subsists while the cattle are trespassing. 1925 N. 50 and does not extend to following them to shed. 1934 N. 258
6. The occupier of the land has the right to seize trespassing cattle and the owners of cattle who forcibly oppose the seizure are guilty under S. 24, although they claim to be owners of the land in question. 3 P. R. 1916 Cr.

S. 11.

1. The seizure by a Forest Officer of cattle found straying in a reserved forest is legal though no damage is actually done. 22 B. 933.
2. Cattle are not liable to seizure by P. W. D. officers unless they were trespassing on public property of the Department. 24 M. 318.
3. It is not necessary that the person who seizes or causes the cattle to be seized must himself take them to the pond. 12 P. R. 1882.
4. Legality of seizure does not depend on actual damage being caused. 1934 S. 34 = 35 Cr. L. J. 830, 1930 O. 250 Ref., 1920 P. 832 Dist.

S. 19.

Sub-Inspector of Police purchasing pony which had been impounded is guilty under S. 19, Cattle Trespass Act and S. 169, I. P. C. 16 W. R. 52.

S. 20.

1. It is not necessary that a Magistrate who is generally empowered under the Cr. P.C. to receive complaints, should be specially authorized by District Magistrate to receive complaint under the Cattle Trespass Act. 50 M. 841, 44 B. 42.
2. A Magistrate receiving complaint cannot transfer it under S. 192 (1) to any Magistrate. 26 P. R. 1879, 34 C. 926, Ref. 44 B. 42.
3. When the cattle are in the custody of another, the owner not acquainted with the facts of the case cannot complain. 5 Bom. L. R. 205.
4. A suit for malicious prosecution under this section lies. 37 I. C. 374.
5. A complaint under S. 20 by a wrong person is nullity and strikes at the root of trial. 1931 N. 98 = 132 I. C. 457, 4 P. R. 1917 Cr., 28 P. R. 1883 Cr., 14 I. C. 671.
6. A servant actually present at the time of seizure might make a complaint under S. 20, when the owner himself is unable to make a complaint or when there is no agent, otherwise the complaint should be by owner or agent. 1931 N. 98.
7. A complaint after 10 days is time barred. 38 C. W. N. 1072.

Cattle Trespass Act—(contd.)**S. 21.**

It is not necessary that the agent must be an eye witness. He may act on what has been told him. 1923 N. 154=84 I. C. 551.

S. 22.

1. Compensation may be awarded to owner of cattle and not the agent filing complaint. 1929 N. 152. Pleader's fee cannot be awarded. 1933 M. 502.
2. Proceedings under S. 22 are not strictly criminal but quasi-civil and a Magistrate can summarily assess compensation. 14 C. 175.
3. Where no compensation is claimed and no allegation as to loss is mentioned in the complaint, Magistrate cannot award it. 1923 P. 292=72 I. C. 71.
4. Compensation need not be claimed in the complaint. 1928 M. 369. See 1930 N. 149.
5. Grazier of cattle is an agent within S. 22. 1929 N. 152=116 I. C. 424.
6. Municipal servant illegally impounding cattle is guilty under S. 22. 44 I. C. 592.
7. Compensation awarded under S. 22 is not a fine and therefore appeal lies under S. 413, if the amount is less than fifty. 46 B. 58=63 I. C. 160, 32 M. 214 Cont. 19 M. 238, 15 C. 712, 10 B. 230, 31 M. 133.
8. Suit for damages for illegal seizure is not barred by this section. 16 C. 159.
9. When two persons are convicted, an order not specifying the amount of compensation to be paid by each is not bad. 14 C. 175.
10. A person cannot seize cattle licensed to graze by Lambardar, although it was given without the consent of all the co-sharers. 84 I. C. 862=1923 N. 336.
11. S. 22 does not apply when there is no illegal seizure or detention. 22 C. 139, 22 C. 669.
12. No sentence of fine can be passed under S. 22. 27 C. 992, 25 P. R. 1878.
13. The compensation is not one for damages to reputation. 37 P. R. 1878.
14. A sentence of imprisonment in default of fine is illegal. 1930 N. 149.
15. Imposition of penalty in excess of the sum awarded to the complainant as compensation is illegal. 36 P. R. 1878, 5 P. R. 1880.

S. 23.

No appeal lies from an order under S. 23. 22 P. R. 1886.

S. 24.

1. Rescuing cattle from cattle pound by opening the lock of the door is an offence under S. 24, C. T. Act and Ss. 378, 441, I. P. C. 1927 M. 343=100 I. C. 120.
2. It is necessary to prove that cattle were liable to seizure. 1926 A. 276=92 I. C. 697 (1)=27 Cr. L. J. 313, 50 I. C. 1006, 57 I. C. 464.
3. Plea of title to land will not prevail against a true owner. 3 P. R. 1916 Cr.
4. Driving cattle by shouts and cries constitutes rescuing. 1923 M. 608.
5. For a conviction under S. 24 there must be finding of trespass and damages. 43 I. C. 445, 43 I. C. 618, 50 I. C. 1006.
6. If cattle were not liable to be seized, their rescue is no offence. 24 M. 318.
7. Separate punishment under the Act and the Penal Code is illegal. 41 I. C. 445.
8. An offence under this section is not compoundable. 42 A. 202.
9. Cattle strayed into the field of accused, and complainant tried to rescue them by force and got a grievous hurt, held that the accused exercised the right of private defence. 86 I. C. 988=1925 Pat. 762=26 Cr. L. J. 924.

CAUSING DEATH BY NEGLIGENCE. See Death by Negligence, S. 304-A. Penal Code.

CAUSING MISCARRIAGE. See Abortion.

CEREALS AND GRAIN. See Identification of things.

CERTIFICATE.

1. **False.** See Forgery—14, Cheating—19.

2. **Doctor's.** See Doctor's certificate.

3. **Of Magistrate as to examination of accused.** Ss. 164, 364, Cr. P. C.

See Confession or statement (Recording of)—3.

4. **Of Police Agent.** S. 188, Cr. P. C.

1. The certificate of Political Agent is necessary for prosecuting a person in British India for an offence committed outside British India, otherwise trial is illegal. 24 A. 256, 19 A. 109, 41 A. 452, 24 B. 287, 13 M. 423.
2. The defect cannot be cured even if the Magistrate was himself the Political Agent. 13 M. 423, 5 M. 23.
3. An agreement between a Native State and British Indian authorities to arrest people found gambling in each other's territories does not take the place of certificate. 42 A. 89=52 I. C. 668.
4. Want of certificate is not a fatal defect, if accused is not prejudiced. 35 P. R. 1888, 30 P. R. 1889, 4 P. R. 1902 *Cont.* 24 A. 256.
5. But if the defect was observed and objected to by the Sessions Judge, the commitment should be quashed. 5 L. 416 (420), 11 P. R. 1899.
6. There is nothing illegal if the certificate is produced just before framing of charge. 47 B. 907 (1911), 12 Bom. L. R. 667, 1925 S. 88=81 I. C. 108.
7. The Magistrate is not confined to the charge in the certificate. 33 A. 514.
8. Certificate once given cannot be revoked. 13 Cr. L. J. 537.
9. The framing of an alternative charge under Ss. 379 and 411, I. P. C., does not confer jurisdiction on the Magistrate when offence under S. 411 is committed in a Native State without the certificate of the Political Agent. 54 B. 171.
10. The word "certificate" does not occur in S. 188, and there is no direction of signing it by any particular person. The convenient manner of proving it is the production of a document signed by the Political Agent. 7 L. 468=1926 L. 609.
11. The certificate signed by Under Secretary to the Political Agent is insufficient. 7 L. 468=1926 L. 609.
12. A commitment without a certificate is illegal. 7 L. 396=1926 L. 582, 5 L. 416.
13. The defect as to absence of certificate of Political Agent is not curable by the subsequent production of the same. 1925 L. 185=5 L. 416=92 I. C. 170.
14. If an offence of forgery is committed in a State, the trial and conviction of the accused is vitiated if without the sanction of the Political Agent or the Local Government. 1930 Pat. 501=122 I. C. 155=31 Cr. L. J. 364.
15. Kidnapping is not a continuing offence or when it was committed in a Native State, the British courts have no jurisdiction without a certificate. 41 A. 452.
16. The offence committed on High Seas does not require a certificate, as there is no Political Agent there. 41 B. 667.
17. The proviso to S. 188 is universal and is not restricted to Native States in India. 14 Cr. L. J. 298.
18. An Indian British subject accused of an offence in a Foreign State cannot be tried except on the certificate of the Political Agent or with the sanction of Local Government. 1932 C. 299=136 I. C. 598=33 Cr. L. J. 322.
19. S. 188, Cr. P. C., overrides S. 179, where S. 188 is applicable. 1932 C. 465.
20. British Vice Consul in foreign territory is not Political Agent within the meaning of S. 188. Certificate of Local Government is sufficient. 1934 Sind 96.
21. Absence of certificate under S. 188, Cr. P. C. can be cured under S. 537, Cr. P. C. 8 if it was granted subsequently. 1934 L. 827, 35 P. R. 1838 Cr., 30 P. R. 1889 Cr., 4 P. R. 1932, 11 P. R. 1899 Cr. See 5 L. 416, 7 L. 396, 13 M. 423, 19 A. 109.
22. Under S. 188 a court in British India cannot try an offence by virtue of the terms

Certificate—(concl'd.)

of S. 179, merely because part of the consequences have ensued within its jurisdiction. The certificate of Political Agent is necessary. 1935 M. 326=63 L. J. 415.

23. Certificate of Political Agent is necessary for trial of dishonest retention of stolen property in a foreign territory. 1933 M. 461=34 Cr. L. J. 285.
24. Dacoity was committed in British India but murder was committed while carrying away stolen property, in a Native State. Held, Indian British Court had jurisdiction to try offence under S. 396 without a certificate. 1933 L. 977=147 I. C. 2.
- 5. Of Public Prosecutor for prosecuting an approver.** S. 339, Cr. P. C.
 1. The absence of certificate by the Public Prosecutor for the prosecution of an approver that he has not complied with the conditions of the pardon, vitiates the trial. 5 L. 379=1925 L. 15=84 I. C. 61=26 Cr. L. J. 237.
 2. An approver cannot be prosecuted at the instance of a suggestion by the Sessions Judge. Certificate by Public Prosecutor is the sole basis of the prosecution. 1933 B. 135=85 I. C. 149=26 Cr. L. J. 469.
 3. When the approver was committed without a certificate by the Public Prosecutor and it was provided at the trial before Sessions Judge. Held, that what was forbidden by S. 339 is the trial not the enquiry and therefore commitment was not irregular. 3 R. 55=1925 R. 219=92 I. C. 430.
 4. No sanction under S. 339 (3) for giving false evidence can be granted, unless a Public Prosecutor gives a certificate to the effect that the approver has not complied with the conditions of the pardon. 1929 O. 527=121 I. C. 83=31 Cr. L. J. 204.
 5. S. 339 (1) does not cancel S. 476, it merely imposes an additional condition essential to the institution of a prosecution for perjury by an approver and even when the condition is satisfied, the prosecution can still be initiated only on a complaint by the Sessions Court or High Court. 1927 N. 189=28 Cr. L. J. 645.
 6. A sanction to prosecute an approver who made contradictory statements should not be refused unless it is shown that he made the statement under undue influence. 1924 L. 90=76 I. C. 398=25 Cr. L. J. 174.
 7. Production of certificate in the Sessions Court in an offence under S. 396, I. P. C. is sufficient. It need not be produced in the Court of committing Magistrate, as the trial commences in Sessions Court only. 1935 O. 116=153 I. C. 596=1935 Cr. C. 206, 1919 M. 190=20 Cr. L. J. 514=51 I. C. 674 and 1925 R. 219=3 R. 55=27 Cr. L. J. 254 Rel. on.
 8. Public Prosecutor need not be Public Prosecutor when granting certificate. 1936 L. 409=162 I. C. 969.
 9. Public Prosecutor conducting the case can grant certificate. 1936 L. 409.
 10. Police must charge persons against whom there is evidence. They have no right not to charge them because they require him as witness. 1935 B. 186=37 Bom. L. R. 179.

CHALAN. See Incomplete chalan, Cognizance of offence—20, Investigation.

A police chalan is a police report of facts constituting an offence under Cl. (b) S. 190, and a Magistrate can take cognizance upon it. 8 P. R. 1901 Cr., 22 P. R. 1900 Cr.

CHANCE WITNESS. See Witness—12.

CHANGING GROUNDS BY PROSECUTION. See Duty of prosecution—3.

CHARACTER. See Bad character, Good character.

Witnesses to character may be cross-examined. See S. 140, Evidence Act.

CHARGE. S. 225 to S. 234, Ss. 210 and 254, Cr. P. C. See Distinct offences—2.

1. Addition of Ss. 227-228, Cr. P. C.

1. Where the facts disclosed by the Magisterial enquiry warrant a charge not framed by the Magistrate, the Sessions Judge can frame an additional charge. 71 I. C. 343=30 I. C. 125, N. F. 32 C. 22=54 I. C. 409. See 1924 C. 625.

2. Accused was committed for murder, the Sessions Judge could not add a charge under S. 123. 20 P. W. R. 1909 Cr.

Charge—(contd.)

3. The Sessions Judge's power to add charge is not fettered by the fact that a complaint in respect of it had been dismissed by the Magistrate. 16 B. 414, 36 C. 573, *Cont.* 1927 S. 28, 19 B. 51, 19 B. 749, 27 B. 135, 1927 P. 370.
4. If a charge is added or altered after the close of prosecution and defence evidence, it is prejudicial to the accused. 31 B. 218.
5. Sessions Judge can add charges under Ss. 497, 498, I. P. C., where the complaint is not only of assault but under those sections as well. 48 C. 1105=64 I. C. 280 Dist. 2 P. 708=1924 P. 233=77 I. C. 734, 1926 N. 426=95 I. C. 471, Ref. 1923 L. 163=72 I. C. 593, 1923 N. 260=72 I. C. 361, 1926 M. 296.
6. When complaint contained charges under Ss. 352, 504, I. P. C., Magistrate could not add a charge under S. 500 (Defamation) on the statement of the complainant. 10 A. 39, Dist. 1926 R. 53, Ref. 1924 M. 340=81 I. C. 129, 6 L. 375.
7. Magistrate can add a charge for any offence disclosed by the facts though not mentioned in the certificate under S. 188, Cr. P. C. 33 A. 514.
8. Where a person was charged with murder of one person and causing hurt to another, the Sessions Judge can add a charge of murder also. 1924 C. 625.
9. Sessions Judge can add charges under Ss. 326, 325, Penal Code, for causing injuries to the prosecution witnesses, when the original charge was for murder. 1924 L. 413=71 I. C. 593, 9 S. L. R. 37 Foll. 32 C. 22, 4 I. C. 903 Dist.
10. If the effect of alteration is to deprive a person of right to be tried by Jury, it is bad in law. 5 P. 238=1926 P. 253=27 Cr. L. J. 512.
11. Sessions Judge cannot add a charge, on which prosecution led no evidence. 97 I. C. 1041=1927 Sind 28=27 Cr. L. J. 1217.

2. Alteration of.

1. Magistrate cannot alter a charge under S. 501 to one under S. 500, I. P. C., when there is no formal complaint by the person aggrieved for the latter offence. 18 P. R. 1889, 8 P. R. 1891 Cr., 1923 O. 4=69 I. C. 81, 35 P. R. 1905.
2. A charge of rape cannot be altered into one for adultery. 29 C. 415, 2 P. R. 1918=44 I. C. 204, 30 C. 910, 6 L. 375.
3. Where a prisoner has been extradited for dacoity, the Court may alter the charge of dacoity into theft. 17 B. 369.
4. A Court cannot alter charge in a compoundable offence after the presentation of compromise petition. 29 P. R. 1914.
5. A Court cannot alter charge after the verdict of Jury. 8 B. 200, 9 A. 525, 12 A. 551, 16 B. 414, 1924 C. 625=83 I. C. 485.
6. A charge under S. 395, I. P. C., cannot be altered into one for robbery without hearing evidence. 13 I. C. 783.
7. Alteration of charge at a late stage would prejudice the accused in his defence. 31 B. 218, 32 P. R. 1910. See 131 I. C. 461.
8. Application for alteration of charge must be made immediately after the original charge. 27 C. 839 and the Magistrate cannot postpone passing order on this. 16 B. 414.
9. It is not incumbent on the court to re-examine the accused after the alteration of the charge. 1 P. 54, 46 M. 449=1923 M. 609=73 I. C. 163.
10. An illegal conviction under S. 30 (a), Burma Excise Act, cannot be altered to a conviction under S. 37. 7 R. 316=1929 R. 256=30 Cr. L. J. 990.
11. If charges, as framed, disclose no offence, it is illegal and prejudicial to the accused to alter or amend the charge and convict him thereon without giving him opportunity to meet it. 54 I. C. 409.
12. Appellate Court cannot add a charge under S. 143 to charges under Ss. 451, 426, as the former imposes a constructive liability for the acts of others. 31 I. C. 337.
13. If the alteration has not been explained and read to the accused, the conviction is illegal. 1926 A. 227=91 I. C. 888=27 Cr. L. J. 152, 88 I. C. 1.
14. A Magistrate at the time of writing judgment discovered that charges under Ss. 504

Charge—(contd.)

and 352 could not be tried together, as the occurrences were different. He struck off a charge under S. 352 and asked the accused if he wants to recall the witnesses and convicted him under S. 504. Held, it is illegal. 90 I. C. 914=1925 M. 1065=49 M. L. J. 93=26 Cr. L. J. 1618.

15. An accused charged under S. 412 (triable by Jury) can be convicted under S. 411 triable with the aid of assessors, though not separately charged. 1926 B. 134=27 Cr. L. J. 650=27 B. L. R. 1416=94 I. C. 602, 26 M. 243, 5 P. 238.
16. Where accused is challaned under S. 341, I. P. C., the trying Magistrate can charge him under S. 341 as well as under S. 506. 1931 O. 73=32 Cr. L. J. 330.
17. A Court can add charge at any time before the pronouncing of judgment and the discretion conferred by statute cannot be whittled away by ruling. 131 I. C. 461=1931 M. 439=32 Cr. L. J. 756=1931 Cr. C. 487.
18. S. 226 does not empower the Sessions Judge to add in the existing charge. A charge under Ss. 497, 498, I. P. C., cannot be added to a charge under S. 366, I. P. C., by the Sessions Judge. 134 I. C. 314=1931 C. 524=32 Cr. L. J. 1135.

3. Altered charge requiring sanction. S. 230, Cr. P. C.

1. If sanction is obtained for substantive offence, no fresh sanction necessary for abetment of the same. 30 C. 905.
2. The fact that sanctioning authority is of opinion that facts constitute an offence under one section, is no bar to conviction under another section. 31 P. R. 1919 Cr.

4. Alternative—

1. In a criminal trespass case one or other of intents specified in S. 441, I. P. C. is sufficient. 5 P. R. 1886 Cr. See 12 P. R. 1906 Cr., 42 P. R. 1881, 75 I. C. 292, 17 P. R. 1908 Cr., 96 I. C. 871, 73 I. C. 527, 81 I. 239.
2. An alternative charge in respect of two contradictory statements can be framed only when the prosecution is unable to prove which of the two statements is false. 27 P. R. 1890, 32 P. R. 1888, 71 P. L. R. 1904.
3. When the conviction is in the alternative, Court can pass the maximum sentence provided for the lesser of the two offences. 63 P. L. R. 1903.
4. There is no misjoinder in charging an accused in the alternative with the main offence (murder) and under Ss. 201 or 203. 1930 M. 870, 1925 Sind 306.
5. If the age of the girl is in dispute, an alternative charge for abduction and kidnapping is not irregular. 57 C. 1074.
6. Alternative charges under Ss. 395, 457, Penal Code, are not illegal. 57 C. 801.
7. Alternative charges under S. 201, Penal Code, and S. 52, Post Offices Act, are legal. 1930 L. 460=129 I. C. 760=1930 Cr. L. 564.
8. Alternative charge under S. 380, I. P. C. and S. 52, Calcutta Police Act, is legal. 45 C. 727, 50 C. 564=1923 C. 596=24 Cr. L. J. 372.
9. Alternative charge under S. 16, Motor Vehicles Act and S. 338, I. P. C., is legal. 2 P. L. T. 31.

5. Amendment of—S. 227.

1. Amendment of charge by Sessions Judge after assessor's opinion is illegal. 33 P. R. 1916 Cr.
2. A Magistrate amending charge should not write over the original charge. 26 I. C. 306.
3. An illegal charge, *e. g.*, of four offences cannot be amended by striking out one of the offences. 29 M. 569, 49 C. 555.
4. An amendment of charge by Sessions Judge which does not prejudice the accused is legal. 25 I. C. 630.
5. A Court can amend the charge, although accused was not summoned under that section. 1925 C. 579=84 I. C. 446=26 Cr. L. J. 302.
6. Sessions Judge should compare the charge sheet and amend it using so far as possible the words of the section. 91 I. C. 233=1926 O. 245=27 Cr. L. J. 57.
7. Amendment of charge from S. 304 to S. 302 but the substance of the charge being

Charge—(contd.)

the same, the trial is illegal and S. 537 does not cure it. 1935 P. 431.

6. Contents of. See--21.**7. Conviction for different offence for which charge not framed. S. 237, Cr. P. C.**

1. Accused charged with substantive offence can be convicted of abetment. 49 B. 84, 59 I. C. 913, 1930 N. 145=113 I. C. 881, 23 M. L. J. 722, 33 M. 264, 1929 C. 807=50 C. L. J. 472, 42 C. 1094, 49 A. 120.
2. A person charged under Ss. 302—201, Penal Code, can be convicted under S. 201 only. 96 I. C. 867, 1925 P. C. 130.
3. A person charged and tried under S. 411, I. P. C., may be convicted under S. 379 (Theft). 1888 A. W. N. 116 and *vice versa*. 17 M. L. J. 219.
4. A person charged under S. 406 may be convicted for attempt to cheat. 12 B. H. C. R. 1.
5. A person charged under S. 380, I. P. C. may be convicted under S. 54-A. of Calcutta Police Act, although no charge was framed. 50 C. 564.
6. The offences must be cognate offences and not distinct like murder and theft. 4 L. 373=1924 L. 109=25 Cr. L. J. 385, 1888 A. W. N. 95.
7. A person charged with rape cannot be convicted of kidnapping. 8 Bom. L. R. 120.
8. A person charged under Ss. 149 and 325, I. P. C., cannot be convicted under S. 325. 34 C. 698, 41 C. 662, 16 C. W. N. 1077, *Cont.* 47 M. 746.
9. Appellate court can convict the accused under S. 423, Cr. P. C., for an offence, though he was not charged with it. 25 C. 863, 41 C. 537.
10. A person acquitted under S. 302 can be convicted on Government appeal, under S. 193, I. P. C., though he was not charged with it. 52 B. 385, 1927 A. 75.
11. A person charged with an offence can be convicted of attempt to commit the same. 1924 C. 18=82 I. C. 545.
12. A person cannot be convicted for greater offence than that with which he is charged, whether on appeal or in the original Court. 69 I. C. 628.
13. A person charged with murder can be convicted under S. 201 without a further charge being made against him under that section. 10 L. 213, 7 L. 84=1926 L. 88=94 I. C. 901, 6 P. R. 1902 Cr., I. P. R. 1904 Cr., 46 C. 427, 1926 A. 737, 1925 P. C. 130, 108 I. C. 905=29 Cr. L. J. 457, 6 L. 226, 103 I. C. 402.
14. A person charged under S. 397, I. P. C., can be convicted under S. 412 if the charge under S. 397 fails for want of identification. 1930 O. 353.
15. A person charged under Ss. 326—149, Penal Code, can be convicted under S. 326 read with S. 34. 7 P. 758=1929 P. 11=30 Cr. L. J. 205.
16. A person charged under S. 452, Penal Code, cannot be convicted under S. 19, Arms Act. 4 R. 355=1927 R. 32=27 Cr. L. J. 1360.
17. A person charged under S. 395 can be convicted under S. 457. 1927 O. 196.
18. On a charge of rioting, a conviction under S. 160 (affray) is legal. 1927 N. 163=99 I. C. 861, 1921 A. 261.
19. On a charge under S. 304, conviction can be had under S. 304-A. 1924 B. 450.
20. If the accused is prejudiced, when he is convicted for an offence for which no charge was drawn up, retrial should be ordered. 1925 C. 581=84 I. C. 708, 47 M. 746.
21. On a charge under S. 468, I. P. C., a conviction under S. 471, I. P. C., is wrong, for the accused must have been prejudiced. 1925 N. 294=89 I. C. 398.
22. A charge of murder cannot be converted into one of robbery. 4 L. 373.
23. On a charge under S. 501, a conviction under S. 500, I. P. C. is illegal. 69 I. C. 81.
24. Court can convict an accused for a lesser offence than that with which he had charged him. 111 I. C. 573=1928 O. 402.
25. On a charge of abetment of forgery, conviction for using the same with guilty knowledge cannot be had. 53 C. 466.

Charge—(contd.)

26. Where a Magistrate tries the accused under the section named in the complaint, it cannot be said that because another section could also be charged in the complaint, therefore the trial under the sections charged in the complaint is void. 1930 A. L. J. 1422, 12 M. 54 and 24 M. 675 Dist.
 27. A person charged under Ss. 353—186 was proceeded against under S. 186 only without framing a charge. Held, that the omission to frame a charge was not fatal. 53 A. 206=1931 A. 7=32 Cr. L. J. 313, 3 A. 129.
 28. Accused was charged under Ss. 302—201. Acquittal under S. 302, I. P. C., is no bar to conviction under S. 201. 36 C. W. N. 373, 6 L. 226, 30 C. W. N. 816.
 29. A person charged under S. 395 cannot be convicted under Ss. 448—323, I. P. C. 132 I. C. 254=1931 C. 414=32 Cr. L. J. 892.
 30. Accused was charged under S. 307 and it appeared that shot was fired to scare away the Police, he may be convicted under S. 506, I. P. C., although he was not charged with it. 1931 M. W. N. 861.
 31. Persons sent for trial under Ss. 302—149 and acquitted can be convicted under S. 323 for causing hurt to the companions of the deceased. 1931 L. 566.
 32. On a charge under S. 395, I. P. C., accused can be convicted under S. 458. 1935 A. 458 (2).
- 8. Conviction for abetment on charge of principal offence.** Ss. 237—236 Cr. P. C.
1. A man may be convicted of abetment, though charged with the principal offence only. 1932 C. 455=36 C. W. N. 595, 49 A. 120 Dist. 34 C. W. N. 198 Ref. 1931 O. 274=132 I. C. 529.
 9. On a charge of rape, a conviction for abetment of rape is valid, without amendment of charge. 1935 A. 935, 1925 A. 448 and 1926 A. 227 Dist.
- 9. Conviction of substantive offence on a charge of abetment.**
- Accused charged for abetment of offence only may be convicted of the principle offence. 1931 M. 225=131 I. C. 458, 1925 M. W. N. 418 (P. C.) Rel. 33 M. 264 Not Foll.
- 10. Cross-examination before—** See Cross-examination—4.
- 11. Doubts as to which of several offences was committed.** S. 236, Cr. P. C. See Alternative Charge.
1. S. 236, Cr. P. C. applies to a case where it is doubtful whether the act or acts constituting a single offence, may amount to one or other of several cognate offences. 23 C. 174 (177), 5 S. L. R. 16, 54 C. 476.
 2. S. 236 does not apply to distinct acts but single act or series of acts, so that the charge may be in the alternative. 43 P. R. 1877.
 3. S. 236 does not apply when acts proved raise a doubt whether accused is guilty of any of the charges at all. 12 C. W. N. 530.
 4. Doubt must be as to the application of law to the proved facts and not about the facts which constitute the offence. 1925 C. 903=85 I. C. 818, 134 I. C. 433, 132 I. C. 254, 41 C. 537, 43 I. C. 618, 54 I. C. 252.
 5. That the accused is charged both under Ss. 380 and 414 does not vitiate the trial. 8 P. 731.
 6. Alternative charge for contradictory statements can be framed, when the prosecution is unable to prove which of the two statements is false. 27 P. R. 1890, 2 Weir 309, 89 I. C. 1025=1935 O. 660.
 7. When the conviction is in the alternative, the Court should pass maximum sentence provided for the lesser of the two alternative charges. 15 A. L. J. 587, 63 P. L. R. 1903.
 8. S. 231 applies to cases in which prosecution cannot establish exclusively any one offence. 134 I. C. 1004=1931 Sind 116=33 Cr. L. J. 41.
- 12. Dropping of**
- Accused has been framed under Ss. 326 and 149 I. P. C., a conviction under S. 326 is not necessarily bad. 47 M. 746=1925 M. I.

Charge—(contd.)

13. Effect of framing.

1. When charge is framed, the inquiry becomes a trial. 38 M. 385.
2. Where a Magistrate frames a charge, he cannot acquit the accused or dismiss the complaint without hearing evidence on both sides. 7 C. W. N. 521.

14. Error, omission in—.

Ss. 225, 232, 535 and 537, Cr. P. C.

1. If the superior Court thinks that in consequence of material error in a charge, the accused has been misled, it is bound to direct a new trial. 33 P. R. 1916 Cr.
2. If the appellate Court setting aside a conviction for rioting, convicts the accused for house trespass and hurt, the omission of the charge for the latter offence causes prejudice to the accused. 30 C. 288, 18 C. W. N. 1274—1276.
3. Accused charged for dishonestly using as genuine a forged instrument was convicted of defamation. Held, that no valid charge for defamation could be framed and no trial could be held. 28 C. 63.
4. If the common objects of an unlawful assembly are not mentioned in the charge, it is defective. 22 C. 276, 77 I. C. 988, 33 C. 295, 2 P. 134. See 21 C. 827, 1926 B. 314=95 I. C. 72.
5. A charge of sedition is not defective if it omits to state the particular passage or particular words used by the accused. It is sufficient if the substance of the words is set out. 33 B. 77, 32 M. 384, 32 M. 3, 42 C. 957.
6. If the charge is defective but is sufficiently explicit to give the accused notice of the charge, the irregularity will be cured. 33 B. 77, 1924 C. 18=25 Cr. L. J. 1313.
7. Omission to frame a charge does not invalidate an order of acquittal. 6 A. 129.
8. A person charged under S. 147 with the common object of causing hurt to complainant cannot be convicted under S. 323 of causing hurt to another person. 40 C. 168.
9. An omission to set out the guilty intention of the accused in the charge will be cured under S. 537 unless the omission has occasioned a failure of justice. 22 C. 391.
10. A trial *de novo* must not be ordered when no charge or a defective charge is framed. A fresh trial from the stage of illegality should be ordered. 1925 N. 147.
11. If any person is misled in his defence by absence of any charge or an error in the charge, a retrial should be ordered. 9 P. 642=118 I. C. 323=1929 P. 712.
12. In a charge under S. 498 it was found that wife was not enticed away from her husband's house but from B's house. Held, that it was not proper to order retrial. 1930 C. 138=124 I. C. 520=31 Cr. L. J. 697=1930 Cr. C. 138.
13. Failure to define accurately the common object of unlawful assembly is an irregularity curable under S. 537. 1930 M. 188, 36 C. 865, 37 C. 340.
14. Omission to frame a charge against accused under S. 506, when it was framed against co-accused is immaterial. 1923 A. 476=76 I. C. 568.
15. Accused charged under 147 can be convicted under S. 323, I. P. C. in appeal. 1928 P. 359=108 I. C. 333.
16. The lumping of charge together in a manner which is contrary to the provisions of S. 233 is covered by S. 537, Cr. P. C. 61 I. C. 168.
17. If two offences could not be tried together, their joinder would vitiate the whole trial. 1 L. 562, 25 M. 61.
18. If theft and assault are committed on different occasions, the joinder of charges is bad and vitiates the trial. 1922 L. 144=62 I. C. 329.
19. Omission of S. 149, I. P. C., from the charge is not an illegality. 47 M. 746.
20. A defect of charge cannot be condoned in an appeal against acquittal. 1927 L. 109=99 I. C. 602=28 Cr. L. J. 170.
21. In a charge under S. 498 if the accused are not charged with knowledge that abducted woman was married one but the accused knew what they were charged with, the defect is not fatal. 1927 L. 432=101 I. C. 451, 1927 L. 702.

Charge—(contd.)

22. If the charge is meaningless and inunderstandable but the accused and his counsel knew the nature of offence, it is covered by S. 537. 8 R. 25=1930 R. 201=31 Cr. L. J. 793=125 I. C. 266.
 23. Where the charge is defective under S. 234 as having been presented out of time, the trial is vitiated and the defect is not cured by S. 537, Cr. P. C. 34 C.W.N. 959.
 24. In a charge under S. 415, I. P. C., a mere surplussage to state in the charge that any person suffered loss is only a curable irregularity. 1930 L. 407=129 I. C. 293.
 25. Where accused were charged under S. 420 but were convicted under S. 420 read with S. 114, I. P. C. Held, that it was necessary to frame a charge under Ss. 420-114. 1927 C. 63=99 I. C. 34.
 26. A Magistrate finding that a charge under S. 353, I. P. C., could not be sustained proceeded with the case under S. 186, I. P. C., without framing a charge. Held, that the defect was curable. 53 A. 206=1931 A. 7=32 Cr. L. J. 313.
 27. Where wrong section, e.g., S. 16 instead of S. 5, Motor Vehicles Act, is stated in the charge but accused knew the charge he had to meet, the accused was not prejudiced. 59 C. 113=1932 C. 461=33 Cr. L. J. 549.
 28. A person was accused under Ss. 186-353, I. P. C. The Magistrate found that there was no case under S. 353, I. P. C., and proceeded with the trial without framing a charge under S. 186, I. P. C. Held, that omission was not fatal. 1930 A. L. J. 1314=1931 A. 7=129 I. C. 369=32 Cr. L. J. 313.
 29. Omission to frame a charge is not fatal to the trial. It is an irregularity which can be cured. 53 A. 206, 3 A. 129.
 30. If the description given in the charge is incomplete, the provisions of Ss. 225-232—537, Cr. P. C., apply. 132 I. C. 174=1931 C. 410=32 Cr. L. J. 844.
 31. S. 537, Cr. P. C., cures errors or omissions in charge unless the accused is prejudiced. 1935 Sind 34=36 Cr. L. J. 598, 1927 P. C. 44=28 Cr. L. J. 259.
 32. In a charge of murder if the application of S. 34 is not mentioned and the accused is not prejudiced, it is not defective. 1935 R. 304.
- 15. Explaining of—to accused.** S. 255, Cr. P. C.
1. The charge must be read out and explained to the accused and the record must show that the Magistrate has done so. 7 C. 96.
 2. When charge was not explained to the accused, the High Court set aside the conviction and ordered a retrial. 9 M. 61.
 3. When a question whether there was kidnapping either with or without persuasion, and a question as to how long the kidnapping continued and whether at some stage there was a fresh kidnapping and whether there was only a confidence trick undertaken to cheat a person, is more than ever the duty of the Judge even though counsels may be engaged, to clear the ground and to be quite sure that each accused understands the case he has to meet. 1923 A. 285=81 I. C. 80=25 Cr. L. J. 522.
- 16. For lesser offence.**
- Though the framing of a charge under minor section is tantamount to the discharge of the accused under a more serious section of the same type or family of offences, it is true if the commission of more serious offence has been alleged from the start and the Magistrate must visualise or have been invited to visualise the possibility of framing the more serious charge. 1931 L. 402 (2)=32 Cr. L. J. 1029.
- 17. In a Sessions Case.** S. 10, Cr. P. C. See Commitment.—5.
1. The framing of a charge does not amount to an order of commitment and the Magistrate does not after the charges become *functus officio*. He can amend the charge. 12 Bom. L. R. 521.
 2. It is illegal to frame a charge without taking all evidence adduced by the accused. 20 A. 264.
 3. If the case is transferred from the Court of one Magistrate to another, the latter can commit the case acting on the evidence recorded by the former. 36 A. 315.
 4. A District Magistrate cannot order a Subordinate Magistrate to commit as

Charge—(contd.)

accused unless the evidence is sufficient in law to form the basis of conviction. 2 Bom. L. R. 225.

5. Where an accused is charged with two offences one of which is triable by Court of Session, the Magistrate should adopt the procedure laid down in Chapter XVIII, Cr. P. C., and give the accused opportunity for cross-examination of prosecution witness. 61 I. C. 1008.

18. In warrant case when to be framed. S. 254, Cr. P. C.

1. In a warrant case it is imperative on the Magistrate to draw up a formal charge in the manner indicated in S. 254. 93 I. C. 70.
2. It is not necessary for a Magistrate to examine more witnesses than are sufficient to convince him of the truth of the charge and then after putting question can draw up a charge. 3 M. H. C. R. 2 (App.)
3. It is not necessary that the Magistrate should wait till the whole evidence for the prosecution has been taken. 8 A. L. J. 707.
4. It is only when the prosecution has proved all the facts necessary to constitute an offence charged against an accused person that a charge can be framed. 2 P. R. 1906 Cr.
5. If on the evidence recorded different offence than the one charged against an accused is proved, Magistrate can frame a charge for that offence. 5 B. H. C. R. 100.
6. If accused is to be proceeded against for an offence triable as summons case, that offence should also form part of the charge. 29 C. 481.
7. If complaint for defamation is lodged and the complainant in her deposition further charged the accused with using criminal force and the Magistrate tried him for both the offences and acquitted him of defamation but convicted him of using criminal force. Held, that the trial was legal. 3 Bom. L. R. 675.
8. Magistrate should draw up a charge in accordance with the offence disclosed and not to consider whether he can adequately punish the accused or whether he should send up the case to the Sessions. 1 P. R. 1901 Cr., 2 P. R. 1906 Cr.
9. Where the complaint purported to be under Ss. 193—211, I. P. C., but the Magistrate after recording evidence framed a charge of defamation. Held, that it is quite sufficient for the complainant to state the true facts and it is for the Magistrate to apply the law to it. The charge for defamation was legal. 6 L. 375, 23 P. R. 1895 Cr. Foll. 10 A. 39, 27 M. 61 and 29 C. 415 Dist.
10. Although a Magistrate has framed a charge against an accused person, it is not incumbent on him to convict him because the latter could not adduce satisfactory evidence in rebuttal. 89 I. C. 388=26 Cr. L. J. 1348=1926 Notes 115.
11. When the trial has begun according to the provisions relating to warrant case, it is not open to the Magistrate to alter the section and convict the accused without framing a charge. 28 Cr. L. J. 227=99 I. C. 1027.
12. A complaint was made under Ss. 353—186, I. P. C. The Magistrate during the course of trial found that a conviction under S. 353 could not be sustained and therefore proceeded with the case under S. 186 without framing a charge. Held, that omission was not fatal to the trial. 53 A. 206. 3 A. 129.
13. Where, having taken up a case as a warrant case, the accused were discharged of that offence, but the Magistrate proceeded with the summons case without a charge. Held, that the procedure was right. 1931 M. W. N. 1319.
14. Where the Committing Magistrate is competent to dispose of a case himself, but does not do so, he is guilty of failure to comply with the provisions of S. 254, because an unnecessary committal is an error of law which would justify the quashing of commitment. 1932 L. 263=33 P. L. R. 185=33 Cr. L. J. 680, 41 A. 454.
15. Where the evidence if believed, justifies conviction, it is better to draw up a charge and dispose of a case finally. 18 P. W. R. 1909 Cr.
16. In a complaint under certain sections, charge was framed under a different section and accused was acquitted. In revision retrial was ordered. Held, that charge

Charge—(contd.)

under sections mentioned in the complaint could not be framed. 1933 M. 65 (2)= 33 Cr. L. J. 825, 31 M. 543.

19. Joinder or misjoinder of.—*See Distinct offences.*

1. If two offences could not be tried together, their joinder would vitiate the whole trial. 1 L. 562, 25 M. 61.
2. If the provision in framing the charge has been infringed, it would be curable except when it works actual injustice to the accused. 53 M. 937, 1927 P. C. 44.
3. A joint trial of offences under S. 379 and S. 411 is illegal. 1923 L. 394.
4. Distinct offences cannot be charged together. 81 I. C. 612, 50 C. 94.
5. Joinder of two offences in a single charge is only an irregularity cured by S. 537, 1928 C. 700, 100 I. C. 827, 41 C. 66, 19 C. W. N. 972 Foll. 4 C. 846 Diss. from.
6. Where in the course of one transaction three murders were committed and only one charged was framed against all the accused. Held, that three separate heads of charge should have been employed. 54 C. 237=1927 C. 17.
7. Theft of two articles belonging to two different persons committed in one enterprise constitutes only one offence. 1926 N. 89=90 I. C. 151.
8. The offence of conspiracy and offences committed in pursuance of conspiracy form one and the same transaction. 94 I. C. 717.
9. A joinder of charges under S. 408 and S. 477-A. vitiates trial. 44 A. 540.
10. The joinder of charges under S. 376 against one of the accused with charges under Ss. 366 and 147 against others along with him is a misjoinder. 1922 L. 410.
11. The defect of misjoinder of charges vitiates the trial and is not curable under S. 537. 1922 L. 144=62 I. C. 329, 25 M. 6, 27 B. 135.
12. Joinder of charges under S. 121-A. and S. 120-B. is not illegal. 1927 O. 369.
13. When a series of acts are so connected by community of purpose and continuity of action, as to form not only one transaction but a single offence, persons accused of such acts may be charged and tried together. 49 M. 74=1925 M. 690.
14. Where four accused were engaged in a crime from 25th June but the 5th joined them only on the 7th July next. Held, that the trial of the four along with the fifth for an act before 7th July is legal. 50 C. 1004=1924 C. 389.
15. When a person makes deliberate false statements on different subjects during the same deposition, each of such false statements constitutes a separate offence. 51 B. 310=1927 B. 177=28 Cr. L. J. 373=100 I. C. 981.
16. Joinder of charges for offences committed during a period exceeding one year is illegal. 14 P. R. 1905 Cr.
17. Joinder of charges of three offences under S. 411 and three offences under S. 414, I. P. C., is bad. 49 C. 355=1922 C. 401=71 I. C. 214.
18. The breach of the provisions of S. 233, Cr. P. C., is an illegality vitiating trial. 130 I. C. 350, 25 M. 61.
19. Selling adulterated cocoanut oil and failing to expose a sign board are distinct offences and joinder of charges is illegal and vitiates trial. 1931 A. 705=133 I. C. 418=32 Cr. L. J. 1031.
20. Three charges of embezzlement corresponding three charges of falsification of accounts cannot be tried together. 1935 N. 178=36 Cr. L. J. 1216, 26 C. 560, 41 C. 722, 49 B. 892, 32 A. 57, 32 A. 219, 44 A. 540, 30 M. 328 and 1931 O. 86=32 Cr. L. J. 540 Foll. 10 P. 463=1931 P. 349 and 60 I. C. 422=22 Cr. L. J. 230 Not Foll.

20. Not to exceed three offences during a year. S. 234, Cr. P. C.

1. S. 234 says that the trial must be limited to three offences; it does not say three charges. The same offence may be charged under different sections of the Penal Code and any number of such charges can be tried in one and the same trial. 33 B. 77.
2. S. 234 limits the number of offences that can be tried in one trial. It does not mean

Charge—(contd.)

that prisoner cannot be tried separately in one day for more than three distinct offences of the same kind committed during the year. 3 C. 540.

3. If prosecution chooses under S. 222 (2) and the proviso thereto to prosecute for some out of different amounts misappropriated during the year, they are not estopped under S. 403 from instituting further prosecution regarding fresh items misappropriated during the same period. 50 C. 632=1923 C. 654=25 Cr. L. J. 156.
4. S. 234 refers to trials only. A person was committed on six charges of criminal breach of trust and three of falsification of accounts, committed in one year. Held, that the order of committal was not illegal. 2 M. W. N. 179, 53 A. 411.
5. A trial for one offence under S. 401, Penal Code, is not illegal when the period over which the association extends exceeds one year. 47 C. 154.
6. S. 234 does not provide that all offences committed in a year in three different transactions may be tried in one trial. 30 M. 128, 10 S. L. R. 192.
7. Every act of falsification of a book of account would amount to an offence under S. 234 and not more than three of such offences can be tried together. 26 C. 560, 41 C. 722, 32 A. 57.
8. But if the false entries are made in the course of same transaction any number of them can be tried together. 1912 M. W. N. 545, 22 Cr. L. J. 230.
9. Joinder of charges for three offences under S. 411 three offences under S. 414, Penal Code, is bad. 49 C. 555=1922 C. 401=71 I. C. 214.
10. Three charges under S. 409 and one under S. 210 cannot be tried together. 22 C. W. N. 596.
11. The trial of accused on eight counts under Ss. 211, 490, 466, Penal Code, is illegal. 20 Cr. L. J. 784.
12. A trial for four offences is illegal and it cannot be cured by the Judge striking out one of the charges after the trial has closed. 29 M. 569, 49 C. 555, 52 M. 999.
13. A person was accused of committing theft of eight necklaces on different occasions extending over a year. Held, that even if one charge was framed, the trial is vitiated in the same way as if there had been misjoinder of charges. 49 A. 312=1927 A. 223=99 I. C. 603=28 Cr. L. J. 171, 25 M. 61, 38 A. 42.
14. Offence of waging war (S. 121) is a continuing offence and therefore a charge mentioning more than three offences spread over a period longer than one year is not illegal. 49 M. 74=1925 M. 690=1926 M. W. N. 331=95 I. C. 304.
15. A charge under S. 406 made fifteen months after the offence was committed is illegal. 34 C. W. N. 959=1931 C. 357=128 I. C. 816=32 Cr. L. J. 195.
16. The joint trial for more than three offences committed during one year is illegal. 52 M. 999, 25 M. 61, 100 I. C. 371.
17. A conviction for criminally misappropriating 26 different sums amounting to Rs. 91-2-0 in a year is illegal. 1923 A. 483=76 I. C. 652.
18. Accused was charged with three separate offences and for abetment of two of them, the trial is illegal. 1925 R. 198=84 I. C. 463.
19. When two persons are charged with and convicted under S. 241, Penal Code, of passing counterfeit coins on three different occasions on the same day to three different persons, the trial is not illegal. 1923 M. 181=69 I. C. 447.
20. Accused was charged and convicted under S. 409 with regard to 4 sums of money in one charge, the trial is not illegal. 1930 A. L. J. 1130.
21. S. 234 applies when there are several complainants. 69 I. C. 628.
22. If more than three items are mentioned in a charge of embezzlement, it is not illegal. 24 A. 254, 1929 C. 175=116 I. C. 722.
23. Accused was charged under S. 477-A, I. P. C., for having made false entries in ten sheet. Held, that these being distinct offences, more than three could not be tried. 1932 C. 377=137 I. C. 179. See 10 P. 463, 1932 Sind 64.
24. Offences under Ss. 380 and 457 are not of the same kind. 34 Bom. L. R. 590.

Charge—(contd.)

25. Two or more charges of criminal breach of trust cannot be joined with two or more charges of falsification of account. 1932 C. 486, 41 C. 722.
 26. Joinder of three offences under S. 477-A with three offences under S. 409, I. P. C. is illegal. 1932 C. 486=36 C. W. N. 512=33 Cr. L. J. 265.
 27. Accused was charged with having realized various sums of money from six tenants and he was tried for all in one trial. Held that the trial was illegal. 1935 O. 273=154 I. C. 320, 25 M. 61 (P. C.), 1931 O. 86=32 Cr. L. J. 540, 52 A. 941=1931 A. 267, 1931 P. 349=133 I. C. 450=32 Cr. L. J. 1026, 29 M. 558, 29 C. 707, 30 B. 49, 24 A. 254, 31 C. 928, 32 C. 1085, 1934 P. 232=35 Cr. L. J. 876, 49 A. 312, 1923 A. 483=25 Cr. L. J. 220 and 11 Cr. L. J. 337 discussed.
- 21. Particulars of—** Ss. 221-222, Cr. P. C.
1. Where a particular intention is an important element of an offence, it must be stated in the charge. 22 C. 391.
 2. Where law and words of section are put in the charge, the omission of the word "unlawfully" and "maliciously" is immaterial. 42 C. 957.
 3. Where there are two objects of an unlawful assembly, both objects must be specified in the charge. 22 C. 276.
 4. An accused is entitled to know with accuracy and certainty the exact value of the charge brought against him. 11 C. 106, 42 C. 957.
 5. Failure to state in any substantial form the nature and particulars of offence is a fatal defect. 17 Cr. L. J. 111, 55 C. 858=1928 C. 675=29 Cr. L. J. 1022.
 6. The common object of the unlawful assembly must be specified. 11 C. 106, 33 C. 295, 9 C. W. N. 599, 1924 L. 667=75 I. C. 431.
 7. The time, place, person and circumstances must be specified in the charge. 15 B. 491, 38 C. L. J. 163, 30 C. 402, 1930 S. 62, 49 M. 74.
 8. A charge for house breaking is defective if it does not mention the article stolen or the name of person whose house was broken into. 28 M. L. J. 381.
 9. A charge of defamation is defective if it does not set forth the particular occasion on which it was committed. 30 C. 402.
 10. In a charge of adultery it is sometimes impossible to specify the particular date when intercourse took place. It is sufficient to specify two dates between which the offence was committed. 51 C. 488=1924 C. 616=25 Cr. L. J. 997.
 11. If the charge under S. 377 was that the accused habitually wore women's clothes and exhibited physical signs of having committed unnatural offence, it is defective. 6 A. 204.
 12. It is sufficient if a gross sum is only mentioned in a charge of criminal breach of trust, instead of items. 30 B. 49, 31 C. 928, 29 M. 558, 42 A. 522, 50 C. 632, 1930 M. 978.
 13. If particular items less than three are specified, the charge is not illegal. 24 A. 254.
 14. By mentioning only the gross sum the Magistrate must see that the charge does not become vague and the accused is not thereby prejudiced. 16 P. W. R. 1907 Cr. 42 A. 522.
 15. In a charge of cheating the manner of cheating must be given. 1925 C. 603.
 16. For constructive responsibility of accused, a charge read with S. 114, I. P. C., must be preferred. 52 C. 253, 1925 M. 364=82 I. C. 262.
 17. The failure to enter in the charge the actual words used in the deposition is only an irregularity. 68 I. C. 36.
 18. In framing a charge, the court should adhere to the language of the Statute as far as possible. 1925 C. 439=85 I. C. 711.
 19. Where accused is charged with beating the complainant at a particular date or time, it must be connected on the same evidence, if it is proved that he beat him on a different date and time. 1924 L. 616=77 I. C. 623=25 Cr. L. J. 471.
 20. The accused are not prejudiced if the charge stated that they committed offence in

Charge—(concl'd.)

5. Refusal by Magistrate to recall witnesses after alteration in charge vitiates trial. Whether there is prejudice to accused or not is immaterial. 1932 C. 486.

25. Revision against—See Revision.**26. Time for framing—and for objection.**

1. Charge can be framed after hearing one witness. 1936 Pesh. 211.
2. When the charge was fully understood by the accused and his counsel and the objection came for the first time during the arguments, the defect is cured under S. 537, Cr. P. C. 1930 R. 201=8 R. 25=125 I. C. 266.

27. Vague—

1. It is not proper to frame a charge that the accused did a certain act with a view to commit an offence. He must know the specific offence charged with. 1925 C. 160.
2. Where the charge is on the face of it meaningless and ununderstandable, but where the accused and his counsel know the nature of offence charged with and no failure of justice has resulted, the defect is cured under S. 537. 8 R. 25=1930 R. 201=125 I. C. 266, 1924 C. 18=82 I. C. 545.
3. The charge must contain sufficient particulars as to time, place, and circumstance, so that accused may have notice of the matter with which he is charged. 15 B. 491.
4. If the charge under S. 377 states that accused always wore woman's clothes and exhibited physical signs of having committed the offence, it is illegal. 6 A. 204.
5. When there are as many as seven instances when the complainant was defamed, it is not clear from the charge as to which incident each one of the two accused was called upon to meet. The charge is vague and defective under S. 233. 1930 Sind 62=119 I. C. 532=30 Cr. L. J. 1073, 11 C. 106.

28. Withdrawal of remaining—on conviction of some—. See Withdrawal—8.**CHARM—death by—See Death by Negligence—4.****CHAWKIDAR.** See Confession to Police Officer—7.**CHEATING.** Ss. 415—417—420, I. P. C.**1. Abetment.**

1. A person introducing the complainant to the cheater, knowing full well that the offence is going to be committed and does not inform him when he parts with money, is an abettor. 6 P. W. R. 1917 Cr.=41 I. C. 651.
2. Falsely representing a notorious dacoit to be a rich Seth is abetment. 4 P. R. 1905.
3. Accused giving a quick silvered double pice to get it changed as rupee is guilty of abetment of cheating. 9 P. R. 1884 Cr.
4. Accused gave adulterated Sachhrine to a broker, who sold it as genuine, he was guilty of abetment. 1924 B. 303=81 I. C. 926=26 Bom. L. R. 211.

2. Attempt.

1. Mere obtaining thumb impression on a blank paper is not attempt to cheat. 1926 P. 267=94 I. C. 353=27 Cr. L. J. 609.
2. Sending waste paper in insured parcel, as if contained currency notes is no offence. 1924 A. 205=83 I. C. 993, 1927 M. 199=99 I. C. 102=51 M. L. J. 800, 50 C. 849=73 I. C. 780, Cont. 10 P. R. 1913 Cr., 1 P. L. J. 391=34 I. C. 992.
3. Sending Khilafat Notes to the creditor, who pressed debtor to send money due is not attempt to cheat, but is fabricating false evidence. 1924 A. 205=83 I. C. 993.
4. Sending waste paper under insured cover addressed to himself and claiming money from Post Office is attempt to cheat. 9 P. 126=1930 P. 622.
5. Sending stolen halves of notes to Currency Office for cashing it is an attempt to cheat. 1928 L. 551=110 I. C. 812, 29 Cr. L. J. 780, 10 L. 253, 15 A. 173, 16 C. 310 Foll.
6. Fraudulent entry in a book of account is attempt to cheat. 12 M. 114, 1923 P. 307=65 I. C. 492=23 Cr. L. J. 108.
7. Decree-holder inducing judgment-debtor to part with money and withholding receipt

Cheating—(contd.)

technically comes under Ss. 420/511. 11 L. L. J. 95.

8. Accused making a claim against Insurance Company for much more than his loss is guilty under Ss. 420/511. 1924 R. 241=2 R. 53=25 Cr. L. J. 1175.
9. Attempt to obtain property by false pretences falls under S. 420/511. 1922 N. 40=65 I. C. 994, 16 C. 310.
10. Accused manufacturing spurious trinkets and offering to sell them to a goldsmith by false representations is guilty of attempt to cheat. 14 P. R. 1914 Cr.
11. Passing goods at octroi under false description is attempt to cheat. P. L. R. 1900 P. 38.
12. Evasion of payment of Railway fare by means of an altered old pass is attempt to cheat. 6 P. R. 1868. Cr., 11 I. C. 590.
13. Public servant framing an incorrect document and submitting it for payment is an attempt to cheat. 13 P. R. 1881.
14. If accused is prevented from taking delivery of property through an obstacle independent of his will, it is an attempt to cheat. 42 I. C. 606.
15. Dishonest intention is necessary for attempt to cheat. 14 Cr. L. J. 120.
16. Attempt to obtain money by inducing a person to believe that God has ordered him to pay is attempt to cheat. 48 M. 774, 6 M. 381.
17. Where a clerk in charge of weighing the sugarcanes, entered in the register higher weights but register had not left his hands, he was not guilty of attempt to cheat, as it was a mere preparation. 1923 P. 307=65 I. C. 492, 8 A. 304, 3 M. 4.
18. The accused, a cooly recruiter induced complainant to take domestic service. He wrote his name in the book and wrote a letter to a cooly contractor in Calcutta offering this cooly. Accused tried to get him into train for Calcutta. His object was that he may be taken to Assam. He was guilty of attempt to cheat. 9 C. W. N. 764.
19. Accused, a fireman, applied for a post and sent a false certificate to the effect that he was engine driver, purporting to be from N. W. Railway authorities, he was guilty of attempt. 1 P. R. 1907 Cr.
20. Setting fire to car and submitting false information to Insurance Company to obtain money falls under Ss. 420/511. 1934 Pesh. 67. *Case law discussed.*
21. Sending insured cover containing blank papers and the creditor signing postal acknowledgment, falls under S. 415. 1933 P. 183=145 I. C. 671, 34 I. C. 992=1 P. L. J. 391 Expl. 1924 A. 205, 1927 M. 199 and 1924 C. 215 Diss. from.
22. A man is guilty of attempt to cheat even if the complainant is fore-warned and is not cheated. 16 C. 310.
23. Accused tried to sell spurious trinkets by misrepresenting them to be of gold. Goldsmith did not buy. Held, it was attempt to cheat. 14 P. R. 1914, 27 C. W. N. 821.
24. Forwarding of fictitious consignment note is attempt. (1889) Unrep. 470.

3. Burden of Proof.

1. The onus as regards dishonest or fraudulent representations is on prosecution. 42 I. C. 1005=16 Cr. L. J. 45, 102 I. C. 553=28 P. L. R. 171.
2. Accused pawned six rings to be of gold which were discovered to be of silver gilt. The onus is on prosecution to prove that accused knew that rings were not of gold. 55 I. C. 609. See 1935 R. 426, 18 A. L. J. 371, 29 A. 141.

4. By Hirer.

A person hiring certain property for use at a wedding, when in fact there was no wedding, and promising to pay the balance of hire after the wedding is guilty of cheating, when he got the property to apply for its attachment in respect of an alleged claim. 3 N. W. P. H. C. R. 16.

5. By Insurance Agent.

Accused committed fraud on the Company by inducing it to accept the proposal of insurance on the life of M by securing a false medical report by suppressing and misrepresenting facts about him and his family history. Held, he was guilty. 1935

Cheating—(contd.)

C. 26=155 I. C. 261.

6. By Personation. See *Cheating by Personation.***7. By Pledgee.**

1. Accused received a Government Promissory Note, promising to return certain jewels pledged to them, and subsequently claimed to retain the note for another debt alleged to be due to cheating. Held, they were guilty of cheating. 3 N. W. P. H. C. R. 17.
2. The defence was that the transaction took place through K and K took some more money and naturally the pawn broker would not return the article until subsequent loan was paid. Held, it was only a civil dispute. 1933 A. 818=55 A. 562=3: Cr. L. J. 224.

8. By Railway Passenger.

1. Where a Railway passenger gave some part of his luggage to a co-passenger to evade the charge of overweight, he was not guilty of cheating. 25 P. R. 1903 Cr.
2. A passenger travelling in a higher class carriage is not guilty. 1 B. H. C. 140 (1864).
3. Endeavouring to evade payment of a Railway fare by production of an old pass, altered as to date and number of persons, is attempt to cheat. 6 P. R. 1868 Cr.
4. Where a Railway employee obtained a free pass for his wife and mother and handed it over to another woman and she used it, he was guilty of cheating. 1925 O. 479.

9. By Trustee, Guardian, Solicitor, etc. S. 418, I. P. C.

1. A Mahomedan who represents himself to be a Hindu for the purpose of getting an employment with a Hindu, who would not employ a Mahomedan is guilty under S. 418. 18 S. L. R. 59=1925 Sind 57.
2. If directors, managers and accountants dishonestly put a wrong balance sheet before the shareholders and mislead public to allow their money to remain in deposit, they are guilty under S. 418. 16 A. 88, 7 B. L. R. 143.

10. By Vendor and Purchaser.

1. The selling of milk and water in about equal proportion as pure milk amounts to cheating. (1880) Unrep. Cr. C. 145.
2. A person was purposely sent to buy milk knowing that it was watered, in order to prosecute the seller, it was held that as there was no deception, a conviction for cheating would not stand. 18 W. R. 61 (Cr.) *Cont.* 16 C. 310.
3. Accused sold nasty sweetmeats. Held, he was not guilty as the purchaser might have tasted it before buying. 18 W. R. 61 (Cr.).
4. Accused advertised to sell an almost new Jazz set, and the complainant answered the advertisement and on paying the price, the goods were despatched to him but he found that it was not of the quality he expected and certain articles were not sent. Held it was a mere untrue praise of goods only. 29 C. W. N. 362.
5. Where a vendor of immovable property omitted to mention a previous incumbrance on the property, he was not guilty. 27 A. 302, 27 A. 561, 9 P. L. T. 303.
6. Where a licensed opium vendor sold opium at rates higher than those fixed by the Government, he was guilty of cheating. 4 Bom. L. R. 823.
7. Accused contracted to supply 260 bales of good machine ginned cotton. He sent cotton seeds, raw cotton and rubbish carefully packed into the middle, while all around the sides was placed good ginned cotton. He had dealings with a ginning factory which was capable of making the admixture. Held he was guilty. 14 Bom. L. R. 137.
8. Selling or pawning as genuine gold mohurs, which were of gilt or in some way covered with gold amounts to cheating. 29 A. 141.

Cheating—(contd.)

2. When a creditor in whose favour three bonds for Rs. 170 were drawn up and accepted Rs. 116 in full discharge but returned only two bonds, it is a dispute of civil nature. 25 P. W. R. 1913 Cr.=20 I. C. 1001.
3. There is no cheating when civil remedy is barred, e.g., illegal or immoral contract. 15 I. C. 793, 14 Hon. L. R. 503.
4. Insurance company declined to pay policy until age of deceased is proved. The matter is of a Civil nature. 20 I. C. 222=17 C. W. N. 761.
5. Advance was made to a broker for supply of paddy which he failed to supply. Held, there was no cheating. 1924 R. 31=1 R. 397=76 I. C. 700=25 Cr. L. J. 236.
6. A sold land to B without disclosing a prior incumbrance. B got a decree in which he had to pay the previous mortgagee. On a complaint of cheating A was acquitted. Held, that acquittal should not be set aside, as parties had remedy in Civil Courts. 1923 L. 601 (2)=6 L. L. J. 50.
7. When the dispute is of a civil nature, there is no cheating. 1923 P. 13.
8. Complainant sold two huts for Rs. 150 out of which Rs. 47 were to be set off on account of debt. He got the deed registered but accused did not pay the balance. Held it was a Civil dispute. 94 I. C. 204.
9. Where a woman accepted valuation of property by son and decree was passed, she cannot proceed under S. 420 against him. The proper remedy is to have the decree set aside. 1935 Sind 95.
10. Parties should not be encouraged to resort to Criminal Courts when the matter can be more appropriately decided by civil court. 33 P. R. 1910 Cr.

14. Complaint.

1. Complaint for cheating must be by person defrauded. 22 Cr. L. J. 672=63 I. C. 464.
2. Accused presented a document for registration to the Registrar, took it back on pretext and tore it. The complaint should be made by the Registrar. 54 I. C. 64.
3. In a prosecution on a charge of attempting to cheat a certain person, that person need not be the complainant. 12 C. W. N. 750.

15. Compromise.

Compromise arrived at between the parties without the sanction of the Court is of no legal effect and cannot be acted upon. 9 L. 400=1928 L. 232=29 Cr. L. J. 585.

16. Concealment of fact.

1. Accused mortgaged his house without telling the complainant that his title was defective and agreed that if mortgagee could not recover money from the mortgaged property, he would make it good from his other property. Held, he was not guilty. 40 P. W. R. 1910 Cr., 9 S. L. R. 97 Cont. 140 I. C. 97.
2. No concealment is dishonest unless one is legally bound to disclose it, e.g., defect in title need not be disclosed by seller. 30 I. C. 994, 27 A. 561, 18 A. L. J. 408, 18 Cr. L. J. 40. Cont. 17 A. L. J. 500.
3. Raising money on a house already sold in execution is cheating. 18 P. W. R. 1915=30 I. C. 641, 114 P. L. R. 1912, 10 P. W. R. 1912 Cr.
4. Mere omitting to disclose previous incumbrance is not fraudulent unless the accused was asked who misrepresented to be unincumbered. 27 A. 561, 27 A. 302, 9 S. L. R. 97, 50 I. C. 667, 36 I. C. 872, 1928 P. 337=110 I. C. 332 Cont. 101 P. L. R. 1908, 17 A. L. J. 500, 1934 N. 149.
5. Silence may amount to deception. 52 C. 347=1925 C. 14=26 Cr. L. J. 401.
6. Explanation to S. 415 refers to the actual deception itself and not to the concealment of a deception by some one else. (1895) 1 U. B. R. 255.
7. Accused who was indebted to complainant, despatched an insured letter containing waste paper, intending to use the receipt for the same as evidence of payment of Rs. 530, it was held that he was guilty of attempt to cheat. 10 P. R. 1913 Cr., 34 I. C. 992 Cont. 1924 A. 205, 50 C. 849, 99 I. C. 102=83 I. C. 993.
8. Selling trees which were already sold is cheating. 50 I. C. 667.

Cheating—(contd.)

9. Accused obtained advance for purchase of motor car from the Government on the security of the mortgage of the car. The car was already mortgaged. Held, he was guilty. 5 R. 274, 103 I. C. 845=1927 R. 239=28 Cr. L. J. 765.
10. A man in embarrassed circumstances is not bound to disclose all his circumstances to people with whom he deals on credit. Of course he is not entitled to make untrue statement. If accused orders goods on credit and promises expressly or impliedly to pay it on a particular date and although his circumstances were such that he could not pay on that and then becomes insolvent he is guilty of cheating. 56 B. 204.
11. Mortgagor is not bound to disclose previous mortgage. Concealment does not amount to cheating. 1934 N. 149=35 Cr. L. J. 1063.
12. Raising loan on a ring misrepresented to be of gold, is cheating. 18 A. L. J. 371.
17. **Conspiracy to—** S. 196-A, Cr. P. C., S. 120-B, I. P. C.
 1. In case of conspiracy by five persons to cheat, if four are acquitted, conviction of fifth person is not affected by such acquittal. 1936 A. 357=162 I. C. 748.
 2. Accused were convicted of criminal conspiracy but were not charged with or convicted of the individual acts of cheating which took place in pursuance of conspiracy, though they were mentioned in the charge. Held, that their subsequent trial for cheating is not barred. 58 B. 23=1933 B. 447, 42 C. 957, 26 I. C. 307, 42 C. 1153 and 53 B. 344=1929 B. 128 Ref.
 3. Offence under S. 420 is punishable with more than two years, sanction under S. 196-A, Cr. P. C., is not necessary for a charge under Ss. 420-120-B. 1935 P. 91=154 I. C. 387=36 Cr. L. J. 500, 49 C. 573=1922 C. 107 Foll.
 4. Conspiracy to cheat was entered into in B and subsequent acts of cheating were committed at P. Held, P Court had no jurisdiction to try for conspiracy. 1936 M. 317=37 Cr. L. J. 634.
18. **Damage or harm in body, mind or reputation**
 1. The definition of cheating is wide enough to include all damages resulting or likely to result as a material consequence of the induced act. 51 C. 250=1924 C. 495.
 2. The damage caused or likely to be caused must be the necessary consequence of the act. 17 C. 606, 34 P. R. 1918 Cr., 51 C. 250, 52 C. 188, 1934 L. 833.
 3. The proximate and natural result only of the act induced has to be considered and not any vague and contingent injury that may possibly arise. 52 C. 188.
 4. Loss from non-delivery of goods arises from breach of the contract and not from the act of acceptance of a bought note and loss from the subsequent rise of the market or harm to reputation from dealing with a bogus firm are remote contingencies not contemplated by S. 415. 52 C. 188, 21 A. L. J. 873.
 5. The accused without any authority arranged a contract for the delivery of goods to the complainant by B. & Co. He went to the complainant's Pleader and instructed him to write a letter for cancelling the contract. On reference to complainant the fraud was detected. Held, that accused was guilty of attempt to cheat, as it must necessarily have caused injury to the Pleader in mind, reputation or business if fraud was successful. 12 C. W. N. 750=7 C. L. J. 375.
 6. A licensed book maker on the assurance of accused that he would pay up his losses, if any, punctually, on the settling day, allowed him to take bets on credit. Accused failed to pay debts on different days and gave cheques and induced him to accept further bets on credit. Held, he was not guilty. 1924 C. 111.
 7. The unauthorized allotment of more wagers to a colliery than they were entitled to, through the fraudulent acts of the servants of a Railway Company would not cause any damage to the Company. 51 C. 250=1924 C. 495.
 8. Offence committed for enlistment is no offence. 34 P. R. 1918 Cr.

Cheating—(contd.)

11. Entering an exhibition building without ticket is not cheating. 6 B. H. C. Cr. 6.
 12. A person attempting to obtain recruitment in Police by giving false information to the District Superintendent of Police, is not guilty of cheating. 6 A. 97.
 13. Accused promised to withdraw his charge against complainant's brother-in-law, without intending to do so and thereby induced the complainant to withdraw his charge against the accused, he was not guilty of cheating. (1892) 1 Weir 477.
 14. Accused passed himself off for another and tried to obtain a duplicate of matriculation certificate of that other person, he was guilty of cheating the Registrar of the University. 12 M. 151, 15 A. 210, 25 C. 512, 28 M. 90.
 15. Where there was some suspicion regarding the conduct of the accused, but there was no *prima facie* evidence of cheating, he was not guilty. 134 I. C. 309.
 16. Accused induced I. G. Police, to transfer lorry to their name by producing receipt signed by F. in whose name lorry stood. As I. G., Police, suffered no damage or harm, etc., accused was not liable under S. 420. 1934 Pesh. 5=35 Cr. L. J. 872.
- 19. Deception by conduct.**
1. Deception may be by words or conduct. 2 C. L. J. 524, 1927 Sind 161, 1925 C. 14=52 C. 347, 32 C. 941, 114 P. L. R. 1912, 18 P. W. R. 1915.
 2. It is not necessary that false pretence should be in express words. It can be inferred from circumstances. 59 I. C. 921=22 Cr. L. J. 169.
 3. Statements though literally true, are nonetheless fraudulent if their general effect is to create or are intended to create a false impression. 12 I. C. 641=12 Cr. L. J. 553.
 4. Accused induced complainant to part with money on understanding to pay it back in a day and decamped at the first opportunity. Held, that the fraudulent intent was proved. 9 I. C. 458. See 56 B. 204=34 Bom. L. R. 313.
 5. The intention is to be inferred from previous or subsequent conduct of accused and the cumulative effect of the surrounding circumstances. 18 P. W. R. 1915 Cr.
 6. Silence may amount to deception. 52 C. 347=1925 C. 14.
 7. Accused wearing khaki dress threatened to take complainant to Thana for extortion. He was not Police officer nor did he say he was but gave the complainant to understand that he was. Held, that deception was proved. 1933 C. 308=34 Cr. L. J. 530.
- 20. Deception through agent.**
- Deception may be practised by representation made through an innocent agent. 1927 Sind 161=101 I. C. 458=28 Cr. L. J. 426.
- 21. Delivery of Property.**
1. Accused left certain promissory notes with the complainant as security for loan. He induced him to return them in order to collect money out of which complainant would be paid. He got money but never paid the complainant. Held, he was guilty of cheating. 45 M. L. J. 133=1923 M. 597=24 Cr. L. J. 452.
 2. Accused falsely represented himself to be the manager of an estate and induced A. to pay him some money as advance of security money to be deposited for a post promised by him to A. He then put off A. for sometime, and at length when found out, he promised to return the money. Held, that the offence of cheating was completed as soon as accused obtained money by a promise which he could not fulfil. 36 C. 573, 9 Cr. L. J. 605, 56 B. 204=34 Bom. L. R. 313.
 3. Accused falsely represented to A. that he was instructed by a competent authority to recruit unskilled labour for service in Africa and got money as fee. Held, he was guilty of cheating. 26 P. W. R. 1910 Cr.
 4. Accused agreed to let her daughter on hire to the complainant for concubinage for one year in consideration of Rs. 70, out of which she received an advance of Rs. 35. Later on she refused to carry out the contract or to return the advance. Held, she was not guilty, as the contract was immoral. 14 Bom. L. R. 563 15 I. C. 793.
 5. Accused took money for the restoration of stolen property and failed to return it.

Cheating—(contd.)

property, he was guilty under S. 420. 1 B. L. J. 179.

6. Accused drew Hundi and borrowed money on it, without assuring himself that the drawee would be able to pay it. It was dishonoured and he made himself scarce. Held, he was guilty of cheating. 23 Bom. L. R. 340, 60 I. C. 993.
7. A person whose duty it was to report current rates in the market by arrangement reported higher rates than those current, and in consequence of which higher rates were paid to sellers. He was guilty of cheating. 8 A. 201.
8. Accused got a bicycle from the complainant on the false representation that he was a Commission Agent and it was required for an up country purchaser. He then, sold it in Bombay. He was guilty of cheating. 2 Bom. L. R. 621.
9. Accused falsely pretending to be a pensioned Subedar, induced the complainant to give articles on credit for which he did not intend to pay, he was guilty of cheating. 10 L. 513=1928 L. 935.
10. The accused by making a false representation that he was employee of the Calcutta Municipal Corporation got a sum of rupees as subscription from the Health Officer of that Corporation for charity, which was actually paid to charity. Held, he was not guilty of cheating. 33 C. 50.
11. A got opium from the shop with B's ticket, he was guilty of cheating. 1 L. B. R. 356.
12. Accused advertised that a book on English idiom by Robert S. Wilson, M.A., was ready, stating the price to be Rs. 2-4-0 and that money orders should be sent to R. S. Wilson, Calcutta. He wrote a letter purporting to be signed by R. S. Wilson to redirect money orders to accused, who collected them through a clerk. Accused had no book ready for sale. Held, he was guilty of cheating and forgery. 13 M. 27.
13. Accused, a judgment-debtor, applied for permission to raise the amount of the decree by a private transfer, which was refused. He mortgaged the house to the complainant on the misrepresentation that he was empowered to do so. He got money and did not enter appearance in Court. The sale was confirmed. Held, he was guilty of cheating. 114 P. L. R. 1912.
14. Accused was in charge of a mare belonging to C for sale. L. made an offer. The accused showed him a telegram refusing the offer. L. paid higher price. Held, that accused was not guilty even though the telegram was false. 12 A. L. J. 1258.
15. Accused made false representation to a clerk and got warrant of attachment. He made an endorsement on it to his own advantage, he was guilty of cheating. 6 Bom. L. R. 375.
16. Offence consists in delivery of property. Mere fraudulent or dishonest representation is not sufficient. 130 I. C. 796=32 Cr. L. J. 611=1931 P. 102.
17. The important question to be considered is whether accused, when he took money from the complainant's firm for purchasing of rice and to delivering it to the firm, had any intention of performing the contract. 10 C. W. N. 1005.
18. Accused induced a clerk to deliver a warrant of attachment and made an endorsement. Held, he was guilty. 6 Bom. L. R. 375.

22. Denial of liability.

A mere refusal to admit legal liability which is otherwise proveable, does not amount to making a false representation at the time of payment. 1925 Sind 231=89 I. C. 247.

23. Essentials and Evidence.

1. If the connection between deception and the parting with some property is too remote, there is no cheating. 1924 A. 209 (2)=20 A. L. J. 873, 1925 A. 100, 1924 C. 494=84 I. C. 554, 1924 A. 209=83 I. C. 997, 52 C. 188.
2. Selling trees which are known to be previously sold is cheating. 50 I. C. 667.
3. Taking back ornaments from bride's father as a token of dissolution of marriage, is no cheating. 1923 A. 431=21 A. L. J. 2321.
4. Deducting a small sum for alleged depreciation of currency notes is not cheating. 43 B. 842=52 I. C. 604.

Cheating—(contd.)

5. In cheating, damage or harm is necessary consequence. Mere annoyance is not enough. 34 P. R. 1918 Cr.,=48 I. C. 877.
6. Selling a sweeper woman as fat is cheating. 6 P. R. 1918=61 P. L. R. 1918.
7. The intention is to be inferred from previous or subsequent conduct of accused and the cumulative effect of all the surrounding circumstances. 18 P. W. R. 1915 Cr.
8. Accused induced complainant to part with money on the understanding to pay it back in a day and decamped at the first opportunity, fraudulent intent is proved. 9 I. C. 438.
9. Statements though literally true are nonetheless fraudulent, if their general effect is to create or are intended to create a false impression. 12 I. C. 641=12 Cr. L. J. 553.
10. A minor misrepresenting himself to be major and borrowing money is guilty of cheating. 58 I. C. 253=21 Cr. L. J. 749.
11. Getting a deed of divorce executed on a false pretence amounts to cheating. 67 I. C. 583=8 L. L. J. 283=1926 L. 468.
12. Mere refusal to return a bond after the money under it has been paid is not cheating. 59 I. C. 921=1921 P. 12.
13. Getting money without request or inducement is no offence. 1924 A. 249 (2).
14. Judgment-debtor was induced to execute bonds on inducement of postponement of sale, which was held later on. Held, it did not amount to cheating. 37 I. C. 483.
15. Accused negotiated Hundi knowing that it will not be honoured, held, he was guilty. 60 I. C. 993.
16. Accused received cash or cattle in payment of his debt and gave the debtor notice afterwards to pay. Held, that there was nothing to show that he received payment with the preconceived intention of denying it later on. 1923 L. 621.
17. Receiving money to exert influence to restore complainant back into the caste is no cheating. 1924 O. 113=69 I. C. 152.
18. Delivery of Railway waggons in excess of allotted number owing to fraud of servants is no cheating. 51 C. 250=1924 C. 495, 32 C. 775=84 I. C. 554.
19. Adulteration of Saccharine with mixture of Soda Bicarbonate and passing off as Saccharine falls under S. 420. 1924 B. 303=81 I. C. 926.
20. Drawing cheque on a bank where accused had no account and taking property is cheating. 1925 C. 14=84 I. C. 1041=26 Cr. L. J. 401.
21. Creditors were induced by retail dealers to give time but removed their goods. Held, guilty. 1925 A. 473=87 I. C. 426=26 Cr. L. J. 970.
22. Substitution of goods between cheat and the person cheated does not effect the offence of cheating, when no new contract is substituted. 1926 O. 161=90 I. C. 74=26 Cr. L. J. 1164.
23. Undue praise of goods advertised is no offence. 1925 C. 605=86 I. C. 985 (1).
24. Railway servant handing over family pass to a stranger for use is guilty under S. 420. 1925 O. 479=88 I. C. 524=26 Cr. L. J. 1164.
25. Mere taking thumb impression on a black paper is no offence. 1926 P. 267=94 I. C. 353=27 Cr. L. J. 609.
26. Deception may be practised through an innocent agent. 1927 S. 161=101 I. C. 458, 1928 P. L. R. 171=102 I. C. 553=1927 L. 746.
27. When a cheque is given and immediate payment is not contemplated, there is no cheating. 1928 O. 292=110 I. C. 209=29 Cr. L. J. 657.
28. Accused falsely represented himself as Pensioned Subedar and got credit for articles for which he never intended to pay; held, guilty. 1928 L. 935.
29. Cheque dishonoured. If accused knew that cheque would not be met, he is guilty under S. 420. 1930 B. 179=126 I. C. 868=51 Cr. L. J. 1096.
30. Deceiving Courts and Judges by instituting false case is no cheating. 1924 C. 502=81 I. C. 810, 21 P. R. 1914.
31. Subsequent conduct of the accused is admissible to show the state of mind of the

ating—(contd.)

- accused that he was party to cheating. 1922 A. 244=23 Cr. L. J. 671.
32. Accused purchased wool with delivery of possession, agreeing to pay the price on the next day, which he did not and pledged it to B, appropriated the money himself. Held, not guilty as there was nothing to show that at the time of purchase he had no intention to pay. 1885 B. U. C. 312.
33. When a charge of cheating rests upon a representation which is impugned as false and which relates to a certain future event it must be shown that it was false to accused's knowledge at the time when it was made. Mere showing that it turned out to be false is insufficient. 15 B. L. R. 297.
34. Accused gave out that he was President of an Association and would give sacred thread to the untouchables to make them Khashatri. He raised money. Held, he was not guilty. 86 I. C. 705=1925 C. 603.
35. Where the only witness of the complainant on whom reliance could be placed contradicted himself and the complainant was an enemy of the accused, the conviction was bad. 1927 L. 797=28 P. L. R. 461.
36. Where a prostitute communicated syphilis to a man who had sexual intercourse on the strength of her misrepresentation that she was free from disease, she was guilty of cheating. 11 B. 59.
37. Accused passed off a low class girl as of higher caste and thus obtained money, he was guilty of cheating. 2 A. W. N. 237.
38. Where an opium consumer got one licence to purchase in one of his name and another licence in another name and thereby obtained more opium, he was guilty of cheating. 22 C. W. N. 1001, 51 C. 250, 52 C. 188.
39. Entering an exhibition-building without purchasing a ticket is no cheating or trespass. 6 Bom. H. C. (Cr. C.) 6.
40. Entrustment and dishonest misappropriation may be proved either by direct evidence or by circumstantial evidence. 1935 R. 453.
41. Debtor deceitfully obtaining document from his creditor likely to facilitate evasion of payment of debt, commits offence under S. 417, *e.g.* (sending blank papers under insured postal covers and getting acknowledgment from creditor). 1933 P. 183, 1924 A. 205; 1927 M. 199 and 1924 C. 215=50 C. 849 Diss. from.
42. Accused represented that he could influence the court and got money for bribe. Held, he was guilty of cheating. Illegal purpose of the contract was no defence. 1933 R. 199, 13 Cr. L. J. 521 Dist
43. Obtaining money by cheating is an offence under S. 420 and not under S. 417. 1933 L. 1009=147 I. C. 737, 10 L. 513 Ref.
44. Misguiding people and then making off with their property is theft and not cheating. 1932 C. 865.
45. The offence of cheating is not committed if third party on whom no deception is practised sustains pecuniary loss in consequence of accused's act. 25 P. R. 1904 Cr.
46. An illegal demand if not fraudulent, is not cheating. 15 C. L. J. 515.
47. Accused told his master's brother that his master was ill in a certain village and so induced him to go there, he is guilty of cheating. (1888) Unrep. Cr. C. 423.
48. Accused entered an Exhibition without ticket. Held, he was not guilty. (1883) 1 Weir 479.
49. A received money from B for bribing officer to get post for B. He spent greater portion for the purpose and B was called for interview. Held, A was not guilty under S. 403 or S. 415. 1936 R. 471.
4. False certificate.
 1. Where a person attempted to get himself re-instated in the post of Karnam by the production of a certificate of another man bearing the same name, that he had passed a certain examination, he was not held guilty for attempt. 19 M. L. J. 271.

Cheating—(contd.)

2. A person who obtains a certificate from a Deputy Inspector of Schools by stating untruly that he passed the examination in a certain year, when another man of the same name did, he was guilty under S. 417. 1922 N. 229=23 Cr. L. J. 443.
3. A Railway Company offered reduced rates to student travellers and a certificate containing names of persons who were not entitled was presented. Held, accused who was student was not guilty in presenting it. 1 M. W. N. 510.
4. Accused, in order to get employment sent a false certificate purporting to be from N. W. Railway authorities that he was engine driver. Held, he was guilty of attempt to cheat. 1 P. R. 1907 Cr.

25. False entries.

1. Where accused was requested to make an entry in a book of account belonging to the complainant to the effect that he was indebted to the complainant that for a certain sum due on settlement of accounts. But he wrote in a language not known to the complainant that this sum had been paid to the complainant, he was guilty of attempt to cheat. 12 M. 114.
2. Where the lessee of a forest presented false accounts to a forest officer in order to defraud the Government, he was guilty of attempt to cheat. (1875) 12 B. H. C. (Cr. C.) 1.
3. Where a clerk in charge of weighing sugarcane for the Company entered in the register higher weights, but register had not left him, he was not guilty of attempt to cheat. 1923 P. 307=65 I. C. 492, 8 A. 304, 3 M. 4.

26. False name.

1. Accused giving false name and address in order to shield prosecution is not guilty. (1893) Cr. R. No. 10 of 1893=Unrep. Cr. C. 635.
2. Accused presented a stolen note for encashment and after cashing it gave a false name on inquiry. Held, he was not guilty of cheating. (1893) 1 Weir 479.

27. Forgery for.—S. 468, I. P. C. See Forgery—15.

28. Fraudulent or dishonest intention.

1. With a view to escape the just dues of their creditors, the accused who were retail dealers, fraudulently induced them, before the closing of the Civil Court for vacation, to grant them sometime to pay up. Their object in gaining time was to remove goods from the shop. The Civil Courts having closed within the time thus granted, the creditors were prevented from seeking remedy in Civil Courts. Held, they were guilty of cheating. 1925 A. 473.
2. Judgment-debtor was induced to execute bonds on inducement of postponement of sale, which was held later on. Held, it did not amount to cheating. 37 I. C. 483.
3. Accused induced complainant to part with money on the understanding to pay it back in a day and decamped at the first opportunity, the fraudulent intention was proved. 9 I. C. 458.
4. A minor misrepresenting himself to be major and borrowing money as such is guilty of cheating. 58 I. C. 253=21 Cr. L. J. 749.
5. Accused sold goods worth Rs. 2-13-0 and received currency note of Rs. 2-8-0 and Re. 1. He returned Re. 0-9-3 instead of eleven annas saying that notes were not worth their face value. Held, he was not guilty. 43 B. 842.
6. Accused waylaid some intending customers and took them to his own shop on the pretence that it was the complainant's shop and sold sweets to them. Held, he was not guilty as he charged only market rates. 25 P. R. 1904 Cr.
7. 'Dishonestly' implies a deliberate intention to cause wrongful gain or wrongful loss and when it is coupled with cheating it falls under S. 420. 13 B. L. T. 239.
8. The dishonest intention must precede or accompany the act. 11 Cr. L. J. 295.
9. Accused entered into two contracts with the complainant. He promised to pay cash and induced the complainant to part with his shares, but subsequently offered credit to the value thereof and then tendered the amount less the amount of loss sustained by non-fulfilment of the other contract. Held, guilty. 25 C. W. N. 618.

10. A boy was married to a girl who was much older. The mother and brother ask the father of the girl to return the ornaments to terminate marriage. After *Punchayat* was called he returned the ornaments. Held, that as there was dishonest inducement, there was no cheating. 21 A. L. J. 321.
11. Accused left promissory notes with the complainant as security for loan. induced the complainant to return them pretending that they were required collect money from the debtors with the aid of which complainant was to be paid. He disposed of the notes and did not pay the complainant. Held, he was guilty under S. 420. 45 M. L. J. 133=1923 M. 597=24 Cr. L. J. 452.
12. In a case of cheating the intention of the accused at the time of offence is to be seen and the consequence of the act or omission itself is to be judged. 52 C. 188, 68 C. 621=23 Cr. L. J. 589, 1934 P. 231.
13. Where the accused took the receipt for the rent but refused to pay the money, was guilty under S. 420. 63 I. C. 621=23 Cr. L. J. 589.
14. Person identifying before Treasury Officer another as the proper payee of a certificate of money and without taking care to ascertain as to truth of his identity is not guilty under S. 182 or S. 420, I. P. C., when there is no dishonest intention. 1927 C. =99 I. C. 57=23 Cr. L. J. 25.
15. Securing advantage by misrepresentation is fraudulent. 65 I. C. 1005.
16. A mere refusal to admit legal liability which is otherwise provable does not amount to making of false representation at the time of payment. 1925 Sind 231.
17. There must be some evidence of an intention to cheat *at the time* when the promise (the omission to perform which completes the offence of cheating) is made. 9 B. H. C. (Cr. C.) 448.
18. When another's money is used without his consent and contrary to purpose for which possession is given, the intention of person using it is dishonest. 1935 R. 453.
19. Accused writing letter to another containing definitely false statements with a view to get valuable security from such person. Accused is guilty. 1935 R. 453.
20. For S. 420 it is not necessary that dishonest intention matured into actual loss. 1923 L. 90.
21. Decree-holder received certain sum of money from grandson of judgment-debtor promising to relieve them from further liability under the decree. Subsequent application for execution claiming relief against grandson is not cheating. 19 O. 372, 1923 L. 621=25 Cr. L. J. 1311 and 159 I. C. 167=37 Cr. L. J. 38 Rel. o
22. A practically conclusive test as to the fraudulent character of deception for criminal purposes is this. Did the author of deceit derive any advantage from it which he could not have had if the truth had been known. If so, it is hardly possible that the advantage should not have had an equivalent in loss or risk of loss to some one else, and if so, there was fraud. 1935 B. 30=30 Cr. L. J. 522=154 I. C. 55 *History of Criminal Law of England, Vol. 2, P. 122.*

29. Introducing cheat.

1. In order to sustain a conviction of middle man who introduced a cheat to the complainant, it must be proved that he acted dishonestly and fraudulently in the transaction. 1927 L. 746=102 I. C. 553=23 Cr. L. J. 585.
2. Representing a notorious gambler as rich Seth is cheating. 4 P. R. 1905.
3. A and B went to C. B asked for a loan on the security of a ring seemingly but not really, of gold. A assured C that B was an honest man. B was not guilty, as was on A's assurance that he got money. 18 A. L. J. 371.

(contd.)

3. Accused sent four boxes by V. P. P. from Madras to a person at Hyderabad, who paid the money to the postman and found dust instead of tea in the boxes. The offence is triable at Hyderabad only. 1927 M. 544=28 Cr. L. J. 452.
 4. Accused styling himself as the Director of Mesmerism posted three V. P. Parcels containing a piece of paper, purporting to convey the first lesson. Held, that the Court in whose local area the posting was made had jurisdiction to try the case. 1930 Bom. 358=127 I. C. 177=31 Cr. L. J. 1155.
 5. Where the accused at C gave the telegram for despatch from T to one J. T Court had jurisdiction to try the offence under Ss. 420-511. 99 I. C. 127=1927 Mad. 77.
 6. Where the letter indicating intention to cheat was received by him at Buxar, the Buxar Courts had jurisdiction. 1924 P. 708=76 I. C. 17=25 Cr. L. J. 81.
 7. In a case of cheating the Court in whose jurisdiction the loss occurred is not competent to try the offence of cheating. 1923 L. 90=67 I. C. 623=23 Cr. L. J. 447.
 8. In fulfilment of a contract the accused consigned tins of ground nut oil at Madras to the complainant at Dhulia. The tins contained ground nut oil mixed with rock oil. Held, Dhulia Court had jurisdiction where complainant became victim of the deceit in consequence of accused's act. 17 Bom. L. R. 389, 12 A. L. J. 1022.
 9. Accused at Lahore recovered money from a Bank at Bombay on a forged draft of the Amritsar Branch of Punjab National Bank of Lahore, it was held that Lahore Court had jurisdiction to try the offence of cheating. 18 P. W. R. 1908 Cr.
 10. Where A sent goods by Railway from Karachi to Lahore under a false description, the Court at Lahore could try A, as loss of freight to the Railway Company took place at Lahore—the Headquarters of the Company. 7 P. R. 1900 Cr.
 11. Where Railway Receipt was sent from Harda and Rs. 40,000 were obtained on their credit at Bombay. Held, that both courts had jurisdiction to try the offence of cheating. 65 I. C. 994=1922 N. 40=23 Cr. L. J. 210.
 12. Where the accused two days after he became insolvent realized at Calcutta the money due in respect of certain Hundies which the complainant purchased. Held that only Calcutta Court had jurisdiction and not the Aligarh Court where the loss ensued to the complainant. 5 A. L. J. 333.
 13. Two persons induced another to purchase a barrel at Meerut on the false representation that it contained a certain quantity of spirit. At Agra it was discovered that quantity was less. Held, Agra Court had no jurisdiction. 13 A. L. J. 1067.
 14. Accused sent from Bombay an insured letter to the complainant in Gujrat intending to use the receipt as evidence of discharge of debt. Held that Gujrat Court had jurisdiction under S. 420, I. P. C. 132 I. C. 864=32 Cr. L. J. 996.
 15. Drafts induced by accused to be issued on false pretences were issued at S and were negotiated and the money was received by accused at S. The Drafts were honoured in due course at K. Held, that the court had no jurisdiction. 1832 I. C. 477=32 Cr. L. J. 924=1931 N. 94.
 16. When contract of sale is entered into at A with a partner of firm situated at B, in case of cheating it is the firm that is cheated and therefore Court at B has jurisdiction. 1934 A. 846, 1934 A. 499=35 Cr. L. J. 982 Expl.
- 31. Ornaments containing alloy.**
1. Jewellery is not generally made of pure gold. Pawning bangles as "gold bangles" does not mean "pure gold bangles". Pure gold used is 22 carat or 22 parts out of 24. Sovereign gold is 22 carat. In England anything from 18 carat to 9 carats is used as gold jewellery. The pawnor is not guilty of cheating merely because the bangles are found to be of alloy of gold. 1935 R. 426.
 2. Raising loan on a ring misrepresented to be of gold is cheating. 18 A. L. J. 371.
 3. Selling or pawning gold Mohurs which were rupees covered with gold amounts to cheating. 29 A. 141.
- 32. Procedure**
1. Where the facts charged indicate an offence under S. 420, a second class Magistrate could try it under S. 417. 20 L. W. 919, 82 I. C. 57=1925 M. 367.

Cheating—(contd.)

2. A Court should not go beyond the finding of Civil Court and convict a person of cheating when the matter is of civil nature. 33 P. R. 1910 Cr.
3. The complainant must disclose all evidence of cheating at the first trial. 99 I. C. 1035=1927 Mad. 444=28 Cr. L. J. 235=25 M. L. W. 220.
4. Joint trial for separate offences of cheating committed at different intervals is illegal. 69 I. C. 271=1922 O. 250.
5. On appeal from conviction for cheating one person, it was turned into cheating another. Held, that accused was prejudiced. 1934 L. 833.
6. Appellate court can alter a conviction of cheating to one of criminal breach of trust. 1933 P. 26=34 Cr. L. J. 419, 12 B. H. C. R. 1 Rel. on.
7. A person acquitted of cheating for using false affidavit can be tried under S. 193, I. P. C., for swearing false affidavit. S. 403, Cr. P. C., is no bar. 1936 R. 174=37 Cr. L. J. 492, 40 B. 97, 48 C. 78, 1929 R. 209 and 1924 R. 213 Rel. on.

33. Property.

1. A decree is not a valuable security or property. 1924 C. 502=81 I. C. 810.
2. Acknowledgment receipt of money order is not valuable security. 1927 M. 199, 50 C. 849, 99 I. C. 102=28 Cr. L. J. 170. See 1933 P. 133.
3. Property in S. 420 only refers to moveable property. 2 A. W. N. 6, 32 C. 22.
4. A railway ticket is property. 4 Cr. App. R. 276.
5. A certificate of having passed an examination is property. 18 N. L. R. 52.
6. Promissory note is property. 45 M. L. J. 133=1923 M. 597.
7. A warrant is property. 6 Bom. L. R. 375.
8. A thing whose value cannot be measured in money is "property." 18 N. L. R. 52.

34. Puffing one's goods.

Puffing one's goods or advertising or giving under praise to one's goods is not cheating. 29. C. W. N. 362=1925 C. 605=86 I. C. 985 (1)=26 Cr. L. J. 921.

35. Restoration of property.

If accused is acquitted, the Magistrate cannot restore the property to the complainant. 1926 C. 1048=95 I. C. 933=27 Cr. L. J. 853.

36. Selling adulterated goods. See Adulteration

1. Selling adulterated sachharine mixed with bicarbonate of soda as genuine sachharine amounts to cheating. 26 Bom. L. R. 211=1924 Bom. 303=81 I. C. 926.
2. Selling of milk and water in about equal proportion as pure milk amounts to cheating. (1880) Unrep. Cr. C. 145.
3. A person purposely sent to buy milk, knowing it was watered, in order to prosecute the seller, bought it, it was held that as there was no deception, a conviction for cheating would not stand. (1872) 18 W. R. 61 Cr., Cont. 16 C. 310.
4. Selling nasty sweetmeats is not cheating. (1872) 18 W. R. 61 Cr.
5. Selling or pawning as genuine gold *Mohurs*, which were of gilt or in some way covered with gold, amounts to cheating. 29 A. 141.
6. Accused contracted to supply good machine of ginned cotton but supplied cotton seeds, raw cotton and rubbish carefully packed in the middle with good ginned cotton on all sides. Held, he was guilty. 14 Bom. L. R. 137.

37. Sentence.

1. Imprisonment under S. 420 is obligatory. 1929 A. 260 (1)=114 I. C. 733, 1926 L. 350=94 I. C. 130=27 Cr. L. J. 562.
2. The longest period of sentence under Ss. 417/511 is six months. 1928 N. 113.
3. S. 562, Cr. P. C., does not apply to an offence under S. 420. 16 P. R. 1911 Cr., 23 P. W. R. 1908. (But the law has now been amended.)
4. In case of previous conviction for cheating by a second class Magistrate, enhanced

Cheating—(concl'd.)

punishment under S. 75 cannot be awarded. 19 P. R. 1889 Cr.

5. Accused was a *leading* member of Bar and 64 years of age. Held, that a sentence of 18 months should be reduced to 9 months. 1935 R. 453, 1935 R. 456.
6. Money was extracted for charitable institution but was pocketed by collector himself. He should be given deterrent sentence. 1934 P. 114=35 Cr. L. J. 1167.

38. Similar Acts. S. 15, Evidence Act.

1. A licensed clerk was charged with cheating by collecting 2 annas more than due, from each licensee. Held, that evidence of action with others is not admissible. 34 A. 93.
2. Evidence of similar acts committed by accused is relevant to show his intention. Evidence to show character of accused that he is likely to do such an act is inadmissible. 269 P. L. R. 1914, 12 P. R. 1913 Cr., 42 C. 957, 36 C. 573. See also 112 I. C. 850, 39 A. 178, 39 A. 273.
3. Evidence of similar frauds is admissible as showing systematic course of conduct and to negative an honest motive. 36 C. 573, 39 A. 273, 46 B. 958, 47 C. 671.
4. Cheating is a case in which the question of guilt or innocence depends upon the proof of actual facts and upon the state of accused's mind. Evidence as to any previous act of fraud is not admissible. 34 A. 93, 112 I. C. 850, 1925 C. 674.
5. In case of cheating by ordering goods with the intention of not paying for them, evidence that he ordered goods from others and did not pay is admissible. 56 B. 204=1932 B. 273=33 Cr. L. J. 401.
6. Accused misrepresented himself as *Dewan* of an Estate. Similar acts were admissible to show series of systematic fraud. 36 C. 573.
7. Evidence of similar instances of cheating or embezzlement is admissible to rebut, by anticipation, a defence of innocent receipt or appropriation. 1925 L. 880=111 I. C. 387, 97 I. C. 1041=27 Cr. L. J. 1217.
8. In case of *bona fide* payments to wrong persons, evidence of previous acts of dishonesty are inadmissible. 1933 C. 136=34 Cr. L. J. 294.

39. Subsequent conduct of accused.

1. Subsequent conduct of accused is admissible to show the state of mind of accused that he was party to cheating. 1922 A. 244=69 I. C. 159=23 Cr. L. J. 671.
2. Subsequent negotiation between cheat and the person cheated, does not effect the offender's criminal liability, when no new contract is substituted. 1926 Q. 161.
3. Accused received cash and cattle in payment of his debts and gave the debtors notice afterwards to pay. Held, that there was nothing to show that he received payment with the preconceived intention of denying it later on. 1923 L. 621.
4. Mere refusal to return a bond after the money under it has been paid is no cheating. 59 I. C. 921.
5. Accused falsely representing himself as manager of an estate got money from A. as security for a post to be granted to A. He put him off for sometime, but on being found out, promised to return the money. Held, that the offence of cheating was completed as soon as he got money and the fact that he paid back part of money under pressure did not in any way effect his criminality. 36 C. 573.
6. Accused drew Hundi and borrowed money on it without assuring himself that the drawee would be able to pay. It was dishonoured and he made himself scarce. He was guilty of cheating. 23 Bom. L. R. 340, 60 I. C. 993.
7. Subsequent events can merely show the reflection of what a man's mind may have been. But previous events are more important to ascertain his state of mind. 1935 R. 456.

CHEATING BY PERSONATION. Ss. 416—419, I. P. C.**1 Abetment.**

1. Where A represented himself as B and got Hall Ticket for University examination and named answer papers with B's name. A is guilty of cheating by personation and B of abetment. 12 M. 151, 23 M. 90, 15 A. 210.

(See also Section 404, Cr. P. C.)

3. A person, after seeing another, who wanted to cheat an officer, on his assurance, but not on his knowledge, of the existence of a fault in the absence of proof that he knew the man to be a cheat, is not guilty. 1929 P. 137=29 Cr. L. J. 642.

Attempt

1. A person, who with a forged highway pass, but not proved to have shown to any person, is not guilty before the completion of journey is guilty of attempt. 21 M.L.J. 748.

Essentials and evidence

1. Where the accused falsely represented himself to be A, at a University examination, and H. H. Tucker as a candidate signed answer papers with B's name, he was guilty of cheating by personation. 12 M. 151, 28 M. 60.
2. Taking advertisement and receiving money from the Post Office in the name of a false person is not cheating and forgery. 13 M. 27.
3. Passing a stamp from a stamp vendor in another's name is not cheating by personation. 16 P. R. 1876 Cr. L. Weir 480 (1883).
4. Inducing Mohan of a cattle fair to write wrong name into a certificate of a mare is cheating. 9 P. R. 1914 Cr., 36 P. R. 1888 Cr., 20 P. R. 1882 Cr.
5. Falsely representing a notorious gambler to be a rich Seth is cheating by personation. 4 P. R. 1905 Cr.
6. A person who described a girl to be the daughter of A and of good family while she was not, is cheating by personation. 7 W. R. 51 Cr. (1867).
7. Accused knowingly represented a wrong woman to be the mother of a sepoy, who had been killed in action and thereby induced the Military authorities to grant her pension, which she drew for nine years was guilty. 1907 A. W. N. 291.
8. A executed a deed, fell ill and requested B to personate her and admit the deed for Registration which B did. Held B is not guilty of S. 419, though guilty under Registration Act. 17 C. 609, 11 W. R. 24.
9. Where B passed himself off as A and deposes as such in the witness box is not guilty of cheating by personation but under S. 193, I. P. C. 1 B. H. C. R. 89.
10. Where there is no pecuniary loss to a third person who was not deceived, there is no cheating by personation. 25 P. R. 1904 Cr.

Misrepresentation as to caste.

1. Accused induced another to part with money in consideration of marriage by representing a Sudra girl to be a Brahmin is guilty under S. 419. (1871) 16 W. R. 42 Cr.
2. Brahmin woman described as Khatriam for the purpose of marriage and obtaining money. Held, it did not amount to an offence under S. 419 but under S. 420. 13 P. R. 1904 Cr., 149 P. L. R. 1903.
3. Obtaining Government service by false representation as to caste is not cheating by personation. 14 P. R. 1880 Cr.
4. Accused passed himself off as *prohit* and offered to give the abducted girl in marriage is guilty. 20 P. R. 1880 Cr.
5. A Mahomedan who pretends to be a Hindu in order to get a job under a Hindu who would not employ a Mahomedan is guilty. 1925 S. 57=25 Cr. L. J. 789.
6. Describing a sweeper woman whose husband was alive as a Jat widow and getting money is offence under S. 420 and not S. 419. 28 P. W. R. 1918 Cr., 6 P. R. 1918 Cr., 13 P. R. 1904, 2 A. W. N. 237, 5 W. R. 98 Ref.

Misrepresentation as to position in life.

1. Accused represented a girl to be the daughter of a certain woman of good family, when to his knowledge, she was the daughter of another woman. He was guilty under S. 419. (1867) 7 W. R. 51 Cr.
2. Where a document purported to have been signed by a Patwari, was signed by him at a time when he was not Patwari, an offence under S. 419 was committed. (1874) 21 W. R. 41 Cr.
3. Falsely representing a notorious gambler, as a rich Seth is cheating by personation.

Cheating by personation—(contd.)

4 P. R. 1905 Cr.

6. Personation at an examination.

A represented himself as B, got a Hall Ticket in B's name at a University examination and wrote papers in B's name. Held, he was guilty under Ss. 419 and 463. 12 M. 151, 13 B. 505, 28 M. 90, 15 A. 210, 1936 C. 403, 25 M. 726 Diss.

7. Personation by a witness.

A witness falsely deposing in another's name should be charged with giving false evidence, under S. 193 and not under S. 419. (1863) 1 B. H. C. R. 89.

8. Personation before a public servant.

1. A female vendor started for D in company with others to get a sale deed registered. She fell ill on the way and one of the women personated the vendor and got registry of the deed. Held, that she was guilty under the Registration Act and not under S. 419. (1869) 11 W. R. 24 Cr., 17 C. 606.
2. Accused knowingly represented a wrong woman to be the mother of a sepoy who had been killed in action and got her pension from the Military authorities, he was guilty under S. 419. (1907) 27 A. W. N. 291.
3. Where a person falsely personated another and induced a Health Officer to deliver to him a health certificate, he was guilty under S. 419. 11 L. W. 368, (1919).

9. Sentence.

A previous conviction of theft or burglary should not be taken into account in increasing the sentence, when the subsequent offence is cheating by personation. 1927 L. 220 = 100 I. C. 536 = 28 Cr. L. J. 312.

CHEMICAL EXAMINER. S. 510—Cr. P. C., S. 51, Ev. Act.

1. Chemical Examiner's negative report regarding absence of trace of blood in the earth, grass or leaves from the alleged place of occurrence will not displace direct evidence about the place of murder. 1924 C. 625 = 83 I. C. 485 = 26 Cr. L. J. 5.
2. Great weight must be attached to the report of Chemical Examiner with regard to the stains of semen in sodomy cases. 10 L. 794 = 1930 L. 518 (2).
3. Court must be satisfied that the substance examined were in fact what they were said to be. 18 C. W. N. 180.
4. Certificate of Professor of Anatomy is not *per se* admissible. 47 B. 74.
5. Report prior to proceedings is inadmissible. 50 I. C. 26.
6. The report of Chemical Examiner cannot be admitted in appeal for the first time, when it is not formally tendered in evidence. 1924 A. 193 = 83 I. C. 904.
7. Where the appellate court admitted the report without examining the Chemical Examiner, but the evidence to support conviction was sufficient otherwise. Held, that the dismissal of appeal was improper. 98 I. C. 177 = 1926 R. 193 = 27 Cr. L. J. 1281.
8. If the report of Chemical Examiner contains quantitative analysis it should be shown to medical officer conducting *post-mortem* to explain medico-legal inferences to be drawn from report. 1933 A. 837 = 146 I. C. 1089.
9. If the written report of Chemical Examiner is not given on oath and not tested by cross-examination, accused should not be put in peril of capital punishment on such report. 1933 A. 837 = 146 I. C. 1089 = 1933 Cr. C. 1463.
10. Courts should not admit Chemical Examiner's report if it is inadequate, unless he submits full and satisfactory report. 1934 O. 62, 1933 A. 873 Ref.
11. Report though meagre which is admitted by Sessions Judge cannot be rejected by High Court in appeal. 1934 O. 62 = 35 Cr. L. J. 700.
12. Report of Chemical Examiner has value, even though he is not examined in court. It is for the court to determine cause of death on report and other evidence. 1934 L. 150 (2) = 15 L. 310, 1933 A. 837 Expl.
13. If the accused did not object to the report of the Chemical Examiner on the ground that she was not personally examined in Court he cannot object to it in the High Court. 1934 A. 873.

Chemical Examiner—(concl'd.)

14. **Chemical Examiner** must give in his report *opinion* and *grounds* on which *opinion* is based. 1933 A. 394.

CHEQUE DISHONoured. See *Cheating*—12.

CHHAVI. See *Arms Act*, deadly weapon.

1. *Chhavi* is an arm for the purpose of *Arms Act*. 16 P. R. 1900 Cr.

2. Head of a *chhavi* is an arm. 20 P. R. 1900 Cr., 32 P. R. 1918 Cr.

CHIEF JUSTICE.

Chief Justice has no greater judicial powers than other judges of the court. 1933 C. 870, 2 C. W. N. 481 Ref.

CHILD. See *Minor*.

. **Abandonment of—** See *Abandonment of child*.

. **Abduction for committing theft.** See *Abduction*—16.

. **Abstaining from giving nourishment to—** See *Culpable Homicide*—4.

. **Death of—** See *Death by negligence*—2.

. **Evidence of—** See *Witness*—15.

. **In mother's womb.** See *Abortion, Murder*—19.

. **Liability of—**under 7 years. S. 82, I. P. C.

If the child is under 7 years, it is a good answer to the prosecution. 22 W. R. 27.

. **Liability of—** Under 12 years. S. 83, I. P. C.

1. A child of 9 years of age stole a necklace worth Rs. 2-8-0, and immediately sold it to the accused for five annas, the child was guilty of theft and the accused of receiving stolen property. 6 M. 373.

2. A girl of 10 years mortally wounded her husband and hid herself in a field. It was held that she was guilty. (1864) 1 W. R. 43 Cr.

3. Where the age of the accused is under 12 years, the Magistrate should under S. 83 find that he has attained sufficient maturity of understanding to judge the nature and consequence of his act. 27 C. 133, 5 M. L. T. 296.

4. A boy of 12 can be guilty of attempt to rape. 11 B. L. T. 135.

5. Where a child under 12 commits an offence, when he is unable to understand the nature of offence, he cannot be debarred under S. 105, *Evidence Act*, from the defence allowed by him under S. 83. 1925 O. 311=26 Cr. L. J. 310.

6. That the child has not attained sufficient maturity of understanding is a matter of defence to be considered with the other issues arising in a case 22 W. R. 27 Cr.

9. **Overfeeding—to death.** See *Murder*—32-B.

0. **Throwing—to crocodiles.** See *Culpable Homicide*—33.

CHILD MARRIAGE RESTRAINT ACT (1929).

1. A relation of a girl's mother applied to be appointed guardian and for an injunction against her father marrying her in contravention of the Act. The Court granted an injunction but the father married the girl. The Court put him in Civil Jail. He pleaded that he never received any notice of injunction. Held, he was entitled to prove the absence of notice. 1932 C. 719=137 I. C. 425.

2. A Court taking cognizance of offence should hold preliminary inquiry before taking any further action. 1931 Lah. 56=130 I. C. 783=32 Cr. L. J. 616.

3. If preliminary inquiry under S. 10 of the Child Marriage Restraint Act of 1929 is not held, it vitiates the whole trial. 12 L. 383.

CHIT-FUND. See *Lottery*—3.

CIPHER CODE. See *Conspiracy*—5.

CIRCUMSTANTIAL EVIDENCE. See *Murder*—22.

1. Accused owes no duty to give explanation but if *prima facie* case is made out, the

Circumstantial Evidence—(contd.)

force of suspicious circumstances is augmented when no explanation is forthcoming. 1925 S. 289=88 I. C. 7=26 Cr. L. J. 1063, 32 I. C. 151.

2. In a case of theft of currency notes, it was proved that accused was one of the persons who entered the office in the absence of complainant and that he was in possession of money after theft for which he could not give satisfactory account, held that evidence is insufficient. 23 I. C. 501=15 Cr. L. J. 203.
3. Mere fact that accused was last seen with the deceased with a motive for murder is insufficient. 1927 L. 581=103 I. C. 49=24 Cr. L. J. 635.
4. Circumstances must be incompatible with accused's innocence. 1926 L. 691=7 I. C. 561, 98 I. C. 241, 1928 B. 130=52 B. 385, 41 C. 621, 43 I. C. 211, 55 I. C. 294, 5 P. R. 1872, 136 P. L. R. 1909, 15 P. R. 1897, 1923 L. 382=112 I. C. 859, 1922 L. 263, 59 I. C. 858, 137 I. C. 63, 1932 O. 251 (2).
5. The existence of general enmity with a desire to procure death of a person is only a piece of circumstantial evidence but is not corroboration of sworn testimony. 1926 A. 377=48 A. 409=95 I. C. 74=27 Cr. L. J. 746.
6. Where there was no eye witness of murder, the circumstantial evidence that accused was standing in the door way with his cloth and feet bloodstained and that deceased had been paying attention to his sister is insufficient to support conviction. 1924 L. 62=5 L. L. J. 40=81 I. C. 173=25 Cr. L. J. 685.
7. A conviction on circumstantial evidence cannot be sustained unless inferences, drawn from the history of case point strongly to the commission of offence and defence is highly improbable. 1923 L. 489=83 I. C. 721, 16 P. W. R. 1911, 109 I. C. 912, 32 P. R. 1916 Cr., 7 L. 396=97 I. C. 752=1925 L. 582.
8. Association of a person with accused raises suspicion but is no evidence to convict him. 27 P. L. R. 441=23 Cr. L. J. 209.
9. The fact that fields were irrigated by accused is insufficient to hold that they were guilty of opening an outlet in the canal. 1923 L. 603.
10. Discovery of jewels worn by deceased and knife in accused's cattle shed is not sufficient to connect him with the offence. 5 L. L. J. 78.
11. A very grave suspicion rests on a person found in possession of ornaments belonging to the deceased soon after murder. 66 I. C. 187.
12. Where the evidence of identification of dead body is unsatisfactory, conviction cannot stand. 221 P. L. R. 1915=40 P. W. R. 1914.
13. Mere evidence that deceased drank milk offered by accused and died soon after exhibiting symptoms of poisoning is insufficient for conviction. 25 P. W. R. 1911.
14. In a case of conviction on circumstantial evidence only there must be a chain of evidence, so complete as to leave no ground for a conclusion therefrom consistent with the innocence of the accused. 27 P. R. 1913 Cr., 1931 C. 11=32 Cr. L. J. 418.
15. The conduct of the accused, such as absconding and giving false name when found is only a ground of suspicion against him and insufficient to support conviction. 46 I. C. 709.
16. Conviction on blood stains on tracker's evidence is not sound. 171 P. L. R. 1913, 136 P. L. R. 1909, 67 P. L. R. 1913.
17. Where there is a strong feeling between the parties and the evidence on both sides is of a partisan character, it is safe to decide the case on circumstances and probabilities. 50 A. 733=1929 A. 18=113 I. C. 434.
18. Circumstantial evidence is conclusive when evidence is of such a nature that it can possibly lead to no other inference except the guilt of the accused. 56 C. 738.
19. From the redness of eyes it cannot be held that a person merely on that account is an habitual smoker of Bhang. 89 I. C. 145=1925 O. 480=26 Cr. L. J. 1281.
20. The question was whether guardian was guilty of gross negligence. Held, that circumstantial evidence is as good rather better evidence than oral evidence. 1923 M. 245=70 I. C. 335=41 M. L. T. 449.
21. The circumstances from which inference adverse to the accused is sought to be drawn must be proved beyond all doubt. 1931 C. 11=129 I. C. 677=32 Cr. L. J. 418.

Circumstantial Evidence—(concl.)

22. Circumstantial evidence must unmistakably point to the guilt of accused. Little weight should be attached to extra judicial confession. 1932 O. 324=33 Cr. L. J. 379.
23. Since the failure of one link breaks the chain, every link in the circumstantial chain must be proved. 58 I. C. 457=21 Cr. L. J. 777, 1 P. 630=1922 P. 582=24 Cr. L. J. 91.
24. No person should be required to answer the charge without a clear proof of *corpus delicti*. *Best on Ev.* S. 441.
25. Indirect or circumstantial evidence does not prove the point in question directly, but establishes it only by inference. 41 C 173.
26. It is not difficult to produce false evidence of eye-witnesses. It is on the other hand extremely difficult to produce circumstantial evidence of a convincing character, and, therefore circumstantial evidence, if convincing, is more cogent than the evidence of eye-witnesses 1933 P. 180=34 Cr. L. J. 395=142 I. C. 613.

Cognizance of Offences—(contd.)

2. If a person is released by police under S. 169, Cr. P. C., prosecution should not be launched against him on evidence disclosed by him in certain cases. Such practice should be discouraged. 1933 A. 397=34 Cr. L. J. 761.
2. **Against Judges and Public Servants.** S. 197, Cr. P. C. See Prosecution of Judges and Public Servants.
3. **Beyond Powers.**
 1. A Magistrate of the second class cannot take cognizance of a complaint of murder. If he entertains it or finds it to be false, he cannot order the complainant to be prosecuted for false complaint. 5 P. 447=1926 P. 400=27 Cr. L. J. 704.
 2. A Magistrate cannot take cognizance of an offence beyond his power. A second class Magistrate cannot try a case under S. 420 I. P. C. 82 I. C. 57.
 3. A Magistrate cannot take cognizance of offence by refusing it into a minor offence. 47 A. 64=1925 A. 290.
4. **By Court of Session.** S. 193, Cr. P. C. See Commitment—3. See Additional Sessions Judge.
 1. The trial in the Court of Session without a commitment is *ultra vires*. 15 M. 352, 22 C. 50, 42 P. R. 1884 Cr., 97 I. C. 1041, 42 C. 856.
 2. A fresh charge on which prosecution has led no evidence in the Committing Court, cannot be added by the Sessions Court. 1927 Sind 23=27 Cr. L. J. 1127.
 3. In serious cases, of which a Court of Sessions may take cognizance, the accused should have some information of the case. 4 M. 227, 3 M. 351.
 4. Where the Sessions Judge transferred a reference under S. 123, Cr. P. C., to Additional Sessions Judge, the latter has jurisdiction to hear it. 50 C. 229=1923 C. 649.
5. **By District Magistrate.**

If the District Magistrate is moved under S. 436, Cr. P. C., he can take cognizance of complaint under S. 190 (1). 130 I. C. 529=32 Cr. L. J. 548=1931 P. 50.
6. **By High Court.** S. 194, Cr. P. C. See Commitment by High Court.
7. **Complaint against some and—against others.**
 1. When once a Magistrate has taken cognizance of an offence, he is competent to take proceedings against all who from evidence appear to be offenders. His power is not limited with regard to persons mentioned in the complaint or Police report. 4 C. W. N. 560, 21 C. W. N. 950, 26 C. 785, 94 I. C. 717, 1922 C. 107, 41 C. 1013, 1933 P. 297=34 Cr. L. J. 942, 5 B. H. C. R. 100.
 2. A Magistrate takes cognizance of offence but not of an offender. When he adds an accused at any stage of the proceeding he is not acting under S. 190 at all. Where after the commencement of the trial, a Magistrate puts a witness into the dock, the Court is not taking cognizance of an offence against him. 1925 O. 739=90 I. C. 915=26 Cr. L. J. 1619.
 3. Upon a complaint against a person, if Magistrate directs process to issue against others, as there was evidence against them, the Magistrate acts under Cl. (a) and not under Cl. (c) of S. 190. 83 I. C. 885=1924 Sind 71=26 Cr. L. J. 181.
 4. The addition of a new accused does not necessitate fresh proceedings. 73 I. C. 55=1923 R. 31=24 Cr. L. J. 519.
 5. Magistrate can add a second charge disclosed in evidence, though not complained of originally. 1926 R. 53=94 I. C. 717=27 Cr. L. J. 669.
 6. Cognizance is of offence and not of offenders. 1934 P. 467, 37 C. 412, 1933 P. 244=12 P. 341 Rel. on.
8. **Complaint charging two persons in the alternative.**

A Court should not accept a complaint charging two persons in the alternative and the order sanctioning prosecution in the alternative is also bad. 1930 R. 51=125 I. C. 535=31 Cr. L. J. 1065.
9. **Disclosed during inquiry or trial.**

Once the parties are before the Court, the Magistrate can deal with the accused for any

Cognizance of Offences—(contd.)

offence disclosed by the evidence. No separate complaint is necessary. 1933 P. 297=34 Cr. L. J. 942, 26 C. 786 and 5 B. H. C. R. 100 Ref. *Case law discussed.* See 1936 M. 341.

10. Information. (Letter). S. 190 (1) (c), Cr. P. C.

1. The expression "information received from any person other than a Police Officer" in S. 190 means only such information as does not constitute a complaint or Police report. 4 L. B. R. 300.
2. Magistrate can take cognizance of an offence, if his knowledge is based on an anonymous letter. 1923 A. 756=113 I. C. 78=30 Cr. L. J. 62, 3 C. W. N. 65.
3. A letter written to the District Magistrate conveying information of an offence and asking for action to be taken can be treated as information under S. 190 (c) for taking action. 81 I. C. 971=1923 O. 144=25 Cr. L. J. 1147.
4. Information need not contain all the allegations necessary to be proved to establish the offence. 35 C. 1076.
5. Where a Deputy Commissioner as Collector and as such representing the Court of Wards, received information of an offence, he as Magistrate was not competent to issue warrants. 10 C. W. N. 775, 37 C. 221. *Cont.* 43 M. 709.
6. Communication through post is information. 2 Weir 149, 1899 A. W. N. 201.
7. Information received from another Magistrate is information. 10 P. W. R. 1914 Cr.
8. Information received from the petition of objection filed under S. 144, Cr. P. C., in showing cause against the order is not information received as against the petitioners. 72 I. C. 945.
9. The Magistrate must record the information received under Cl. (c). 35 C. 1076, 10 C. W. N. 775.
10. Where a Magistrate who takes cognizance of an offence against a witness in a case pending before him, upon the facts disclosed by the evidence of another witness, does so under Cl. (c) of S. 190 and not under S. 351, Cr. P. C. 1 C. W. N. 105 *Cont.* 5 N. L. R. 113, 4 S. L. R. 258, 41 C. 1013.
11. Magistrate can act on the information received from accused. 62 M. L. J. 680.
12. Magistrate ordering a case reported to him under S. 173 be struck off, can reopen case by calling for charge sheet under S. 190 (1) (c). 1933 P. 242=12 P. 234, 1928 P. 585 *Diss. from.*

11. Inherent powers of High Court to take. See Inherent powers, S. 561-A.**12. Knowledge—Magistrate's own.—S. 190 (c), Cr. P. C.**

1. Knowledge means actual personal knowledge of the Magistrate or knowledge based upon evidence legally before him. 12 B. R. 18.
2. A gratuitous suspicion or belief founded on private information contained in an anonymous petition is not knowledge. 13 W. R. 1.
3. The mere fact that previous to making of a written complaint the Magistrate happened to be in the village and complainant related to him the story of the offence orally and he inspected the locality, would not bring the case under Cl. (c) and if the same Magistrate starts proceedings on a written complaint, the case falls under S. 190 (1) (a). 1927 A. 101=98 I. C. 718=27 Cr. L. J. 1406.
4. A Magistrate is not precluded from trying a case of which he has taken cognizance on his own knowledge under S. 190 (c) provided he has complied with the provisions of S. 191. 84 I. C. 249=1924 R. 352.
5. Where a Magistrate issued an order under S. 144 to stop work in a quarry and convicted a person for disobedience of the same, the conviction is illegal, as he took cognizance on his own knowledge. 84 P. L. R. 1905, 8 P. R. 1905 Cr.
6. A Magistrate who takes part in the initiation of proceedings is not incompetent to take cognizance of offence, but of course he will be debarred under S. 556, Cr. P. C. from trying the case. 50 C. 135=1922 C. 298=71 I. C. 239.
7. After the close of a theft case, Magistrate ordered the Police to send up a charge sheet in respect of a witness under S. 414, and after the Police made report, he

Cognizance of Offences—(contd.)

convicted him. The conviction is legal, as the Magistrate took cognizance of the case under S. 190 (b) and not cl. (c) or S. 351. 62 I. C. 875.

8. In view of S. 195 (1) (c) cognizance of an offence under S. 182, I. P. C., cannot be taken by Magistrate under S. 190 (c) upon his own knowledge or suspicion. If in a Sub-Division there is no other Magistrate, the Sub-Divisional Magistrate should make a complaint to the District Magistrate. 1935 P. 356=36 Cr. L. J. 904.

13. Limitation for.

The general law of limitation is chiefly intended for civil matters and does not apply to the taking of cognizance of offences. 20 B. 543.

14. Of Adultery, Bigamy, Conspiracy, etc. See those offences.

15. Power of District Magistrate.

1. A District Magistrate sent a case to a Sub-Divisional Officer for enquiry and report and after the report ordered him to try the case himself. Held, that the accused should have been given opportunity to be tried by another and the conviction was illegal. 113 I. C. 326=1929 O. 87=30 Cr. L. J. 134.
2. A Registrar who was also District Magistrate directed the prosecution of accused under S. 471, I. P. C. Held, he could cognizance of offence under S. 190 (1) (c). 2 P. 459=74 I. C. 536=1924 P.
3. The District Magistrate to whom a Sub-Divisional Officer sends a report about an unauthorized horse racing as Deputy Commissioner, can take cognizance of the offence on such report. 8 R. 246, 43 M. 709, 1930 R. 253=31 Cr. L. J. 867.
4. District Magistrate of the Civil and Military Station of Bangalore has jurisdiction to take cognizance of offences committed by European British subjects. 34 M. 346.

16. Transfer of cases by Magistrates. S. 192, Cr. P. C.

1. A case can be transferred even before a decision to issue process against the accused has been made. 12 Cr. L. J. 437=7 N. L. R. 97.
2. A Magistrate has power to transfer cases under Ss. 145—147, Cr. P. C. 72 I. C. 951, 65 I. C. 861.
3. Proceedings under S. 110, Cr. P. C., can be transferred under S. 192, 1 P. 621.
4. S. 192 will empower a Magistrate to try a case under S. 20 of the Cattle Trespass Act, if it is transferred to him by District Magistrate, although he could not entertain the complaint. 34 C. 926, 44 B. 42.
5. A case which has been transferred to a District Magistrate or to Sub-Divisional Magistrate cannot be transferred again under S. 192. 36 A. 166, 12 A. L. J. 277.
6. But where a case has been transferred to a District Magistrate with the direction to transfer it to some competent Magistrate he can transfer it. 30 P. R. 1917 Cr., 19 A. 249.
7. A case cannot be transferred under S. 192 after prosecution and defence evidence has been recorded. 12 A. 66.
8. A part-heard case should not be transferred. 50 C. 223=1923 C. 196=27 C. W. N. 99=71 I. C. 662=24 Cr. L. J. 198=36 C. L. J. 417.
9. A case can be transferred to a subordinate Court and not the superior Court. 1890 A. W. N. 7, 12 A. 66.
10. On the transfer of a case, the Magistrate must try it *de novo*. 14 A. 346.
11. District Magistrate should give notice to the parties before the transfer of the case. 8 C. 393, 3 A. 749, 51 M. 610, 2 Bom. L. R. 342.
12. The powers conferred by S. 192 or S. 207, Cr. P. C., are separate and distinct and they do not curtail each other's power. 46 C. 554.
13. S. 192 (1) does not empower a Magistrate to transfer a case for the purpose of considering the report of an investigation under S. 202, Cr. P. C., which he has himself ordered. 87 I. C. 525=1925 C. 742=25 Cr. L. J. 990.
14. A District Magistrate cannot transfer a case under S. 145, Cr. P. C., to a Sub-Divisional Magistrate, when the land is not situated in the latter's jurisdiction. 52

Cognizance of Offences—(contd.)

M. 241=1928 M. 1230=55 M. L. J. 693=28 M. L. W. 664.

15. A Magistrate to whom a case is transferred by District Magistrate, has full authority to deal with the case, as if he has himself taken cognizance of the case. 55 C. 1274, 95 I. C. 935=1926 P. 358=27 Cr. L. J. 855.
16. A Magistrate who transfers a case for trial under S. 192, Cr. P. C., has no power to transfer it again. 65 I. C. 441.
17. The Governor in Council of Assam or a member of his Council disposing of an appeal relating to the Forest Department is not a court. 36 C. W. N. 505=1932 C. 390=138 I. C. 705=33 Cr. L. J. 685=55 C. L. J. 349.
18. Where the whole case is transferred to Subordinate Magistrate, Sub-Divisional Magistrate cannot pass any orders or call for charge sheet unless he acts under S. 528, Cr. P. C. 1933 P. 244=12 P. 341, 27 C. 979, 32 C. 783, 30 C. 449, 1928 P. 585 and 1933 P. 242 Ref.
19. Where a Magistrate has jurisdiction to try a second complaint, he has jurisdiction to transfer it to another Magistrate for trial. 1935 A. 60=151 I. C. 714=35 Cr. L. J. 1485, 9 A. 85, 1895 A. W. N. 86, 29 A. 7 and 1914 A. 179=36 A. 53.
- 17. Transfer of cases if Magistrate takes on his own knowledge.** S. 191, Cr. P. C.
 1. If a Magistrate takes cognizance of an offence under cl. (c), S. 190, viz., upon his own knowledge and does not inform the accused that he has a right to have the case transferred, the conviction is illegal. 1920 P. L. R. 124=21 Cr. L. J. 394, 13 A. 345, 28 A. 212, 8 P. R. 1905 Cr., 36 P. R. 1905 Cr., 13 P. R. 1898 Cr., 22 Cr. L. J. 96, 1926 A. 325=92 I. C. 741, 82 I. C. 152, 1926 L. 627=96 I. C. 989, 60 I. C. 1007, 1923 A. 383=73 I. C. 576, 1934 L. 210=151 I. C. 792, 1934 A. 693 (1), 1923 P. 242.
 2. Accused can waive his right under S. 191. 1 S. L. R. 98.
 3. But waiver cannot be implied unless accused is distinctly told about his right. 21 A. L. J. 89.
 4. Magistrate can hold inquiry or commit the accused to the Sessions, although objection under S. 191 is raised. 22 M. 148, 21 A. 209, 20 Cr. L. J. 47.
 5. A Magistrate is not precluded from trying the case of which he has taken cognizance on his own knowledge under S. 190 (c), S. 191. In such a case S. 556 ceases to operate. 84 I. C. 249, 1893 A. W. N. 79, 1924 R. 352 (1).
 6. The mere fact that previous to making written complaint, the Magistrate happened to be in the village and the complainant related to him the story of offence orally and he inspected the spot, will not entitle the accused to have the case transferred under S. 191, as he takes cognizance under cl. (a). 1927 A. 101=27 Cr. L. J. 1406.
 7. If on perusal of the Police diary, the Magistrate thinks that Police have not properly investigated the case, he can act under S. 190 (1) (c) and order his prosecution. In that case the accused has right to have his case transferred. 1931 A. 273=129 I. C. 267=32 Cr. L. J. 370.
 8. Addition of new accused does not entitle him to be tried by another court. Magistrate can act under S. 351. 1934 R. 193=35 Cr. L. J. 1312, 1923 R. 31=24 Cr. L. J. 519
 9. Magistrate cannot send the case to another district. 1933 P. 643 (1)
 10. Police challaned accused under S. 121, Railway Act, for slapping the Station Master. If the Magistrate tries him under S. 323, I. P. C., he takes cognizance under S. 190 (c) and he must ask accused under S. 191 Cr. P. C., if he wishes to be tried by another Magistrate. Conviction under S. 323 was set aside. 1935 M. 341=59 M. 442.
- 18. Upon complaint** See Complaint—10..
 1. The Magistrate is bound to receive the complaint and deal with it according to law. 12 B. 161, 13 C. 334.
 2. The Magistrate cannot refer the complaint to Police, without taking cognizance of it. 12 Cr. L. J. 463.

Cognizance of Offences.—(contd.)

3. The fact that complainant is a servant of the Magistrate does not deprive the Magistrate of his jurisdiction, although it would be expedient to refer him to some other Magistrate. 9 B. 712. See 95 I. C. 764.
4. When a complaint is filed, the Magistrate can order the Police to submit a charge-sheet. 33 P. L. R. 318.

19. Upon complaint by Police.

1. There is nothing either in Ss. 23 to 25, Police Act or in Cr. P. C., which would in any way prevent a Police Officer from lodging a complaint with regard to a non-cognizable offence. 1929 P. 514=120 I. C. 297=31 Cr. L. J. 55. 1925 L. 237.
2. Magistrate can take cognizance of non-cognizable offence upon a report made in writing by Police Officer without examining the officer upon oath. 51 A. 382, 51 B. 498, 1927 L. 702=49 M. 525=104 I. C. 437=28 Cr. L. J. 821.
3. The written allegation of a non-cognizable offence made by a Police Officer who is also a Public Prosecutor with the idea of making the Court take action on it, is a complaint. 1925 L. 237=82 I. C. 753=6 L. L. J. 606.

20. Upon information received from a witness.

- A Magistrate taking cognizance of an offence against a witness in a case pending before him upon facts disclosed by evidence of another witness, does so under S. 190 (c) and not under S. 351. 1 C. W. N. 105 *Cont.* 5, 4 S. L. R. 258, 41 C. 1013.

21. Upon information received from accused himself.

- A Magistrate is empowered under S. 190 (1) (c) to record and act on the information furnished by accused himself. 62 M. L. J. 680.

22. Upon Police report. See Police report. S. 17, Cr. P. C.

1. A Police chalan is a Police report of facts constituting an offence under cl. (b), S. 190 and a Magistrate can take cognizance upon it. 8 P. R. 1901 Cr., 22 P. R. 1900 Cr.
2. Mere suggestion of the Police Officer that accused injured the crops of the people of the village, is not a Police report and the issue of the summons to the accused is illegal. 24 P. R. 1894 Cr.
3. The report of a Sub-Inspector of Excise to a Magistrate is a Police report only for the purpose of S. 190, Cr. P. C. 54 C. 371=1927 C. 405=28 Cr. L. J. 316.
4. Magistrate can take cognizance of non-cognizable case upon a Police report. 1927 L. 702, 104 I. C. 437, 49 M. 525=28 Cr. L. J. 821.
5. An application by the Police to a Magistrate to take action against a person amounts to a Police report, within S. 190 (b), Cr. P. C. 59 I. C. 41.
6. A letter was addressed to a Police Officer, on this he made report against his subordinate to the Magistrate. Held, that it was not a Police report. 23 Cr. L. J. 641.
7. A Magistrate has discretion either to take cognizance of the offence on the Police report or to proceed under S. 203, Cr. P. C., or to take no further steps. 2 Weir 119.
8. Where the Magistrate issued warrants against persons not named in the complaint or in the first information but named in a report subsequently made by the Police after investigation. Held, that Magistrate took cognizance of the case under cl. (b) and not cl. (c) of S. 190. 8 C. W. N. 864.
9. If after the receipt of Police report the Magistrate makes over the case to a subordinate Magistrate for inquiry and report, he acts illegally. 40 C. 854, 51 C. 402.
10. Application of Prosecuting Inspector to put prosecution witness on trial as accused, is report within the meaning of S. 190. 1933 A. 399=34 Cr. L. J. 761.

23. Upon Suspicion.

1. Where a Magistrate has only suspicion that an offence has been committed, he should not take cognizance of it until some aggrieved person has complained or until he has before him a Police report. 14 C. 707.

*Cognizance of Offences—(concl'd.)***24. Without jurisdiction.** S. 529 (c), Cr. P. C.

1. A Magistrate of the second class cannot take cognizance of a complaint that certain persons were guilty of murder. 5 P. 447=1926 P. 400=7 P. L. T. 335=27 Cr. L. J. 704=94 I. C. 896.
2. If a Magistrate takes cognizance of non-cognizable offence under S. 109 (1) (a) or (b) without having jurisdiction, it must be shown that he acted in good faith to make his proceedings valid. 1923 L. 66, 106 I. C. 577=29 Cr. L. J. 65, 1926 M. 865. See 32 M. 3.
3. Magistrate erroneously but in good faith took cognizance of cases which he was not empowered to do, proceedings are not invalid unless prejudice is caused to accused. 1933 A. 399=34 Cr. L. J. 761.

COIN. See Counterfeiting Coin. Marked Coin, Identification of things—3.

COLLECTING MEN TO RESIST ATTACK. See Right of Private defence,—14.

COLLECTION OF CROWD. See Public Nuisance.—8.

COLLECTIVE STATEMENT. See Admission. Examination of accused—7.

COLOUR BLINDNESS. See Identification—19.

COMMISSION. Ss. 503 to 508, Cr. P. C.

1. *Parida Nashin* ladies.

1. A *Parida Nashin* lady has a right to be examined on commission. 4 C. 20, 24 C. 551, 45 C. 697, 1923 L. 73=81 I. C. 140 (1) *Cont.* 5 A. 92, 12 A. 69.
2. Although a *Parida Nashin* lady has no right to be examined by commission, yet the word 'inconvenience' empowers the Court to allow it. 5 A. 92.
3. Court can examine a *Parida Nashin* lady in an empty room in a Court building. 12 A. 69.
4. A *Parida Nashin* lady who is the daughter of a prostitute can be examined on commission. 11 P. W. R. 1913 Cr.=43 P. L. R. 1913.
5. A *Parida Nashin* complainant can be examined on commission. 42 C. 19.

2. Remand order directing.—

The trial Magistrate is empowered to record the evidence of a witness himself, although the order of remand directed the examination by commission. 1929 L. 104=116 I. C. 643=30 Cr. L. J. 948.

3. When to issue.

1. Commission can be issued to save unreasonable expense although by doing so time is not saved. 1923 L. 73, 1931 P. 81=130 I. C. 538=32 Cr. L. J. 551.
2. An expert who is a principal witness, cannot be examined on commission. 9 I. C. 347=12 Cr. L. J. 64.
3. Additional District Magistrate empowered under Schedule III, Part V (18) can issue commission within his own jurisdiction. 1923 L. 158=73 I. C. 510.
4. A commission can be issued for the examination of a complainant. 10 P. R. 1896, 11 P. W. R. 1913, 42 C. 19.
5. Witnesses for identification of stolen property should not be examined on commission merely because their expenses would amount to Rs. 500. 6 A. 224.
6. In criminal cases issue of commission is most unsatisfactory and dangerous to the interests of community. 8 C. 896, 1926 S. 124=91 I. C. 393, 1923 L. 73.
7. Commission cannot be issued for the examination of a witness outside India. 5 B. 338, 10 Cr. L. J. 571.
8. After commitment is made, a Magistrate cannot issue commission for taking evidence to be used at a trial before the Sessions Court. 19 C. 113, 19 B. 749.
9. If a witness is ill, a Magistrate should ascertain whether he can attend within a reasonable time and then reluctantly issue a commission. 3 P. 591 (594).
10. A commission is not a 'Court' and cannot make complaint for perjury under Ss. 195,

Commission—(contd.)

476, Cr. P. C. 11 C. W. N. 909.

11. The accused should not be detained for unnecessary long time for the return of commission. The trial and commission cannot go together. 19 C. 133.
12. Section does not empower Magistrate to go himself to the house of a witness. 2 S. L. R. 8.
13. Application for issue of fresh commission for cross-examination after charge is competent. 1934 C. 698.
14. If the trial Court rejects application for issue of commission, District Magistrate cannot interfere. Revision to High Court is the only remedy. 1936 S. 221.
15. A complainant is not a witness and therefore commission for the examination of complainant cannot be issued, although the complainant be a *Parda Nashin* lady or a Ruler of a State. 5 A. 42, 10 P. R. 1896, 12 Cr. L. J. 555

COMMITMENT Ss. 209 to 210, Cr. P. C.**1. Absence of accused.**

1. A commitment in the absence of accused is illegal. 260 P. L. R. 1913, 5 C. W. N. 110.
2. Where the accused was allowed to appear by an agent under S. 205, Cr. P. C., commitment made in the absence of accused but in the presence of the agent, is not illegal. 2 W. R. 50.

2. Addition of charge after. See Charge—1.**3. After Discharge.**

1. Commitment after discharge is proper, if there is fresh evidence against the accused. 7 M. H. C. R. 40.
2. The discharge of a person accused of an offence exclusively triable by Court of Session is no bar to his being apprehended with a view to commitment. 10 B. 319.
3. Where a complaint was made of an offence exclusively triable by Court of Session and the Magistrate framed charge for minor offence and acquitted the accused. Held, the Sessions Judge could order the commitment of accused on the original charge. 24 M. 136, 82 I. C. 760, 41 M. 982, 53 I. C. 618, 94 I. C. 359, 43 M. 330, 1932 N. 85 (1). *Cont.* 20 C. 633, 23 M. 225.
4. On a complaint under S. 302, Magistrate framed charge under Ss. 147, 325. Held, that it amounted to implied order of discharge under S. 302 and the Sessions Judge could order the committal of the accused. 43 M. 330.
5. When an order of discharge under S. 209, Cr. P. C., has been confirmed by higher authorities, it is not competent for a Magistrate to entertain a fresh complaint on the same charge. 1928 Sind 496=99 I. C. 89=23 Cr. L. J. 57, 1922 Sind 23.
6. The dictum that further enquiry after discharge is improper unless the order of discharge is manifestly perverse or foolish, does not apply to a case in which Magistrate is acting as a Court of enquiry and not a trial Court. 1930 O. 415.
7. An order of discharge after full enquiry should not be lightly interfered with. 1925 L. 395=89 I. C. 272=26 P. L. R. 198.

4. Bail after—See Bail—6.**5. By Appellate Court.** S. 423 (1) (b). *See Appeal—25* order of commitment.**6. By District Magistrate or Sessions Judge.** S. 437, Cr. P. C.

1. The Sessions Judge and District Magistrate have co-ordinate powers to order a commitment. 28 C. 397.
2. Sessions Judge can direct a commitment of a case, although District Magistrate refused to call for record. 43 M. 330.
3. In order to give jurisdiction to Sessions Judge and District Magistrate to order commitment the accused must have been charged with an offence exclusively triable by Court of Session. 234 P. L. R. 1904, 1 A. 413, 3 P. R. 1879, 42 M. 561, 20 C. 633, 53 C. 645=1926 C. 1090

Commitment.—(contd.)

4. A Sessions Judge may direct commitment even where the District Magistrate himself discharges the accused. 7 A. 853.
 5. A Sessions Judge or District Magistrate can call upon the discharging Magistrate to make commitment. 19 B. 100, 23 C. 397, 53 C. 645, 1930 M. W. N. 683, 10 B. 319.
 6. In a clear case of committal, the Sessions Judge or District Magistrate should direct commitment and not further enquiry. 15 C. 608.
 7. When no opportunity to show cause why commitment should not be ordered, was given to the accused, the order should be set aside. 48 M. 874=1925 M. 1061.
 8. Where a Sessions Judge made a complaint under S. 476, Cr. P. C., to a first class Magistrate which was dismissed, he could not order the commitment of the accused to himself. 1927 B. 35=99 I. C. 85=28 Cr. L. J. 53.
 9. The order of commitment passed by Sessions Judge or District Magistrate can be quashed by High Court upon strong grounds and under exceptional circumstances. 25 A. 564, 30 M. 224, 27 M. 54, 1930 O. 415=128 I. C. 285.
 10. On a complaint under S. 302, I. P. C., the Magistrate framed a charge under Ss. 325—147. Held, that it amounted to implied discharge of accused under S. 302 and Sessions Judge could order the commitment of the accused. 43 M. 330.
 11. When a Police chalan contains a mention of Ss. 304—147, I. P. C., but after recording evidence, Magistrate frames charge under Ss. 325—147, the Sessions Judge cannot order committal. 1926 O. 194=93 I. C. 145=27 Cr. L. J. 417.
 12. Accused was tried under Ss. 307—323 but the Magistrate framed a charge under S. 323 only. Held, that Sessions Judge could order commitment of accused under S. 303, I. P. C. 1934 A. 141=148 I. C. 999, 5 Bom. L. R. 125, 24 M. 136 and 42 A. 123 Rel. on. 41 M. 932, 1923 A. 484, 59 I. C. 193=22 Cr. L. J. 49 and 41 I. C. 658=18 Cr. L. J. 834. Expl. and Dist.
 13. When a commitment order is passed by District Magistrate under S. 437, High Court will not interfere if there is some evidence to go to the Jury. 1934 Sind 27=35 Cr. L. J. 884.
- 7. By High Court.**
Power of High Court to order commitment should rarely be exercised in the midst of a trial. 1926 O. 194=93 I. C. 145=27 Cr. L. J. 417.
- 8. By Revenue or Civil Court.** S. 478, Cr. P. C.
1. The power of a Civil Court to commit a case to the Sessions is limited to cases triable exclusively by the Court of Sessions and when the offence has been committed before the Civil Court itself. 4 B. 287.
 2. A Civil Court cannot commit accused without holding preliminary inquiry, 22 W. R. 52, 40 A. 32
 3. When notices were issued to the persons concerned and witnesses were not examined, the commitment is illegal. 40 A. 32.
 4. Revenue Court can commit an accused if the offence is committed in mutation proceedings. 1930 O. 58=124 I. C. 364=31 Cr. L. J. 679.
 5. It is discretionary with the Civil Court to send the case under S. 476 to a Magistrate or commit it direct to the Court of Sessions. 49 A. 893=1927 A. 571.
 6. There is no right of appeal against an order of Civil or Revenue Court committing accused to the Court of Sessions. 1930 O. 58=124 I. C. 364, 49 A. 893.
- 9. By trying Magistrate during trial of a case.** S. 347, Cr. P. C.
1. Where an offence is triable both by the Sessions Judge and by Magistrate, the latter can commit an accused to Sessions only if he is of opinion that the case ought to be tried by Court of Sessions. He must record reasons for the same. 1923 P. 551=109 I. C. 804=29 Cr. L. J. 612.
 2. Magistrate cannot decline to commit a case of public importance to the High Court Session on the ground that there is congestion of work in the High Court Sessions. 53 Bom. 611=1929 Bom. 313=119 I. C. 665=30 Cr. L. J. 1090.

Commitment—(contd.)

3. A Magistrate can acquit the accused of a part of a case and commit him for the other part. 1925 O. 547=85 I. C. 360=26 Cr. L. J. 520.
4. Where the evidence recorded by the Magistrate is not read over to each witness, in the presence of the accused, the commitment is illegal. 52 M. 995=1929 M. 862.
5. Before committing the Magistrate should allow the accused to cross-examine the prosecution witnesses before the charge is framed. 51 C. 442 (445).
6. If the Magistrate finds that the accused should be committed, the proceedings are not to be commenced *de novo*. 2 A. 190.
7. The commitment can be made before signing judgment. If it is signed, no other Court except High Court can alter or review it. 14 C. 42, 2 A. 672.
8. Commitment may be made after framing a charge. 3, C. 495.
9. If some of the accused are charged with an offence which ought to be tried by Court of Sessions and the rest are accused of summons case, which the Magistrate can try and adequately punish, it is not illegal to commit all the accused to the Sessions. 21 Cr. L. J. 791.
10. Although the Magistrate decides to commit the case to the Sessions under S. 347, he should still follow the procedure of Chapter XVIII and allow the accused to cross-examine the prosecution witness. 1931 B. 517=134 I. C. 1230, 51 C. 422.
11. An order of commitment made without taking all the evidence as the accused was prepared to produce before the Magistrate is invalid. 26 A. 177, 20 A. 264.
12. All the proceedings in the Magistrate's Court must be held to be proceedings in an inquiry under Chapter XVIII and not proceedings in a trial, as soon as the Magistrate decides under S. 347 to commit the accused for trial in the Court of Sessions. 132 I. C. 47=32 Cr. L. J. 849 (2)=1931 A. 434.
13. Under S. 347 the Magistrate need not start proceedings *de novo*, but he must not deprive the accused of any right which he may have under Chapter XVIII. 1931 A. 434=132 I. C. 47=32 Cr. L. J. 849 (2).
14. Where the accused has cross-examined all the prosecution witnesses and has produced defence witnesses, he has no further right of further cross-examination after framing of the charge. His only right is to cross-examine the witnesses over again in the Court of Session. 1931 A. 434=132 I. C. 47, 1931 A. 621.
15. The fact that accused wants to have the benefit of trial by Jury. 1932 B. 63=56 B. 61, or the case has caused sensation in a particular community. 1926 B. 251, or there is Government resolution 42 B. 172 is no ground for committal.
16. Where the offence appears to deserve greater punishment, accused should be committed. 16 B. 580, 11 A. 393.
17. From the moment the Magistrate decides to commit, what has hitherto been a trial becomes an inquiry under chapter 18. 1930 C. 666, 60 C. 643.
18. The charge already framed must be set aside in order that Magistrate may go back to the stage at which preliminary case proceedings may be applied. 1932 M. 302=33 Cr. C. L. J. 765.
10. Charge by Committing Magistrate. S. 210, Cr. P. C. See Charge—17.
11. De novo proceedings. See De novo trial—3.
12. Discretion to.
 1. A Magistrate should try a case himself even though triable exclusively by Sessions Court, if in his discretion evidence indicates that the course is proper. 1923 C. 104=73 I. C. 770=37 C. L. J. 34=24 Cr. L. J. 674.
 2. In committing cases not exclusively triable by the Court of Session, Magistrate should exercise a proper discretion and give adequate reasons for making commitment to the Court of Session. 11 Bom. L. R. 19, 38 B. 114.
 3. A case not exclusively triable by a Court of Session should not be committed merely to avoid a possible conflict of decision and proper course is to await the result of Sessions trial. 1930 L. 312=129 I. C. 677=31 Cr. L. J. 178.
 4. Where a Magistrate in his discretion considers that a commitment would result in

Commitment—(contd.)

unwarrantable waste of public time without any advantage to any body, he may not commit the case. 1925 P. 755=92 I. C. 697.

13. Grounds of discharge. S. 209, Cr. P. C.

1. When a Committing Magistrate finds that the prosecution evidence is totally unworthy of credit, it is his duty to discharge the accused. 92 I. C. 450=27. Cr. L. J. 274, 35 B. 163, 1924 A. 664, 5 A. 161, 26 A. 564, 4 L. 69, 37 A. 355, 91 I. C. 34. 44 A. 57, 1923 L. 279=68 I. C. 825, 1925 P. 279=81 I. C. 913, 1933 A. 482 (2), 1927 A. 279=49 A. 443, 40 A. 615 not appr.
2. If there is no *prima facie* case, the accused should be discharged. 51 C. 849, 15 M. 39, 2 Weir 255, 1932 M. 43=65 I. C. 993, 1931 M. W. N. 116.
3. If the charge is without foundation, the accused should be discharged, even though the statements of prosecution witnesses make out a *prima facie* case. 46 A. 537, 1904 A. W. N. 5 Diss. from. 26 A. 564, 37 A. 355, 12 A. L. J. 150 Foll.
4. If the Magistrate entertains a doubt about the evidence, he may commit the case, but when he is convinced that evidence is false, he should discharge the accused. 1926 C. 523=93 I. C. 973=27 Cr. L. J. 509.
5. When no evidence is forthcoming, owing to the absence of prosecutor and his witnesses, accused should be discharged. 15 W. R. 53.
6. If the evidence be of such a nature that no reasonable person and no tribunal, judge or jury would ever on that evidence hold the accused guilty, the accused should be discharged. 48 M. 874, 1925 M. 1061=26 Cr. L. J. 1570, 15 Cr. L. J. 373.
7. A commitment or discharge without the examination of all the prosecution witnesses is illegal. 4 M. 227, 4 M. 329.
8. If the Committing Magistrate is of opinion that reliable evidence of prosecution is rebutted by defence evidence and that a conviction will not follow, he can discharge the accused. 44 A. 57, 37 A. 355.
9. Magistrate, after he has drawn up a charge, can allow the accused to cross-examine the witnesses for the prosecution and can cancel the charge. 39 C. 885.

14. Grounds sufficient for—

1. When there is *prima facie* evidence if believed shows that there is a *prima facie* case which ought to be tried at the Sessions, the Magistrate should commit the accused. 15 M. 39, 51 C. 849 (852), 49 A. 443, 14 P. R. 1908, 11 B. 372, 18 A. L. J. 232, 4 L. 69.
2. A Magistrate should leave the Sessions Judge to decide upon the value of the evidence, which tends to show that an offence under S. 302 has been committed. 1929 L. 403=114 I. C. 58=30 P. L. R. 36=30 Cr. L. J. 234
3. When the question of discharge or commitment turns on probabilities, the Magistrate should commit rather than give the benefit of doubt to accused. 26 A. 564, 35 B. 163, 11 B. 372, 18 A. L. J. 232, 15 S. L. R. 1, 1904 A. W. N. 5.
4. When the evidence discloses a circumstance of aggravation which makes the case cognizable by Superior Court, the Magistrate should commit rather than try the case himself. 13 B. 502, 10 C. 85, 24 M. 675.
5. When the charge is not so serious, the Magistrate should rather try than commit the accused to the Court of Session. 1 S. L. R. 103.
6. What the enquiring Magistrate has to try and determine is not whether the case has been made out but only where there is a case for trial. There is always a case for trial when the evidence is of such a nature that the guilt of the accused can be held to be proved or disproved only as the result of valuing and weighing of the evidence. 48 M. 874, 15 Cr. L. J. 373, 1915 M. W. N. 233.
7. If the Magistrate is of opinion that notwithstanding direct evidence, evidence is unreliable and the case is improbable he should not commit the accused. 1925 P. 279=81 I. C. 913, 4 R. 471.
8. "Not sufficient grounds for committing the accused" is quite different from such expressions as "the case not proved" or "the accused is innocent." 1925 P. 670.

Commitment—(contd.)

9. Commitment is not illegal merely because no reason for commitment is given inspite of S. 30 Magistrate in the District. 1934 L. 326 (2).

15. Illegal or Irregular. S. 532, Cr. P. C.

1. It is illegal to commit summons cases to the Sessions. 3 A. L. J. 14.
2. When the Committing Magistrate has no territorial jurisdiction in the place where the offence is committed, the irregularity will be cured under S. 531 unless it has occasioned a failure of justice. 26 M. 640, 17 M. 402.
3. If the Committing Magistrate has no territorial jurisdiction in the place of occurrence, the commitment is void. 3 A. 251, 11 C. L. R. 55, 15 B. 200, 20 Cr. L. J. 416.
4. A commitment or discharge without examining all the witnesses for the prosecution is illegal. 4 M. 227, 4 M. 329.
5. If the Magistrate commits an accused over whom he has no jurisdiction or for an offence not triable by the Court of Sessions or High Court, the defect is not curable under S. 532. 57 C. 1042=1929 Cal. 755=34 C. W. N. 13.
6. The irregularity in commitment will be cured, when the defect is personal to the committing authority. 16 P. R. 1890 Cr.
7. Commitment is not bad owing to a disqualification of Magistrate under S. 556, Cr. P. C. 2 L. B. R. 209.
8. An irregular commitment is cured under S. 532, when sanction under S. 196 or 197 was not obtained. 22 B. 112, 9 B. 288.
9. A commitment by a second class Magistrate is not only irregular but illegal. 16 B. 200.
10. A commitment of a case which could adequately be dealt with by the Magistrate is when there is no cause for commitment illegal. 13 P. R. 1917 Cr., 25 I. C. 992.
11. Accused charged under S. 148, I. P. C., were committed to the Court of Session for the sake of convenience. If the ground of commitment cease to exist, the commitment is bad in law. 1934 L. 95=151 I. C. 970.

16. Inquiry and Evidence before. S. 208, Cr. P. C.

1. A commitment or discharge without examining all the prosecution witnesses is illegal. 4 M. 227—4 M. 329.
2. In committal proceedings there is no obligation on the part of prosecution to get the whole evidence recorded, which they intend to place before the Sessions Court. 1930 Sind 99=120 I. C. 520=31 Cr. L. J. 117.
3. Prosecution is bound to produce all witnesses who prove their connection with the transaction. 8 C. 121.
4. Prosecution must produce all witnesses whether they support the prosecution story or defence story. 16 A. 84, 1 P. L. T. 161.
5. If the Prosecutor is of opinion that a witness is a false witness, he is not bound to produce him. 16 A. 84, 14 A. 521, 15 A. 6.
6. Magistrate is not competent to frame a charge or make an order of commitment until he has taken all such evidence as the accused may produce or is prepared to produce before him for hearing. 20 A. 264, 26 A. 177, 21 A. L. J. 911, 46 A. 137.
7. It is a mistake to remove from the record evidence recorded under S. 208, Cr. P. C., after it had been filed as an exhibit in the case without objection from the accused. 1930 Sind 54=120 I. C. 524=31 Cr. L. J. 121.
8. When two eye witnesses sent up by the Police were not heard by the Court, an inference favourable to the accused could be drawn. 1923 O. 217=74 I. C. 434.
9. If a Magistrate refuses to summon witnesses for the prosecution under S. 208 (3) without recording reasons, his order will be set aside. 1927 M. 162, 3 A. 392.
10. If the Magistrate has given reasons for refusing to summon defence witness, the High Court will not interfere in revision. 6 P. 329=1927 P. 243=103 I. C. 597.
11. Magistrate may refuse to re-summon prosecution witnesses cited only for the purpose

Commitment—(contd.)

of causing vexation and delay. 1928 M. 652=29 Cr. L. J. 725. See 1906 A. W. N. 306.

12. Magistrate may refuse to summon defence witnesses, if the application is made when the charge was going to be drawn up or on the date fixed for passing an order of commitment. 36 M. 321, 42 C. 608.
13. Inquiry as regards absconding accused begins when he is brought before the Magistrate. 135 I. C. 209=1932 L. 103=33 Cr. L. J. 97.
14. It is not open to the prosecution to produce part of the evidence before committing Magistrate and the rest at the trial before the Sessions Court. If the principal witnesses are not produced, the commitment will be quashed. 1934 L. 667=15 L. 331, 1935 Sind 31=154 I. C. 455=36 Cr. L. J. 563, 1933 A. 690, 1 P. R. 1889, 15 Cr. L. J. 704. Not foll. 14 A. 212, 1931 B. 517, 1932 M. 502, 57 C. 44, 52 M. 995 Ref. 15 L. 331 is overruled by 17 L. 176=1936 L. 533.
15. Prosecution need not produce whole of the evidence in the committing Court. 1933 A. 690, 1 P. R. 1889, 15 Cr. L. J. 704.
16. Magistrate can commit accused to Sessions although entire evidence has not been heard. 1933 A. 690, 14 A. 212 and 14 A. 521 Expl. 1924 A. 317=46 A. 137 and 20 A. 264 Dist.
17. The whole of evidence need not be produced before the committing Magistrate. Notice is necessary if fresh evidence is tendered at Session trial. 1933 A. 690, 17 L. 176.
18. Witness not examined in trying Magistrate's Court cannot be bound down to appear and give evidence in Sessions Court. 1936 L. 533=17 L. 176.
19. A Magistrate cannot commit accused unless completing whole of evidence. 1936 A. 134=37 Cr. L. J. 337, 1933 A. 690 Expl. 2 A. 910, 1931 A. 434, 1 P. R. 1889 Cr. and 17 I. C. 813 Rel. on.

17. Joint—

1. Where several persons are charged for rioting, each party should be committed separately and not jointly. 8 W. R. 47.
2. In cases of joint commitment, the Sessions Judge should frame separate charges and try the accused separately, as if there had been separate commitment. 26 M. 252, 1900 A. W. N. 206, 35 I. C. 801, 38 M. 1044, 39 M. 527, 52 I. C. 280.
3. When several persons are jointly charged and it is considered necessary to commit one of them to the Sessions, all should be committed. 2 Weir 258.

18. List of defence witnesses at the time of— See Defence witnesses—9.**19. Objection to—** S. 532, Cr. P. C.

1. Where objection to the want of jurisdiction is not taken before the Magistrate, the High Court can accept the commitment, if accused is not prejudiced. 22 B. 112.
2. If the Committing Magistrate has no jurisdiction over the place of offence and the objection was taken before commitment, the commitment cannot be set aside under S. 532. 17 M. 402, 16 B. 300 Foll.
3. Objection to the illegality of commitment cannot be taken during the appeal, when accused is convicted. 1925 L. 557=91 I. C. 806=27 Cr. L. J. 134.

20. Object of—

The object of commitment is, that accused should have some information of the case he has to meet. 4 M. 227, 3 M. 351.

21. Of approver. S. 339, Cr. P. C.

1. If an approver has forfeited his pardon during the preliminary enquiry he cannot be committed to the Sessions along with the other accused. 23 B. 493, 24 M. 321, 31 M. 272, 4 Bom. L. R. 825 Cont. 42 C. 856, 20 A. 529, 29 A. 24, 25 B. 675.
2. On forfeiting pardon the Sessions Judge should send the approver to a Magistrate for regular commitment. 15 M. 352, 14 A. 336, 22 C. 50, 2 M. 351.
3. If the accused has forfeited pardon during the trial, he can be tried along with other

Commitment—(contd.)

accused, since he has not been regularly committed but was sent up as a witness. 14 A. 336, 14 A. 502, 42 C. 856, 1 L. 218.

4. Where a Judge sends up the approver to a Magistrate for commitment, he must in his committing order give reasons for holding that approver has forfeited his pardon. 10 Bur. L. T. 46, 8 L. B. R. 447.
5. For prosecution of approver, certificate of Public Prosecutor is necessary. 5 L. 379.
6. When the Magistrate asked the Police to prosecute the approver and she was committed without a certificate from the Public Prosecutor, the commitment is not illegal. 3 R. 55, 42 H. 172.
7. A Magistrate committed an approver along with other accused to the Sessions. The Sessions Judge proceeded with the case, as though there had been no commitment. Held, that the irregularity did not vitiate the trial. 1929 O. 190=30 Cr. L. J. 567.
8. Approver cannot be committed for trial along with the accused persons. 1925 O. 472=88 I. C. 736=26 Cr. L. J. 1216.
9. If the Sessions Judge finds that an approver has not told the truth, he can himself commit him to stand the trial. 59 I. C. 560, 1924 L. 568, 42 C. 856, 25 Cr. L. J. 121, 31 P. R. 1904 Cr., 1 P. R. 1898, 6 P. R. 1899.
10. The object of commitment is that accused should have some information of the case he has to meet. 4 M. 227, 3 M. 351.

22. Order of—. S. 213, Cr. P. C.

1. The signature of Magistrate to the Warrant of Commitment should not be impressed with a stamp. The irregularity does not vitiate the proceedings. 6 M. 396.
2. The Magistrate in his grounds of commitment should specify precisely the proof against each prisoner and the manner in which it is supported. 5 W. R. 6.
3. Magistrate must record reasons for commitment. 38 B. 114, 11 Bom. L. R. 18.
4. The Magistrate must say in his order of commitment why the case was not disposed of by himself. 8 S. L. R. 23.
5. When a Magistrate commits an approver, he must in the order of commitment give reasons that he has forfeited the pardon. 10 Bur. L. T. 46, 8 L. B. R. 447.

23. Of Counter case.

A case under S. 326, I. P. C., cannot be committed to the Sessions because of its connection with a counter case under S. 302, I. P. C. If the defect is to avoid a possible conflict of decisions, it can be achieved by awaiting the result of Sessions trial. 32 P. L. R. 856=1932 L. 168, 1930 L. 312=31 Cr. L. J. 178.

23.A. Of Previous convict. S. 348, Cr. P. C. See Enhanced sentence.

1. Previous conviction before Court Martial cannot be taken into consideration. 1933 Pesh. 6.
2. Where the subsequent offence is not punishable with three years' imprisonment, this section will not apply. 12 Cr. L. J. 439=11 I. C. 623.
3. Where subsequent offence was committed after five years S. 75, I. P. C. should not be invoked. 1929 L. 278=30 Cr. L. J. 376.

24. Quashing of—. S. 215, Cr. P. C.

A. General.

1. A commitment cannot be quashed after the accused has been put on his trial or pleaded to the charge before the Sessions Judge. 12 C. L. R. 120, 1 S. L. R. 6, 2 Weir 262, See 6 C. 584.
2. A commitment made under the orders of Sessions Judge under S. 437, Cr. P. C. can not be quashed under S. 215. 31 C. 127 M. 54, 77 I. C. 982, 31 C. 1, 27 M. 54.
3. A commitment made under S. 437 can be quashed under S. 439, Cr. P. C. 7 C. W. N. 327, 25 Cr. L. J. 518, 77 I. C. 982, 30 M. 224.
4. A Magistrate cannot quash the commitment, even though the complainant wishes to compound the case. 4 A. 150.

Commitment—(contd.)

5. If an order of commitment is made by the original civil side of the High Court under S. 478, the Appellate side can quash the order of commitment on appeal under the Letters Patent. 43 M. 361.
6. A commitment cannot be challenged in appeal against conviction. 1925 L. 557.
7. The effect of an order of quashing commitment is that Magistrate should go back to the point at which he took cognizance of the case. The order does not amount to discharge and no fresh complaint is necessary. 1929 C. 756.
8. If the Magistrate was competent to deal with the case himself it is most undesirable that the case should be committed. 1932 L. 263=33 P. L. R. 185.
9. High Court can quash commitment at any stage. 12 P. 353=1933 P. 273 (2)=34 Cr. L. J. 938.
10. High Court will interfere in exceptional cases only. 1934 S. 27.

B. The commitment should be quashed—

1. On a point of law only. 43 I. C. 800, 15 A. L. J. 756, 43 M. 361, 1925 N. 409=87 I. C. 965=26 Cr. L. J. 1045. The absence of evidence to warrant a commitment is a point of law. 43 I. C. 326=19 Cr. L. J. 102, 23 I. C. 478. 5 C. W. N. 411, 14 C. 740, 1930 L. 545=125 I. C. 324=31 Cr. L. J. 814.
2. When the Magistrate could himself adequately punish the accused. 3 A. L. J. 14, 9 A. L. J. 989, 15 Bom. L. R. 993, 1924 Sind 61=83 I. C. 708, 13 P. R. 1917 Cr., 1930 Sind 145=123 I. C. 702, 1932 L. 263=33 P. L. R. 185.
3. Where the statements of witnesses are not read over to witnesses. 1925 C. 928.
4. Where the enquiry was held without the certificate of Political Agent. 5 L. 416.
5. Where approver was committed along with other accused. 23 B. 493, 20 A. 529.
6. When the approver was committed before the trial of the other accused was concluded. 14 A. 336.
7. When it was made without examining the prosecution witnesses. 4 M. 227.
8. When defence witnesses were not examined. 26 A. 177.
9. When there is a fatal flaw in the prosecution, e.g., when the accused who were Railway clerks, altered certain entries in the Register under the orders of the Station Master. 1925 A. 751=88 I. C. 849=26 Cr. L. J. 1233.
10. When there is no evidence to support an order of commitment. 1930 L. 545=31 Cr. L. J. 814, 6 A. 98, 38 A. 29, 9 C. W. N. 829, 5 C. W. N. 411, 2 Weir 262.
11. When the Magistrate refused to adjourn the case for giving time to accused to obtain copies under S. 162, Cr. P. C. and then to allow cross-examination. 6 P. 329=103 I. C. 597=1927 P. 243.
12. If it is made in pursuance of a request by the accused or because the case has created sensation in accused's community. 1926 B. 251=27 Cr. L. J. 479.
13. When the allegations of prosecution, even if proved would not constitute the offence. 99 I. C. 345=23 Cr. L. J. 137.
14. Where the case was not triable by Sessions Judge, e.g., under the Opium Act. 19 A. 465, 1 W. R. 5.
15. When the commitment was made in the absence of accused. 5 C. W. N. 110.
16. When the commitment was based on evidence recorded while the accused was not arrested on the charge at all. 2 Weir 259.
17. When the commitment was made not in the exercise of the discretion of the Committing Magistrate, but at the suggestion of the District Magistrate. 1906 A. W. N. 306, 15 M. 39.
18. If the Magistrate has contravened any provision of law. 57 C. 44, 1929 B. 269.
19. When case was tried as warrant case up to framing of charge and subsequently committed to Sessions without giving the accused opportunity for adducing defence before commitment. 1932 M. 502=1932 M. W. N. 634.
20. When principal prosecution witnesses were not examined by the Committing Magistrate, although it is not necessary that every detail of evidence must be led in the

Commitment—(concl.)

committing court. 1935 Sind 31=154 I. C. 455=36 Cr. L. J. 563, 15 L. 331=1934 L. 657 Rel. on.

21. The question of insufficiency of evidence as to warrant an order of commitment is not a point of law. 1935 N. 202=158 I. C. 537, 1932 Sind 157 Dist.
22. When defence witnesses were not examined by the Committing Magistrate under S. 208, 1934 L. 610 (1).
23. If prosecution keeps back certain witnesses for trial before the Sessions Judge. 1934 L. 667=15 L. 331. Overruled by 17 L. 176=1936 L. 533.

C. The commitment should not be quashed—

1. Because the Magistrate made a joint commitment of several accused. 26 M. 592, 1905 A. W. N. 306, 7 Bom. L. R. 457.
2. Because of doubts as to credibility of the evidence for prosecution. 1 R. 526, 7 Bom. L. T. 26, 1928 B. 220, 29 Cr. L. J. 987, 9 C. W. N. 829.
3. When the Magistrate has only erred in the exercise of discretion vested in him. 57 C. 44=1929 C. 593=119 I. C. 808=30 Cr. L. J. 1107.
4. Because it is made to the same Sessions Judge who gave the direction for the prosecution of an accused under S. 193, I. P. C., committed before him. 1 B. 311.
5. Because a civil suit is pending in respect of the subject matter of the offence. 18 B. 581. Trial can be postponed till the decision of the civil suit. 2 Weir 260.
6. When the Sessions Judge had no jurisdiction over the place of the offence and the objection was overruled by him. 17 M. 402.
7. When a Magistrate should punish the accused, thinks that it should for other Session. 35 M. L. J. 509, 14 S. L. R. 85, 1936 Pesh. 5, 1930 Sind 145, 1932 L. 263 Ref.
8. When there is absence or insufficiency of evidence. 1931 L. 467=132 I. C. 380.

25. Use of depositions recorded by Committing Magistrate in Session trial. See Deposition—5. S. 238, Cr. P. C.**26. To wrong Sessions. S. 531, Cr. P. C.**

1. Commitment to a Sessions Judge who has no jurisdiction over the place of offence is irregular and not illegal. 8 B. 312, 18 A. 350 Cont. 36 M. 387, 9 A. 191, 3 Pat. 417.
2. Where the commitment was made to the High Court Session for two offences, one of which was committed within and the other beyond the jurisdiction of the High Court, the High Court could, on the ground of convenience and expediency proceed with the trial, the irregularity being cured under S. 531, Cr. P. C. 42 M. 791=1932 C. 487.
3. If the offence was committed within the local limits of the jurisdiction of the Sessions Court of Howrah, the commitment should be made to that Court and not by the Central Children Court at Calcutta to the High Court Sessions Calcutta. 1932 C. 487.
4. Offences committed within the jurisdiction of Howrah Sessions should be committed to Howrah Sessions and not to High Court. 1932 C. 487=33 Cr. L. J. 645.

27. When Magistrate cannot adequately punish.

When Magistrate cannot adequately punish, he can commit accused to Sessions. 1934 O. 185 (2).

28. When Magistrate can try accused.

Four cases in which evidence was same were committed to Sessions Court by Magistrate with powers under S. 30, although he was competent to try two cases. Held, that committal order was proper. 1933 L. 500=34 Cr. L. J. 314, 1930 L. 312=31 Cr. L. J. 178 Dist.

COMMITTING MAGISTRATE.

1. Deposition before—Transfer of. S. 233, Cr. P. C. See Deposition—1.
2. Evidence before—See Commitment—16.

Committing Magistrate—(concl'd.)

3. Examination of Defence witness before. See Defence witness—5.

COMMON GAMING HOUSE. See Public Gambling Act.

COMMON OBJECT. See Unlawful assembly—4.

COMMUNAL FEELING. See Transfer (Grounds)—26.

COMMUNICATION.

1. During Marriage. See Privilege—1.

2. Official—. See Privilege—11.

3. With Counsel. See Interview with Counsel—2.

COMMUTATION OF SENTENCE. See Sentence—9.

COMPENSATION. S. 250, Cr. P. C.

1. Appeal.

1. There is nothing in S. 250 to show that an appeal will lie when compensation awarded to each accused is more than Rs. 50. If the complainant has been ordered to pay compensation exceeding Rs. 50 to one or more accused he has the right of appeal. Total amount determines the right of appeal. 90 I. C. 160=1926 P. 70, 89 I. C. 159=1926 Sind 19, 91 I. C. 882=1926 A. 247, 49 B. 440=1925 B. 129=85 I. C. 160, 9 L. 452=1923 L. 638=103 I. C. 617, 118 I. C. 215=1929 Sind 176.
2. The appeal lies under S. 250 (3) coupled with S. 407 and all the provisions in Chapter XXXI, including the power to take additional evidence given by S. 428 apply. 53 M. 688=1930 M. 483=31 Cr. L. J. 602, 33 M. 90 and 1928 M. 391 Dist.
3. When the complainant files an appeal or Revision against the order of compensation, Crown is the real Respondent and notice to ex-accused is not necessary. 8 L. 568=1927 L. 357=101 I. C. 192, 62 I. C. 823=1921 M. 281, 33 M. 89.
4. Although there is no express provision, yet accused should have notice of appeal in order that they should have an opportunity of supporting the order passed in their favour. 1924 L. 675=76 I. C. 641=25 Cr. L. J. 209, 29 M. 187, 38 M. 1091 Foll. 92 I. C. 424=1926 S. 143.
5. No notice to the other party is necessary, though desirable. 1932 B. 177=33 Cr. L. J. 392, 29 M. 187, 1924 L. 675. The absence of notice will not vitiate proceedings. 33 M. 89.
6. It is open to the appellate Court to go into the merits of the case to find out if complaint is false or frivolous. 35 C. W. N. 1151=1932 C. 120=33 Cr. L. J. 269.
7. In appeal additional evidence can be taken. 1930 M. 483=53 M. 688.

2. Applicability of S. 250.

1. S. 250 is applicable to an offence before a Magistrate. It does not apply to an offence under S. 477, 11 P. C. (the offence not triable by the Magistrate) is without jurisdiction. 11 L. 558=31 Cr. L. J. 1133=1930 L. 482=31 P. L. R. 869=126 I. C. 792, 14 P. R. 1902, 15 P. R. 1919 Dist.
2. S. 250 is applicable to the case of the Crown. 1930 A. 206=31 Cr. L. J. 485.
3. S. 250 does not apply to cases triable by Court of Session. 53 A. 461.
4. An order by a Magistrate awarding compensation in respect of an accusation under S. 477, 11 P. C. (the offence not triable by the Magistrate) is without jurisdiction. 11 L. 558=31 Cr. L. J. 1133=1930 L. 482=31 P. L. R. 869=126 I. C. 792, 14 P. R. 1902, 15 P. R. 1919 Dist.
5. If A tells B and B tells C and C tells the Police, S. 250 does not apply. 1929 M. W. N. 785.
6. If a person makes a report to Police which is found by Magistrate to be false and frivolous, he can award compensation. 1926 A. 165=91 I. C. 67, 85 I. C. 367.
7. Appellate Court cannot make any order as to compensation. 7 L. 152=1926 Lah. 427, 28 A. 625, 39 C. 157=27 Cr. L. J. 570=94 I. C. 138.
8. S. 250 does not apply to an application under S. 488, Cr. P. C.. 11 Cr. L. J. 156.
9. Where one of the accused is discharged and the other is subsequently acquitted, the

Compensation—(contd.)

award of compensation to both is illegal. 1925 C. 251=26 Cr. L. J. 449.

10. S. 250 does not apply if the case is not instituted on complaint or upon information given to Police Officer or Magistrate. 44 B. 463, 14 Cr. L. J. 1, 4 M. 234.
11. S. 250 applies to a complaint under Cattle Trespass Act. 29 M. 517.
12. S. 250 is inapplicable to a case instituted on Police report or on information given by Police Officer as such. 21 C. 979. See 1925 A. 165, 39 M. 1006, 1929 M. 846.
13. If the information given to Village Headman is one which he is not bound to report to Police, no compensation can be ordered. 25 M. 667, 24 Cr. L. J. 717=1924 M. 91.
14. S. 250 applies to cases tried summarily. 11 M. 142.

3. Compensation—when to be awarded.

1. Where a case is not wilfully false nor is there perversion or exaggeration of evidence, compensation should not be awarded. 115 I. C. 900=1929 R. 14=30 Cr. L. J. 539.
2. Two elements, one of falsity and the other either frivolousness or vexatiousness are essentially necessary under S. 250. A vexatious charge may be partly true. 87 I. C. 921=1926 N. 31=26 Cr. L. J. 1033.
3. An order for compensation without giving the complainant an opportunity to show cause, why such order may not be made against him is illegal. 1923 L. 458=82 I. C. 480=25 Cr. L. J. 1312, 91 I. C. 704, 68 I. C. 414=1922 B. 409.
4. When witnesses were present, whom the complainant wanted to produce and the Magistrate without examining them awarded compensation, the order is illegal. 1923 L. 194=24 Cr. L. J. 251, 44 M. 51, 51 M. 337, 1935 Pesh. 178.
5. When a person gets warrants of arrest and drags the accused in Court and then says the case might be filed as he does not wish to produce evidence. Held, the order of compensation against him is not improper. 1921 L. 283=64 I. C. 369.
6. Where there was a *prima facie* good case against the accused, the mere fact that there was a discrepancy of two of complaints witnesses is not sufficient for an order under S. 250. 1935 Pesh. 178.

4. Complainant.

1. S. pointed out two persons to the Police as assaultants. Police sent them up to Magistrate for trial, who discharged them on the ground that the complaint was false. Held, S. was complainant and could be proceeded against under S. 250. 59 I. C. 552=22 Cr. L. J. 120.
2. S. 250 applies to a person upon whose complaint or information given to Police Officer, proceedings have been started. He cannot get rid of order of compensation that he was merely an informer. 1926 A. 295=94 I. C. 894.
3. If a person utilizes another to give information, he is liable to pay compensation under S. 250. 40 A. 79. *Cont.* 12 S. L. R. 76.
4. Where applicants gave information as witnesses of an offence to a constable, upon whose information the case was instituted, no order of compensation can be passed against them. The actual complainant is liable. 54 I. C. 401, 21 Cr. L. J. 49.
5. A person instigating the giving of information. 48 I. C. 980=12 S. L. R.
6. A Magistrate can award compensation, even if the complaint was originally made to a village Magistrate. 36 I. C. 471=17 Cr. L. J. 503.
7. A complaint was made to a village Magistrate, who reported to the Police and they challanled the case. Held, that compensation can be ordered by the Magistrate. 16 Cr. L. J. 248=28 I. C. 104. See 13 Cr. L. J. 29, 25 M. 667, 32 M. 258.
8. The word "information given to Police Officer" in S. 250 includes a village headman's report under S. 45 (c) on a complaint made to him. 39 M. 1006, 32 M. 258, 26 M. 667 Dist.
9. Complaint does not include deposition made in the course of trial. 14 Cr. L. J. 1.
10. A guardian or next friend of a minor complainant cannot be asked to pay compensation. 83 P. L. R. 1912=1 P. W. R. 1912 Cr., 13 Cr. L. J. 136.

Compensation—(contd.)

11. A process-server reported that the accused obstructed him while executing a warrant in execution. The District Judge instituted the Criminal Proceedings. Held, the process-server is not liable to pay compensation. 25 P. R. 1910 Cr.=195 P. L. R. 1910, 20 C. 481, 26 A. 183, 12 Cr. L. J. 482.
12. If the servant is the mouth-piece of the master, the servant is not responsible for the information but if he joins personally in the accusation, he is responsible under S. 250. 14 C. W. N. 326=11 Cr. L. J. 201. See 61 P. R. 1869, 24 P. R. 1869.
13. Police Officers, when they put in complaint on other individuals, can be made to pay compensation. 26 B. 150.
14. Public Officers are not exempted. (1882) 2 Weir 317.
15. Municipal Committee can be ordered to pay compensation. 1923 L. 31=24 Cr. L. J. 463.

5. Exemption from Civil or Criminal Liability.

1. An order under this section is a partial or summary remedy, the accused can obtain further redress by a civil suit or Criminal Prosecution. 30 C. 123.
2. Award of compensation followed by grant of sanction for prosecution is not illegal. 21 M. 237, 108 P. R. 1906.
3. The compensation is in the nature of damages for malicious prosecution, though recoverable in a summary manner. 26 M. 127.

6. Frivolous or vexatious.

1. Frivolous means silly or without foundation. 21 Cr. L. J. 41=54 I. C. 249.
2. Compensation can be granted when the Magistrate directs prosecution of the complainant for bringing false charge. 37 B. 376.
3. A charge of bribery may not be frivolous, but if false, it is vexatious. 26 I. C. 1004=16 Cr. L. J. 92.
4. The complaint must be false and frivolous or vexatious. 38 M. 1091, 41 P. L. R. 1919, 53 C. 969, 1924 L. 675, 76 I. C. 641.
5. Complainant charged accused under S. 500 and S. 506. The accused was convicted of the former and acquitted of the latter. The order of Magistrate awarding compensation while acquitting the accused under S. 506 is illegal. 40 A. 610.
6. Accused should be discharged or acquitted on all the heads of charges. 48 I. C. 986.
7. Where the complainant believed his case to be true at first and subsequently after enquiries found his belief untrue, he must inform the Court that he had made a mistake, otherwise he is liable to pay compensation. 19 Cr. L. J. 172.
8. To pass an order under S. 250, Court's final order should be that the case is false or frivolous or vexatious, not that the explanation is unsatisfactory. 1929 S. 113.
9. An accusation cannot be said to be vexatious unless the main intention was to cause annoyance and not merely to further the ends of justice. 1926 L. 365.
10. In the presence of depositions of some of the witnesses and the Zaildar's report supporting the complainant and in the absence of rebuttal by accused, it is impossible to hold the complaint false and vexatious. 94 I. C. 409=27 Cr. L. J. 633.
11. If a complaint is frivolous and vexatious, it does not mean that it is false. 89 I. C. 159=1926 Sind 19=26 Cr. L. J. 1295.
12. The mere fact that the complainant is unable to prove his case, does not justify the conclusion that complaint is frivolous. 1921 O. 247=24 O. C. 261.
13. A man is justified in saying to the Police that he suspects B. and the inquiries may be directed against him. But if he definitely charges him with an offence but nothing is proved against him, the prosecution is both false and frivolous. 1932 B. 177.
14. The mere fact that complainant is not successful in establishing his accusation, is no ground for holding that the accusation is false. 1934 Sind 18=35 Cr. L. J. 1038.
15. If the witnesses turned round or did not inspire confidence in the Court, S. 250 should not be used. 1934 Sind 18=35 Cr. L. J. 1038, 1932 Sind 156=33 Cr. L. J. 644=138 I. C. 635 Rel. en.

Compensation—(contd.)

16. Magistrate must record reasons that complaint was false or frivolous. 1925 M. 1139=26 Cr. L. J. 1501.
17. The Court should opine that the case was false and frivolous or vexatious and not that the explanation was unsatisfactory. 1927 Sind 113=30 Cr. L. J. 458.

7. Imprisonment in default of—

1. The period of simple imprisonment should not exceed thirty days. 1925 R. 202=26 Cr. L. J. 821.
2. An order that imprisonment in default shall take effect after a term of civil detention. 1925 R. 202.
3. Issue of distress warrant is condition precedent to carrying out of sentence of imprisonment, even if the person pleads that he has no moveables. 3 B. L. R. 32, 26 M. 127.

8. Jurisdiction.

1. It seems doubtful whether High Court has jurisdiction to pass an order for compensation for vexation, in revision. 1928 A. 95=107 I. C. 690=29 Cr. L. J. 274.
2. S. 250 does not apply when the Magistrate has no jurisdiction to try the case. 1927 A. 744=105 I. C. 807, 40 A. 615.
3. Under S. 250 it is immaterial whether the case is triable as a summons case or a warrant case. 1927 O. 175=28 Cr. L. J. 450, 1926 A. 159 Dist.
4. S. 250 does not apply to cases triable by Court of Session. 53 A. 461.
5. When complaint is for offences, some of which are triable exclusively by Magistrate and some by Sessions Court, the Magistrate cannot order compensation. 48 A. 166=1926 A. 159=91 I. C. 38, *Cont.* 1930 L. 482=11 L. 558.
6. Where a case ordinarily triable by Court of Session is tried by a Magistrate with powers under S. 30, the Magistrate is not competent to award compensation. 1923 R. 15=23 Cr. L. J. 289, 1 P. R. 1919 Cr., 26 P. R. 1902 Cr., 15 P. R. 1919 Cr., 2 Weir 315 (1888). See 26 Cr. L. J. 265, 45 M. 29.
7. In a case triable by Court of Session only, an order by Magistrate under S. 250 is illegal. 66 I. C. 671=1922 A. 188.
8. Where the complaint was under S. 467, I. P. C., triable by Court of Session but the Magistrate tried it under S. 463 and awarded compensation under S. 250. Held, the order is legal. 45 M. 29=1922 M. 223=66 I. C. 155.
9. In filing complaint, the complainant must be deemed to make an accusation which includes not only the offence specifically referred to but also the offence which the enquiry revealed. 84 I. C. 329=1921 Sind 105.
10. The question whether an offence is triable by the Magistrate is not to be decided solely by the complaint. Where the District Magistrate caused summons to be issued under Ss. 307, 147, 323, I. P. C. and believed himself to be conducting a trial and not inquiry and took particular notice of offence under S. 307, the order under S. 250 was not illegal. 53 A. 461=1931 A. 355.
11. The term Magistrate does not include village Magistrate. 18 Cr. L. J. 11.
12. Magistrate by whom the case is heard means the Magistrate by whom the case is decided, whether or not he has heard the evidence. 1921 A. 122=22 Cr. L. J. 406.

9. Notice.

1. The accused person should have notice if the order of compensation is going to be interfered by the appellate Court. 33 C. 969=1926 C. 1054, 1926 Sind 143=92 I. C. 424, 38 M. 1091, 29 M. 187, 30 C. 123, 22 Bom. 549. See 33 M. 89.
2. If the complainant is not present, notice should be issued to him to show cause under S. 250. 1929 C. 762=125 I. C. 294=33 C. W. N. 861=31 Cr. L. J. 828.
3. The omission to send notice to District Magistrate and his non-appearance in appeal under S. 250 would not justify interference in revision by the High Court. 25 I. C. 848=15 Cr. L. J. 648, 33 M. 89 Dist.
4. An order awarding compensation under S. 250 without giving notice to the complainant

Compensation—(contd.)

ant is illegal. 9 A. L. J. 170=13 Cr. L. J. 268.

5. It is imperative that notice of appeal should be given to crown. 29 M. 187, 41 M. L. J. 172.

10. Objections of complainant.

1. An order under S. 250 without recording or considering objections of complainant is bad. 1931 O. 247.
2. Omission to record objections is not mere irregularity curable under S. 537 but illegality. 25 I. C. 994, 10 Cr. L. J. 220, 1929 Sind 113=30 Cr. L. J. 458.
3. A mere statement that cause shown is not reasonable is not sufficient. 1922 P. 157=23 Cr. L. J. 261.
4. Complainant is not entitled to an adjournment to show cause or to produce further evidence. 36 A. 132, 15 Cr. L. J. 508.

11. On withdrawal of complaint.

Compensation cannot be awarded on withdrawal of a case. 26 P. R. 1870 Cr., 19 P. R. 1888 Cr. See 24 P. R. 1883 Cr., 30 P. R. 1910 Cr.

12. Procedure.

1. An order for imprisonment in default of payment of compensation is illegal unless some attempt is made to levy it under S. 386. 42 I. C. 758=18 Cr. L. J. 1014, 35 I. C. 490, 28 C. 251, 26 M. 127, 18 C. W. N. 702. (*Law amended.*)
2. It is not illegal for Magistrate to proceed under Ss. 250, 476 of the Code at the same time. 14 Cr. L. J. 437=20 I. C. 597, 30 C. 123, 21 M. 237.
3. When High Court set aside the order of compensation under S. 250, it is an order for refund of money, enforceable under S. 547. 12 P. R. 1885, 29 P. R. 1903.
4. A finding that the accusation was false should be arrived at before awarding compensation. 1923 L. 554=33 P. L. R. 670.
5. On the death of complainant the proceedings do not abate. 24 P. R. 1908 Cr. *Cont. Ratan Lal* 634.
6. Magistrate must record all evidence of complainant before proceeding under S. 250. 1935 Pesh. 178, 44 M. 51 Foll.

13. Refund of. S. 547, Cr. P. C. See Fine—2.**14. Revision.**

1. In cases where no appeal lies, High Court has revisional jurisdiction. 1920 A. 351=21 Cr. L. J. 767, 29 P. R. 1903 Cr.
2. If a European British subject did not set up his right as such at the trial, the High Court can exercise revisional jurisdiction without such demand by him. 42 A. 39.

15. Time for order.

1. An order under S. 250 should be passed simultaneously with the order of discharge or acquittal and not in a separate proceedings. 53 I. C. 614=20 Cr. L. J. 774, 31 P. R. 1917 Cr., 38 C. 302.
2. A postscript to and at the same time as an acquittal forming the order for compensation is not illegal, merely on the ground that it has not been included in the order of acquittal. 42 I. C. 758=18 Cr. L. J. 1014.
3. An order for compensation must be part of the original judgment. Failure to embody it in the discharge order is merely an irregularity curable by S. 537. 35 I. C. 490=17 Cr. L. J. 314, 22 I. C. 977, 22 I. C. 725, 99 P. L. R. 1913.
4. An order under S. 250 passed number of days after discharge is irregular. 36 A. 132. See 55 I. C. 851, 34 A. 354, 38 C. 302.
5. Where the Magistrate after signing the order of acquittal passes a subsequent order to pay compensation, the latter order is without jurisdiction, as after signing the order of acquittal, the Magistrate becomes *functus officio*. The order of compensation must be an integral part of the order of acquittal. 22 Cr. L. J. 527.
6. If the order to show cause is simultaneous with the order of acquittal or discharge,

Compensation—(contd.)

16. Magistrate must record reasons that complaint was false or frivolous. 1925 M. 1139=26 Cr. L. J. 1501.
17. The Court should opine that the case was false and frivolous or vexatious and not that the explanation was unsatisfactory. 1929 Sind 113=30 Cr. L. J. 458.

7. Imprisonment in default of—

1. The period of simple imprisonment should not exceed thirty days. 1925 R. 202=26 Cr. L. J. 821.
2. An order that imprisonment in default shall take effect after a term of civil detention. 1925 R. 202.
3. Issue of distress warrant is condition precedent to carrying out of sentence of imprisonment, even if the person pleads that he has no moveables. 3 B. L. R. 32, 26 M. 127.

8. Jurisdiction.

1. It seems doubtful whether High Court has jurisdiction to pass an order for compensation for vexation, in revision. 1928 A. 95=107 I. C. 690=29 Cr. L. J. 274.
2. S. 250 does not apply when the Magistrate has no jurisdiction to try the case. 1927 A. 744=105 I. C. 807, 40 A. 615.
3. Under S. 250 it is immaterial whether the case is triable as a summons case or a warrant case. 1927 O. 175=28 Cr. L. J. 450, 1926 A. 159 Dist.
4. S. 250 does not apply to cases triable by Court of Session. 53 A. 461.
5. When complaint is for offences, some of which are triable exclusively by Magistrate and some by Sessions Court, the Magistrate cannot order compensation. 48 A. 166=1926 A. 159=91 I. C. 38, *Cont.* 1930 L. 482=11 L. 558.
6. Where a case ordinarily triable by Court of Session is tried by a Magistrate with powers under S. 30, the Magistrate is not competent to award compensation. 1923 R. 15=23 Cr. L. J. 289, 1 P. R. 1919 Cr., 26 P. R. 1902 Cr., 15 P. R. 1919 Cr., 2 Weir 315 (1888). See 26 Cr. L. J. 265, 45 M. 29.
7. In a case triable by Court of Session only, an order by Magistrate under S. 250 is illegal. 66 I. C. 671=1922 A. 188.
8. Where the complaint was under S. 467, I. P. C., triable by Court of Session but the Magistrate tried it under S. 463 and awarded compensation under S. 250. Held, the order is legal. 45 M. 29=1922 M. 223=66 I. C. 155.
9. In filing complaint, the complainant must be deemed to make an accusation which includes not only the offence specifically referred to but also the offence which the enquiry revealed. 84 I. C. 329=1921 Sind 105.
10. The question whether an offence is triable by the Magistrate is not to be decided solely by the complaint. Where the District Magistrate caused summons to be issued under Ss. 307, 147, 323, I. P. C. and believed himself to be conducting a trial and not inquiry and took particular notice of offence under S. 307, the order under S. 250 was not illegal. 53 A. 461=1931 A. 355.
11. The term Magistrate does not include village Magistrate. 18 Cr. L. J. 11.
12. Magistrate by whom the case is heard means the Magistrate by whom the case is decided, whether or not he has heard the evidence. 1921 A. 122=22 Cr. L. J. 406.

9. Notice.

1. The accused person should have notice if the order of compensation is going to be interfered by the appellate Court. 33 C. 969=1926 C. 1054, 1926 Sind 143=92 I. C. 424, 38 M. 1091, 29 M. 187, 30 C. 123, 22 Bom. 549. See 33 M. 69.
2. If the complainant is not present, notice should be issued to him to show cause under S. 250. 1929 C. 762=125 I. C. 294=33 C. W. N. 861=31 Cr. L. J. 825.
3. The omission to send notice to District Magistrate and his non-appearance in appeal under S. 250 would not justify interference in revision by the High Court. 25 I. C. 448=15 Cr. L. J. 645, 33 M. 89 Dist.
4. An order awarding compensation under S. 250 without giving notice to the complainant

Compensation—(contd.)

ant is illegal. 9 A. L. J. 170=13 Cr. L. J. 268.

5. It is imperative that notice of appeal should be given to crown. 29 M. 187, 41 M. L. J. 172.

10. Objections of complainant.

1. An order under S. 250 without recording or considering objections of complainant is bad. 1931 O. 247.
2. Omission to record objections is not mere irregularity curable under S. 537 but illegality. 25 I. C. 994, 10 Cr. L. J. 220, 1929 Sind 113=30 Cr. L. J. 458.
3. A mere statement that cause shown is not reasonable is not sufficient. 1922 P. 157=23 Cr. L. J. 261.
4. Complainant is not entitled to an adjournment to show cause or to produce further evidence. 36 A. 132, 15 Cr. L. J. 508.

11. On withdrawal of complaint.

Compensation cannot be awarded on withdrawal of a case. 26 P. R. 1870 Cr., 19 P. R. 1888 Cr. See 24 P. R. 1883 Cr., 30 P. R. 1910 Cr.

12. Procedure.

1. An order for imprisonment in default of payment of compensation is illegal unless some attempt is made to levy it under S. 386. 42 I. C. 758=18 Cr. L. J. 1014, 35 I. C. 490, 28 C. 251, 26 M. 127, 18 C. W. N. 702. (*Law amended.*)
2. It is not illegal for Magistrate to proceed under Ss. 250, 476 of the Code at the same time. 14 Cr. L. J. 437=20 I. C. 597, 30 C. 123, 21 M. 237.
3. When High Court set aside the order of compensation under S. 250, it is an order for refund of money, enforceable under S. 547. 12 P. R. 1885, 29 P. R. 1903.
4. A finding that the accusation was false should be arrived at before awarding compensation. 1923 L. 554=33 P. L. R. 670.
5. On the death of complainant the proceedings do not abate. 24 P. R. 1903 Cr. *Cont. Ratan Lal 634.*
6. Magistrate must record all evidence of complainant before proceeding under S. 250. 1935 Pesh. 178, 44 M. 51 Foll.

13. Refund of. S. 547, Cr. P. C. See Fine—2**14. Revision.**

1. In cases where no appeal lies, High Court has revisional jurisdiction. 1920 A. 351=21 Cr. L. J. 767, 29 P. R. 1903 Cr.
2. If a European British subject did not set up his right as such at the trial, the High Court can exercise revisional jurisdiction without such demand by him. 42 A. 39.

15. Time for order.

1. An order under S. 250 should be passed simultaneously with the order of discharge or acquittal and not in a separate proceedings. 53 I. C. 614=20 Cr. L. J. 774, 31 P. R. 1917 Cr., 38 C. 302.
2. A postscript to and at the same time as an acquittal forming the order for compensation is not illegal, merely on the ground that it has not been included in the order of acquittal. 42 I. C. 758=18 Cr. L. J. 1014
3. An order for compensation must be part of the original judgment. Failure to embody it in the discharge order is merely an irregularity curable by S. 537. 35 I. C. 490=17 Cr. L. J. 314, 22 I. C. 977, 22 I. C. 723, 99 P. L. R. 1913.
4. An order under S. 250 passed number of days after discharge is irregular. 36 A. 132. See 55 I. C. 851, 34 A. 354, 38 C. 302.
5. Where the Magistrate after signing the order of acquittal passes a subsequent order to pay compensation, the latter order is without jurisdiction, as after signing the order of acquittal, the Magistrate becomes *functus officio*. The order of compensation must be an integral part of the order of acquittal. 22 Cr. L. J. 527.
6. If the order to show cause is simultaneous with the order of acquittal or discharge,

Compensation—(concl'd.)

order can be taken to be part of the same proceedings. 9 P. 100=1930 P. 292=125 I. C. 573=31 Cr. L. J. 875, 1927 L. 515, 1926 A. 165.

7. If a Magistrate without first writing out the order of discharge, calls upon the complainant to show cause and combines the order of discharge with that of compensation, the order is not illegal. 1929 C. 332=122 I. C. 298, 1925 M. 1139 and 1922 P. 157 Dist.
8. Where trial Magistrate dated and signed his order of discharge and then called upon complainant to show cause to pay compensation and both orders were passed one following the other, there was sufficient compliance with the requirements of S. 250 (1). 1927 L. 515=28 Cr. L. J. 592, 1926 L. 298 Dist.
9. Under S. 250 as amended, it is only the order calling upon the complainant to show cause why he should not pay compensation that has to be contained in the order of discharge and the order for payment of compensation is necessarily a subsequent order. 7 L. 121=1926 L. 298=95 I. C. 80=27 P. L. R. 310.
10. One of the accused was discharged and the case was adjourned when the other accused was acquitted. The Magistrate required the complainant to show cause and ordered the complainant to pay compensation to each of the accused. Held the procedure was illegal and not curable under S. 537. 1925 C. 264.
11. Order awarding compensation before hearing complainant's explanation is bad. 1934 Sind 18=35 Cr. L. J. 1038=149 I. C. 946.
12. If complaint is dismissed under S. 203 no order for compensation can be passed. 29 A. 137.
13. If accused is charged with more than one offence, he must be discharged or acquitted of all the offences, before an order under S. 250 can be passed. 24 C. 53, 40 A. 610.
14. Order of compensation need not be embodied in the order of acquittal. 29 Cr. L. J. 680=110 I. C. 232.
15. If a Magistrate combines the order of discharge and compensation, it is not illegal. 1929 C. 332=31 Cr. L. J. 411 *Cont.* 7 L. 121.
16. **Who is entitled to—**
 1. The principle is to reimburse the person who has actually suffered from the accusation 24 P. R. 1868.
 2. Compensation cannot be awarded to relatives or heirs. 24 P. R. 1868.
 3. In case of number of accused, only he who has been falsely accused, can be awarded compensation and not all the accused. 5 M. 381.

COMPENSATION FOR INJURY FROM OFFENCE. S. 545, Cr. P. C.**1. Amount of compensation.**

1. A Magistrate cannot order the whole amount of fine to be given to the complainant as compensation, when it is three times the sum illegally taken from the complainant. 10 Cr. L. J. 78=2 I. C. 542.
2. In a theft case compensation exceeding loss incurred by the complainant cannot be awarded under S. 545. 40 P. W. R. 1913 Cr.=335 P. L. R. 1913.
3. The order of compensation is bad, if no evidence is let in about the ability of the convicts to pay the fine imposed. 18 P. R. 1913 Cr.=41 P. W. R. 1913 Cr.
4. A servant of a company was convicted for criminal breach of trust in three cases of sums of money amounting in each case to Rs. 272-4-0. He was fined Rs. 2000 and Rs. 1,800 was ordered to be paid to the company as compensation, as evidence was led to the effect that accused misappropriated thousands of rupees. Held, that court could not award compensation for other offences for which he was not convicted. 1935 R. 199=156 I. C. 957.

2. Applicability or scope of S. 545.

1. A Court in a prosecution for perjury, can award compensation only the expenses properly incurred in the prosecution and has no power to award compensation under S. 545 (b) for perjury. 47 I. C. 443=19 Cr. L. J. 927.

Compensation for injury from offence—(contd.)

2. S. 545 does not authorise a Court to award compensation for offences other than those which form the subject of enquiry. 22 B. 717.
3. Where a complainant cannot recover substantial damages in a Civil Court compensation cannot be given under S. 545 (b) but can be given under Cl. (a) to defray the prosecution expenses. 15 Cr. L. J. 555=24 I. C. 963.
4. S. 545 (b) has been framed so as to give compensation in cases where it is recoverable under Fatal Accident Act (XIII of 1855) by parent, wife, husband and child of the deceased. 36 C. 302.
5. S. 545 does not justify compensation to be paid to the complainant when no fine is imposed. 81 I. C. 940=1925 O. 110=25 Cr. L. J. 1116.
6. S. 545 does not apply to a case under S. 107,² consequently an order directing the accused to pay costs of complainant is *ultra vires* 1924 A. 694=25 Cr. L. J. 476.
7. There is no provision in the Code for ordering payment of compensation to the person whose property was stolen by the accused and destroyed. 90 I. C. 151=26 Cr. L. J. 1495=1926 N. 89.

3. Bonafide Purchaser.

The amended S. 525, Cl. (c) applies to a purchaser and not to a mortgagee or pledgee. An innocent mortgagee or pledgee who has advanced money on the security of stolen property will not be entitled to compensation. 46 B. 893=1923 B. 22.

4. Compensation—when to be awarded.

1. In a petty case where no pecuniary loss or expense has been sustained by the complainant, it is improper for the Court to award compensation. 77 P. R. 1866 Cr.
2. Award of compensation is proper where loss, etc., occasioned by offence can be appraised in money. 12 P. R. 1876 Cr.
3. Where a woman at the time of her delivery was treated by an unskilled midwife and died. Held, that order under S. 545 awarding compensation is *ultra vires*. 1935 R. 471.
4. Where fight was the result of encroachment made by deceased and his relation, compensation should not be ordered. 1934 L. 519.

5. Procedure—Appeal.

1. The Sessions Judge should record under what section or on what grounds he orders a portion of fine inflicted on persons convicted of dacoity to be made over to the complainant. 2 W. R. 58. See 10 P. R. 1898.
2. Where High Court in revision set aside a sentence of fine, compensation paid out of it under S. 545, may be recovered under S. 547. 19 A. 112, 6 A. 96, 7 M. 563, 14 P. R. 1884. 29 P. R. 1903 Cr. Cont. 2 W. R. 717.
3. Notice should be given to the complainant by the appellate Court when the matter of compensation comes up to it in appeal. 53 C. 969=1926 C. 1054.
4. The award of compensation should be a part of sentence and order made upon conviction of an offence 11 W. R. 53.
5. In case of appeal, Court should give notice of hearing to the complainant in whose favour an order under S. 545 for compensation has been made. 1936 N. 144; 53 C. 969=1926 C. 1054, 19 Cr. L. J. 927; 1925 A. 301 Rel. on.

6. Who is entitled to compensation.

1. Compensation cannot be awarded to innocent pledgee or mortgagee of stolen property. 46 B. 893=1923 B. 22=66 I. C. 997=23 Cr. L. J. 341.
2. A Magistrate has no jurisdiction to distribute among witnesses and Police force, the amount of fine inflicted under the Public Gambling Act. 20 Cr. L. J. 302.
3. In awarding compensation to the heirs of the person killed, the name of heirs should be mentioned. An order of compensation to the "nearest heirs" without specifying names is illegal. 18 P. R. 1913 Cr., 326 P. L. R. 1913=41 P. W. R. 1913 Cr.
4. Compensation may be awarded to a person whose wife had been enticed away, for injury done to his honour. 14 P. R. 1878.

Compensation for injury from Offence—(concl'd.)

5. Where accused was charged with causing hurt to two persons, but was fined for causing injury to one of them only, compensation cannot be awarded to the other person. 2 Weir 718.
6. The heirs of deceased are entitled to compensation. 36 C. 302, 17 P. R. 1898.
7. Where fine is imposed upon a person destroying land marks, a portion of it cannot be paid to the Amun to cover the expenses of his deputation to restore the land mark. 6 W. R. 93. See 12 P. R. 1890, 2 P. R. 1870.
8. Compensation may be awarded to surviving injured persons, suffering loss of a pecuniary nature. 25 P. R. 1868 Cr.
9. Compensation is not awardable to the friends of deceased. 25 P. R. 1868 Cr.
10. Where the death of the boy was caused by an offence under S. 304-A, when he was run over by accused, his mother is entitled to compensation to be paid out of fine. 1935 Pesh. 102=1935 Cr. C. 854, 21 M. 74 Not foll. 59 J. R. Rel. on.
11. The amendment of S. 545, Cr. P. C., by Act XVIII of 1923, entitles a person to compensation if he can get damages in Civil Court for any loss or injury caused by the offence. Act XIII of 1855 entitles a wife, husband, parent or child of the person whose death has been so caused to get compensation. 1935 Pesh. 102.

COMPETITION IN TRADE.

Competition in trade unless illegal methods are adopted is not a wrongful act and does not fall under S. 107, Cr. P. C. 1934 P. 104=35 Cr. L. J. 1057.

COMPLAINANT. See Complaint.

1. **Absence of—** See Absence of complainant.
2. **Compensation to or against—** See Compensation—3.
3. **Compromise.** See Compounding of offences.
4. **Death of—** See Abatement, Absence of complainant.
5. **Examination of—** See Examination of complainant.
6. **Expenses—** See Expenses. S. 544, Cr. P. C.
 1. Expenses of producing witnesses in summons case are to be borne by the complainant. If he fails to deposit fees, the complaint should not be dismissed. 5 M. 160.
 2. Expenses of producing accused after issue of warrants is not to be borne by the complainant. 21 P. R. 1872 Cr.
7. **Personal attendance of Parda Nashin—** See Commission—1.
 1. It is in the discretion of Magistrate to have the personal attendance of a *Parda Nashin* lady in a maintenance case. 19 P. R. 1903 Cr.
 2. A *Parda Nashin* complainant can be examined on commission. 42 C. 19.
8. **Pleader of—** S. 495, Cr. P. C. See Prosecution—4.

A complainant's Pleader has no right to conduct prosecution without the permission of the Court. 29 P. R. 1885.
9. **Right of—**

Complainant has a right to retain and be represented by his own Pleader. 30 P. R. 1870.
10. **Withdrawal of complaint by—** See Withdrawal.
11. **Who is—** See Compensation—4. See Complaint—11.

COMPLAINT. S. 4, Cr. P. C.

Absence of—

1. Where the complainant was examined on oath by the Magistrate, absence of a complainant in writing would only amount to an error, omission or irregularity curable under S. 537, Cr. P. C. 1924 P. 691=25 Cr. L. J. 972=81 I. C. 620.
2. The absence of sanction or complaint under S. 195, Cr. P. C., vitiates the whole proceedings and the defect is not cured by S. 537. 1926 O. 485=27 Cr. L. J. 939.

Complaint—(contd.)

3. Want of a complaint for a particular offence is quite different from an error, omission or irregularity in the complaint. It affects the jurisdiction of the Court, and the defect is not curable under S. 537. 1930 R. 153=126 I. C. 530, 56 C. 824.
4. Omission to file an authority to prefer a complaint by an Executive Officer of the Cantonment Board is curable under S. 537, Cr. P. C., when the authority is filed in the revision Court. 1928 L. 946=29 Cr. L. J. 822, 116 P. L. R. 1907.
5. The absence of complaint in writing as required by S. 195 (1) of the Public Servant concerned or his superior makes the Court, a Court not of competent jurisdiction. 1927 Sind 10=97 I. C. 417=27 Cr. L. J. 1105.
6. A complaint by an unauthorized person is no complaint at all and the conviction based on such complaint is illegal. 4 P. R. 1917 Cr.

2. Against unknown accused.

1. A complaint that some unknown persons have committed the offence is legal. 12 Cr. L. J. 399. See S. 4 (11) (h).
2. Complainant need not name all the accused. 13 Cr. L. J. 588, 7 P. 561.
3. Complainant may not accuse each person with a particular offence. 3 P. R. 1891 Cr., 26 C. 786.
4. Magistrate can proceed against persons, not mentioned in the complaint, who appear to be concerned in the commission of the offence. 41 C. 1013.

3. By Collector or Excise Officer.

1. Cognizance of offence on chalan or report of Police Officer invested with certain powers under Excise Act is competent. 22 P. R. 1900 Cr., 8 P. R. 1901 Cr.
2. In the absence of complaint, the conviction under the Excise Act is illegal. 28 P. R. 1883.

4. By Husband. See Adultery, Bigamy and Enticing a married woman—4.**5. By Local Government. See Sedition—9. Conspiracy.****6. By Private persons under Excise or Opium Act.**

For complaints under Abkari or Opium Act, the ordinary Cr. P. C. is not applicable. Complaints by private persons are not properly instituted ones. 52 M. 613.

7. Cognizance of. See Cognizance of offence—8.**8. Consolidation of—**

It is only curable irregularity to consolidate more than one similar complaint and to record evidence with the consent of the accused in one of them and to use it in the other. 50 B. 174=1926 B. 231=27 Cr. L. J. 1335.

9. Contents and Essentials.

1. If the facts alleged disclose an offence, it is immaterial if the section is not mentioned. 1929 M. 188=112 I. C. 566, 1922 M. 353=64 I. C. 282; 6 L. 375=1925 L. 631, 1926 A. 358=93 I. C. 69=27 Cr. L. J. 405.
2. When the person aggrieved asked the Court to take action under S. 107 or S. 145 but there was no allegation of any offence having been committed. Held, it is not a complaint. 1930 O. 500=128 I. C. 279=7 O. W. N. 947.
3. The mere fact that document contains allegation that an offence is committed does not necessarily constitute it a complaint. The allegation must be with a view to taking action under the Code. 1929 P. 473, 36 A. 222, 26 M. 640.
4. If wrong section of Law is mentioned, the complaint is not illegal. It is sufficient that complainant shall state the true facts. It is for the Magistrate to apply the law to those facts. 1928 L. 510=9 L. 678=110 I. C. 108=29 Cr. L. J. 652.
5. The sworn statement of complainant under S. 200 should not be regarded as part of the written complaint under S. 199. 1922 M. 353=64 I. C. 282, 13 Cr. L. J. 287=14 Bom. L. R. 141, 14 Bom. L. R. 1166=18 I. C. 145.
6. The complainant need not have personal knowledge of the offence. 1921 C. 561=61 I. C. 839, 55 I. C. 682=21 Cr. L. J. 346, 15 Cr. L. J. 369.

Complaint --(could.)

7. The complaint must allege that an offence has been committed, the allegation that a person is using his house as a brothel is no complaint. 6 S. L. R. 254.
 8. A complaint need not set out the details of the offence. 32 M. 3.
 9. A complaint in which no facts are set out but only the words of the section of statute are copied, is a colourable compliance with the requirement of law. 16 C. W. N. 1105, 25 C. W. N. 357.
 10. Complaint should be made to a Magistrate and not to Police. 6 A. 96, 7 M. 563, 30 C. 690—285, 22 B. 949.
 11. Petition to institute proceedings under S. 110 or S. 145, Cr. P. C., is not a complaint, as the allegations do not amount to an offence. 27 C. 662, 20 C. 729.
 12. The essential difference between a complaint and information is that a Magistrate acts on a complaint because the complainant has asked him to act, but a Magistrate acts on information on his own initiative. The informant is not examined on oath like the complainant. 1930 A. 820=129 I. C. 436=32 Cr. L. J. 305, 43 M. 709.
 13. A complaint by Public Prosecutor instead of Court to charge a man under S. 211 is not valid, as the Court cannot delegate his power to Public Prosecutor. 19 P. R. 1917 Cr., 38 B. 642, 23 I. C. 107, 13 P. R. 1915 Cr.
 14. A Magistrate taking cognizance of a complaint, can proceed against any other person, who was not mentioned in it. 41 C. 1013.
 15. Complaint includes complaint that some unknown person has committed an offence. 12 Cr. L. J. 399=11 I. C. 583.
 16. When one of the accused was not named in the complaint for conspiracy though mentioned in the sanction of Government, he must be discharged. An application for issue of summons against such a person does not constitute complaint. 15 C. W. N. 98=12 C. L. J. 2. See 16 C. W. N. 1105.
 17. A complaint charging two persons in the alternative is bad. 126 I. C. 535.
 18. Allegations made to a Magistrate, with a view to his taking action is a complaint. 1935 Sind 1, 1934 P. 156.
 19. As to the difference of information and complaint. See 1930 A. 820.
 20. A complaint need not contain all the facts. 32 M. 3, 1933 O. 430.
 21. A complaint need not contain a list of witnesses. 1933 O. 430.
- 10. Conviction for offence not mentioned in—**

If there is no allegation in the complaint regarding certain offence, the accused cannot be convicted, when he was not called upon to plead to that or which may have subsequently fallen from the witnesses. 1935 Sind 91=1935 Cr. C. 377.

11. Definition of—What is? S. 4 (b), Cr. P. C.

1. A petition impugning the correctness of Police report and asking for trial of the accused. 33 C. 1, 18 Cr. L. J. 754=41 I. C. 130.
2. The presentation of a petition by the complainant that his complaint should be enquired into. 5 C. W. N. 106, 5 C. W. N. 254, 43 C. 1152.
3. The petition of complainant who had withdrawn his complaint to be allowed to proceed with the same. 4 C. W. N. 221.
4. Letter to the Magistrate that a certain person used insulting language and praying action. 17 C. W. N. 448.
5. Submission of record to Collector who is also District Magistrate for starting a case under S. 193, I. P. C., against plaintiff in a rent suit. 26 A. 514, 30 P. R. 1905 Cr.
6. The report of the District Judge to District Magistrate that certain alienations made by the insolvent were fraudulent, and asking him to prosecute the transferees. 18 A. L. J. 50, 26 I. C. 148, 1924 A. 190, 1930 A. 820.
7. Proceedings of a Court under S. 476, sending a person to the nearest first class Magistrate 13 B. 109, 13 M. 144, 31 C. 664, 26 M. 98, 32 B. 184. But after the amendment of 1923 a regular complaint is necessary. 47 A. 409.

Complaint—(contd.)

8. An application by a complainant to have his witness summoned, coupled with his oral allegations, though not on oath nor reduced to writing. 35 C. 141.
 9. In a complaint of a non-cognizable case to a Magistrate after the allegations that the accused had committed an offence, the prayer was to have matter enquired by Police and that the complainant reserves the right of bringing a case of defamation against the accused in future. 56 C. 1013=1929 C. 346=33 C. W. N. 446.
 10. A Tahsildar alleged in writing to a Magistrate that three persons named in the document have committed an offence and that they should be tried under the Penal Code. 1930 A. 820=32 Cr. L. J. 306, 1924 A. 190, 11 M. 443, 26 I. C. 148.
 11. A petition praying for an opportunity to prove the petitioner's case by witnesses. 7 P. 561=1928 P. 585=111 I. C. 862=29 Cr. L. J. 942.
 12. The report of a Police Officer in respect of a non-cognizable offence with a view to Magistrate's taking action. 51 B. 498=1927 B. 440=105 I. C. 459, 26 B. 150, 32 M. 3, 1926 M. 865, 1925 L. 237=82 I. C. 753.
 13. The case pending before a Magistrate was compounded but the Magistrate found that there was material alterations in the agreement after it was filed and that the accused was responsible for it and made a report to the District Magistrate who ordered prosecution. Held, that the report could not be treated as an order under S. 476, Cr. P. C., but was a complaint. 1924 A. 190=25 Cr. L. J. 497, 26 A. 514.
 14. A petition to District Magistrate that a Tahsildar is guilty of various offences including bribery. 40 A. 41.
 15. "Committed sheet" signed by Salt Department and sent to Magistrate setting out the particulars of offences and names of accused and witnesses with a request to try the accused. 38 I. C. 750=18 Cr. L. J. 366.
 16. A report of an Excise Officer. 1927 C. 405=54 C. 371.
 17. A report of a judicial officer under S. 6, Child Marriage Restraint Act. 1933 P. 87.
 18. A petition to the Magistrate impugning the correctness of Police inquiry and praying for trial of accused. 14 C. 707 (716), 7 P. 561=1928 P. 585, 4 P. 323, 1923 P. 539, 43 C. 1152, 33 C. 1, 1932 C. 550, 1933 C. 614, 1918 P. 270.
 19. A petition impugning correctness of Police inquiry and praying that his witnesses be summoned and examined. 35 C. 141.
- 12. Definition of—what is not—**
1. A petition for maintenance under S. 488. 11 M. 199, 18 B. 468, 5 C. 536, 29 P. R. 1905, 13 P. R. 1885, 16 C. 781, 2 Cr. L. J. 367, 16 M. 234, 11 Cr. L. J. 156.
 2. An application for the issue of process. 15 C. W. N. 98.
 3. A letter merely conveying a sanction of the Local Government under S. 19b, Cr. P. C., authorizing the prosecution. 16 P. R. 1890.
 4. Statement made in a deposition. 14 Bom. L. R. 141.
 5. An application under S. 107, Cr. P. C. 76 I. C. 25=1924 L. 630, 53 A. 148=1931 A. 53, 1928 L. 694, 1925 O. 138, 1930 O. 500
 6. Application to the Deputy Commissioner, that his application to the Police was not enquired into and praying for inquiry without asking for trial or punishment of the accused. Held, it is not a complaint for the purposes of S. 211, I. P. C., 1924 N. 115=75 I. C. 543=24 Cr. L. J. 959.
 7. An application to continue proceedings. 1923 P. 532=72 I. C. 945=24 Cr. L. J. 835.
 8. An application simply showing why the petitioner should not be prosecuted. 1921 P. 302=64 I. C. 47.
 9. Order on Police complaint for summons is not a complaint within S. 476, Cr. P. C. 1925 P. 483=4 P. 323=86 I. C. 825=25 Cr. L. J. 889.
 10. Sanction granted under S. 476, Cr. P. C. 52 C. 665=1925 Cal. 1226.
 11. Superintendent of Police sending the report of his subordinate to the Magistrate in order that he may exercise his discretion as to whether he would initiate judicial proceedings or not. 1926 A. 565=95 I. C. 211=27 Cr. L. J. 899.

Complaint—(contd.)

12. A process-server reported on the back of warrant that he was beaten when he was attaching property. The Civil Court reported the matter to the Police who challan-ed the accused under Ss. 332, 394, but was convicted under S. 186. Held, that neither the report nor Police challan constituted a complaint and hence the conviction under S. 186 is illegal. 1928 L. 827=29 Cr. L. J. 645, 14 Cr. L. J. 462.
 13. Petition of an aggrieved person asking the Court to take action under S. 107 or S. 145, Cr. P. C. without allegations of any offence being committed is not complaint. 1930 O. 500=1930 Cr. C. 1164=128 I. C. 279.
 14. A petition that an offence is committed but the petitioner does not desire to prosecute the wrong doer is not a complaint. 6 C. W. N. 926.
 15. A mere statement to a Magistrate by way of information without any intention of asking him to take action. 36 A. 222, 17 C. W. N. 980, 26 M. 640, 40 A. 641, 38 A. 32.
 16. A petition sent by husband to Magistrate, not with a view to his taking action thereon but to recover the jewels stolen by his wife. 16 Cr. L. J. 466=29 I. C. 98.
 17. A petition making charges against a person and asking for an order of the Police to warn him. 15 C. W. N. 1051=12 Cr. L. J. 535.
 18. A petition sent to Police is not a complaint. 6 A. 96, 30 C. 285, 22 B. 949, 30 C. 690, 7. M. 563.
 19. A petition to institute proceedings under S. 110 or S. 145, Cr. P. C. 27 C. 662, 20 C. 729.
 20. A statement to Magistrate to take action under S. 6 of Bombay Prevention of Gambling Act. 25 I. C. 985=15 Cr. L. J. 657.
 21. A Police Officer's report is not a complaint within S. 199, Cr. P. C., for an offence under S. 498, I. P. C. 32 P. R. 1910 Cr.=39 P. L. R. 1911. See 4 L. 359.
 22. Where a District Judge on receiving a petition issued an order to take into custody some persons on charge of robbery. Held, it was not a complaint. 65 I. C. 481.
 23. A statement made by a complainant in his examination under S. 200 Cr., P. C., 10 A. 39, 1932 P. 72.
 24. A statement of complainant as witness. 55 A. 871=1933 A. 626, 5 A. 233, 13 Cr. L. J. 287, 14 Cr. L. J. 1, 10 P. R. 1883.
 25. A complaint in which facts are not set out, but mere words of section are copied is not complaint. 1921 C. 561, 13 Cr. L. J. 609.
 26. The report of a Police Officer is not a complaint. 4 P. R. 1888 Cr.
 27. A communication made by Sub-Inspector to Superintendent of Police that certain person has committed an offence and praying for permission, and which is forwarded to Magistrate is not a complaint. 1936 A. 788, 1926 A. 566. Rel. on.
- 13. Dismissal of—S. 203, Cr. P. C.** See Absence of complaint, Abatement.
- A. Effect of—**
1. When a complaint is dismissed under S. 203 no compensation under S. 250 can be awarded to the accused. 14 P. R. 1897, 3 P. R. 1906 Cr.
 2. On a dismissal of complaint the complainant can be prosecuted under S. 211, I. P. C. 6 C. W. N. 295.
 3. If complaint is illegally dismissed (without examining the complainant), the complainant cannot be prosecuted under S. 211 or S. 182. 48 R. 360, 27 C. 921, 2 P. R. 1912 Cr., 28 Bom. L. R. 490, 1926 B. 284, 1924 A. 664.
 4. After the dismissal, a fresh complaint is competent. 26 P. W. R. 1904 Cr., 11 P. W. R. 1910 Cr.
 5. The effect of an order dismissing a complaint under S. 203 is to restore the case to the stage under S. 102. 1925 P. 12=104 I. C. 633=23 Cr. L. J. 857.
- B. Examination of complainant.** See Examination of complainant.
- C. Fresh complaint**
1. After the dismissal of complaint, a fresh complaint without revision is competent.

Complaint—(contd.)

- 26 P. W. R. 1903 Cr., 11 P. W. R. 1910, 1931 M. W. N. 1149, 33 P. L. R. 318, 29 M. 126, 28 C. 211, 2 P. L. J. 34, 36 C. 415, 36 A. 53, 29 A. 7, 55 M. 622.
2. Where a complaint is dismissed under S. 203 and the order is not set aside on revision under S. 437 a fresh complaint on the same facts is not barred. 1930 L. 879=127 I. C. 15, 1925 A. 298=92 I. C. 895, 35 A. 723, 10 P. P. 1911, 36 C. 415, 36 A. 53, 22 A. 106 N. Foll.
 3. A new complaint on same facts should not be entertained unless new facts could not have been brought forward in the previous proceedings or unless there was manifest error in previous proceedings. 1925 R. 114=84 I. C. 348=26 Cr. L. J. 284.
 4. A complainant is bound to inform the Magistrate before whom he makes a fresh complaint, that his previous complaint was dismissed. 1925 B. 258=26 Cr. L. J. 991.
 5. It is not open to a Magistrate to entertain a complaint when a similar complaint was dismissed by another Magistrate and the dismissal has not been set aside by higher authority. 1929 Sind 61=112 I. C. 631=29 Cr. L. J. 1097, 23 C. 983, 22 A. 106, 29 A. 7, 36 A. 129, 1928 Sind 49.
 6. As there is no abatement of a criminal case on the death of the complainant, a fresh complaint will not lie but the old complaint must be treated as pending and proceeded with. 16 Cr. L. J. 713=30 I. C. 1001.
 7. Where a complaint is dismissed without inquiry and without notice to the accused, a fresh complaint is competent and a further enquiry can be ordered without notice to the accused. 35 A. 78.
 8. If the Sessions Judge has upheld the dismissal, a fresh complaint cannot be entertained. The proper course is to move the High Court in Revision. 11 P. W. R. 1910 Cr.=107 P. L. R. 1911.
 9. Where a complaint is dismissed under S. 259, it is not sufficient ground for refusing to entertain a second complaint and dismissing it under S. 203. 8 S. L. R. 196.
 10. Where the complaint was withdrawn because there was no sanction and the accused was discharged, the complainant was competent to lodge a fresh complaint after obtaining the necessary sanction. 22 B. 711.
 11. Five months after the dismissal of a complaint a fresh complaint was preferred. Held, that the proceedings should be quashed. 11 Cr. L. J. 582=8 I. C. 203.
 12. The fresh complaint should be entertained under exceptional circumstances and when the first order of dismissal was made on incomplete record or was perverse or foolish. 33 P. L. R. 318.
 13. Dismissal of an application to direct a complaint under S. 476, Cr P. C., is no bar to entertain second application for the same purpose. 1932 M. 130=33 Cr. L. J. 272, 26 M. 126, 31 M. 543, 8 P. 736.
 14. When a complaint is dismissed, a fresh complaint on same facts between same parties but before different Magistrates is barred. 1934 A. 87=35 Cr. L. J. 1052=150 I. C. 373, 1927 A. 815 and 22 A. 106 Foll. 1925 A. 298 Diss. from. *Case law discussed.*
 15. There is no bar to the trial of a second complaint by the same Magistrate who had dismissed the first complaint and discharged the accused. 9 A. 85, 29 A. 7, 36 A. 53, 1934 A. 87=35 Cr. L. J. 1052.
 16. Summary dismissal of complaint or discharge of accused does not invariably bar inquiry on second complaint on same facts. 1934 A. 514=35 Cr. L. J. 1059, 22 A. 106 and 1927 A. 815 Dist., 9 A. 52, 9 A. 85, 29 A. 7, 1914 A. 79 and 179 and 1926 A. 298 Foll. 22 A. 106 not foll.
 17. Fresh complaint by a different complainant is not barred if first is dismissed under S. 203. 1934 L. 435=152 I. C. 155, 36 A. 53 foll. 12 L. 9=1930 L. 879 not foll.
 18. There is nothing illegal or *ultra vires* of a Magistrate reviving the complaint which he had dismissed under S. 203, after District Magistrate declined to order further inquiry. 36 C. 415.

D. For Failure to pay process fee. S. 204 (3), Cr. P. C.

1. Dismissal of complaint for failure to pay process fee is no bar to second complaint on same facts. 130 I. C. 825=1931 N. 39=32 Cr. L. J. 603.

Complaint—(contd.)

2. If the case is adjourned the witnesses should be told to appear and dismissal of complaint on failure to pay such fees is not proper. 3 P. W. R. 1912.
3. An application for maintenance under S. 498 cannot be dismissed for default to pay process fee. 16 M. 234.
4. In non-cognizable warrant cases, neither the complainant nor the accused can be compelled to pay process fee for the production of witnesses although the complainant must, under S. 204, pay process fee for summoning accused. 93 I. C. 79=27 Cr. L. J. 415=1926 R. 13.
5. Where on the date fixed for delivery of judgment in a summons case, the Magistrate ordered the complainant to file process fee to secure the attendance of accused and the complaint was dismissed for default of process fee, the order was illegal. 1925 A. 392=87 I. C. 419=26 Cr. L. J. 963.
6. When Magistrate cannot record evidence, he must give notice to witnesses to appear on the next day. Complainant cannot be required to put process fee for summoning them again. 13 Cr. L. J. 176.

E. Further Enquiry.— See Further Enquiry.

F. Grounds for and against—

1. Dismissal of a complaint for defamation under S. 203 without taking any evidence on the grounds that Exception 8 to S. 499, I. P. C., applies to the case is not justified. 1927 B. 436=102 I. C. 511=29 Bom. L. R. 713=28 Cr. L. J. 575.
2. A complaint against an agent that he did not pay and account for the money to the complainant is not necessarily a claim of civil nature, therefore the dismissal of complaint on this ground is improper. 1921 P. 85, 55 I. C. 75.
3. If no *prima facie* case is established against the accused, the complaint should be dismissed. 13 B. 590.
4. To see whether there are sufficient grounds for proceeding the Magistrate must exercise judicial discretion. That the Magistrate considers the result of the proceedings undesirable or the motive or conduct of complainant discreditable, are not relevant considerations. 38 M. 512, 1924 P. 379=72 I. C. 76.
5. The complaint must be dismissed, if the report of a Sub-Magistrate after elaborate enquiry is that there is no case against the accused. 40 C. 854 (857).
6. If the allegations contained in the complaint disclose a criminal offence, it should not be dismissed simply because civil remedy is available. 10 W. R. 40.
7. The complaint should not be dismissed on the ground that the accused has been exonerated in a previous departmental enquiry. 33 P. R. 1887 Cr.
8. The fact that besides the complainant, other persons could complain is no ground for dismissing it. 1927 A. 69=97 I. C. 368=27 Cr. L. J. 1104.
9. A complaint cannot be dismissed without examining the witnesses of the complainant who are present in Court. 1925 C. 1031=85 I. C. 705=26 Cr. L. J. 561.
10. Dismissal of complaint without examining the complainant on oath is illegal. 1923 P. 539=74 I. C. 957=24 Cr. L. J. 845, 3 C. W. N. 281.
11. A complainant challenging a Police investigation must be examined on oath before his complaint is dismissed. 1921 P. 205=2 P. L. T. 142.
12. If a complaint is dismissed under S. 203 without being sufficiently enquired into, further enquiry should be ordered. 76 I. C. 391=1921 C. 552.
13. A Magistrate sent a case for preliminary enquiry under S. 202 to a Zaildar and dismissed the complaint on his report. Held, the dismissal is not proper. 1923 L. 119=107 I. C. 603=29 P. L. R. 271=29 Cr. L. J. 267.
14. Dismissing a complaint without giving the complainant opportunity of substantiating it is illegal. 55 C. 1230, 14 Cr. L. J. 412, 4 P. R. 1912 Cr., 1924 O. 174.
15. Dismissal of a complaint on a previous Police enquiry is illegal. 1930 R. 226=126 I. C. 534=31 Cr. L. J. 1064.
16. Dismissal of a complaint by Magistrate on the sole ground that he agrees with the Police Report is illegal, unless the Police Report is made part of the order. 11 Cr.

Complaint—(contd.)

- L. J. 331, 30 C. 923.
17. An application under S. 107, Cr. P. C., is not a complaint therefore S. 203 does not apply to it. 1924 L. 630=76 I. C. 25=25 Cr. L. J. 89.
 18. A Sessions Judge cannot direct further enquiry in a case under S. 107, Cr. P. C., when accused is discharged. 53 A. 148=1931 A. 53=32 Cr. L. J. 570.
 19. There is nothing to prevent a District Magistrate when moved to act under S. 436 from taking cognizance in his discretion of the complaint under S. 190 (1). 130 I. C. 529=1931 P. 50=32 Cr. L. J. 548.
 20. A Subordinate Magistrate directed to make further enquiry into a warrant case by an order under S. 436, Cr. P. C., has all the powers provided for by Chapter XXI of the Cr. P. C. 9 R. 239=1931 R. 225=32 Cr. L. J. 950.
 21. Magistrate cannot dismiss a complaint on the consideration of inquest report made by another Magistrate. 35 C. W. N. 1035.
 22. The motive of the complainant is no ground for dismissal of complaint. 1934 N. 135=35 Cr. L. J. 1215. 13 B. 599 and 38 M. 512 Rel. on.
 23. The fact that party feeling ran high at the place and if accused's act is considered criminal, a large population will be in jail, is no ground for dismissing complaint. Rat. Un. Cr. C. 549.
 24. Existence of malicious feeling is no ground. 13 B. 590, 38 M. 512.
 25. That the complainant has no personal knowledge, is no ground. Rat. Un. Cr. C. 669.
 26. The fact that civil remedy is open, is no ground for dismissing complaint. 12 Cr. L. J. 123=9 I. C. 726.
 27. That the complainant is of low caste is no ground. (1865) 2 W. R. Cr. 35.
 28. Dismissal of complaint for serious discrepancies is proper. 1930 N. 108.
 29. Discretion to dismiss complaint must be exercised judicially. 38 M. 512.
 30. Dismissal of complaint without hearing all the evidence adduced by the complainant is illegal. 14 Cr. L. J. 412, 20 M. 388.
 31. Magistrate cannot refuse to receive complaint and examine the complainant. 12 B. 161.

G. Prima facie case. See *prima facie* case.

H. Recording reasons of—

1. An order for discharge under S. 203 without reasons is without jurisdiction. 40 C. 41.
2. The Magistrate is bound to record reasons for dismissing the complaint. 14 C. 141, 1926 P. 57=26 Cr. L. J. 1502, 13 B. 600, 6 Cr. L. J. 85.

I. Revision.

High Court should not interfere if Magistrate entertained second complaint after dismissal of the first complaint. 1934 A. 514.

J. What is—

1. Refusal to issue process, is dismissal of complaint. 1928 M. 1193=29 Cr. L. J. 1059, 14 Cr. L. J. 183, 29 C. 457, 1923 C. 198.
2. An order staying proceedings against some accused while proceeding with the rest is dismissal of complaint. 2 C. W. N. 209.
3. Magistrate should not delay passing an order on complaint for months. 1922 P. 618.

K. Who can dismiss—

1. A District Magistrate cannot order the dismissal of complaint which is pending before a Sub-Magistrate. 30 C. 449, 3 C. W. N. 490.
2. District Magistrate removed the case to his own file and suspended the warrants and dismissed the complaint without hearing it in due course. Held, it was improper. (1873) 19 W. R. 28.

14 Disqualification of Magistrate— See Disqualification of Magistrate.

Complaint—(contd.)

15. Filing of—.

A Magistrate has no power to delegate his power to Public Prosecutor to file a complaint for an offence under S. 211, I. P. C. 13 P. R. 1915 Cr.

16. Form of—.

1. There is no particular form in which complaint should be made. Substance and not the heading of the complaint should be regarded. 14 Cr. L. J. 425, 8 P. R. 1884, 26 B. 193, 11 Cr. L. J. 596.
2. The use of wrong printed form is immaterial. 18 Cr. L. J. 641.
3. Giving wrong section of the Penal Code is immaterial. 25 A. 209, 6 L. 375=1925 L. 631, 1929 M. 188, 9 L. 678=1928 L. 510, 1933 P. 297, 23 P. R. 1895, 240 C. 232.
4. The complaint may be oral. 1924 R. 35, 35 C. 141.
5. A complaint need not allege all the facts. 32 M. 3, 1933 O. 430.
6. Statement of complainant under S. 200 is not complaint. 1932 P. 72, 10 A. 39.
7. Statement of complainant as witness is not complaint. 55 A. 871, 5 A. 233, 10 P. R. 1833, 13 Cr. L. J. 287, 14 Cr. L. J. 1.

17. Frivolous—. See Compensation—5.

18. Information and—Distinction.

1. A mere statement to a Magistrate by way of information without any intention of asking him to take action is not complaint. 36 A. 222, 17 C. W. N. 980, 26 M. 640, 40 A. 641, 38 A. 32, 1930 A. 820.
2. When cognizance is taken by Magistrate upon information, the accused can claim transfer of the case. S. 191, Cr. P. C.
3. Third class Magistrates cannot take cognizance upon information. S. 190 (3), Cr. P. C.

19. Issue of Process. S. 204, Cr. P. C.

1. An order directing issue of process is not a judgment under S. 369, Cr. P. C., and the Magistrate can rescind the orders on sufficient ground. 77 I. C. 816=27 C. W. N. 651=25 Cr. L. J. 464=1923 C. 662.
2. Magistrate is not bound at any stage of the trial to stop proceedings and arrest any person against whom he thinks there is a chance of conviction. 85 I. C. 236.
3. Where the complainant has taken proceedings against some of the accused, the others are entitled to appear and insist that complaint against them shall be proceeded with or dismissed. 26 Bom. 552.
4. Where the Police report is true and the Magistrate has directed the case to be entered as such, he cannot refuse to issue process on the ground that no useful purpose would be served. 29 C. 416.
5. In counter cases the Magistrate can issue process in one case or postpone the other until the disposal of the other case. 3 P. L. T. 764, 116 I. C. 46.
6. If a *prima facie* case is made out, the Magistrate must issue process. 53 C. 606, 94 I. C. 903, 13 Bom. 590 Cont. 1931 C. 607=134 I. C. 1045=33 Cr. L. J. 3.
7. Magistrate issued warrants against one accused and on the next date of hearing issued warrants against others. Held, that there was nothing illegal. 1925 L. 541=107 I. C. 778=29 Cr. L. J. 293.
8. A complaint was dismissed and on revision further enquiry was ordered. The Magistrate summoned the accused without holding an enquiry under S. 203. Held, that the order was premature. 109 I. C. 508=29 Cr. L. J. 572, 112 I. C. 563.
9. Magistrate can postpone the issue of process under S. 344, Cr. P. C. 88 I. C. 603.
10. If the Magistrate has exercised sound discretion under S. 204, the High Court will be slow to interfere in revision. 53 C. 606=1925 C. 795.
11. A *prima facie* case only means that there is ground for proceedings. It is not the same thing as proof. 1931 C. 607=33 Cr. L. J. 3.

Complaint—*contd.*

12. The evidence discloses *prima facie* case, if it is such that if uncontradicted and if believed it will support a conviction. 134 I. C. 1045=1931 C. 607.
13. Even when there is a complaint, the Magistrate can order the submission of a charge sheet. 136 I. C. 842=1932 P. 75=13 P. L. T. 167.
14. If a Magistrate ordered the issue of a warrant and left on tour and another Magistrate signed the warrant in his absence, the warrant is legal. 1932 P. 175.

20. Joint

- A joint complaint is not contemplated by the Code. The provisions of S. 200 as to examination of complainant support this view. 1931 C. 646=33 Cr. L. J. 83.

21. Limitation for— See Delay.

1. There is no period of limitation for preferring complaint. 15 S. W. R. 25.
2. Magistrate cannot refuse to inquire a complaint lodged after six years. 1891 Rat. 549, 11 M. 332.
3. Unless a statute creates a period of limitation, a complaint can be lodged any time. 20 B. 543.

22. Of various offences. (Adultery, Defamation, etc.). See under those offences.

23. Oral.

The complaint may be oral 1924 R. 35=1 R. 549, 35 C. 141.

24. Presentation of—By Post.

1. The word 'at once' in S. 200 indicates that complaint should be presented by complainant in person, though in the case of Pardi Nashin woman it may be presented by a person duly authorised. 42 C. 19, 32 C. 469.
2. It is competent for a Magistrate to receive and take action on a complaint received by post. He may call upon the complainant to appear before him on a date fixed for examination on oath. 1900 A. W. N. 189, 1929 S. 132.

24-A. Privilege attaching to—

For a defamatory statement in a complaint, the complainant will be protected only if the statement was made in good faith. 48 C. 388, 49 M. 798, 47 B. 15, 1914 M. 382.

25. Revival of.— See Revival—2.

26. Stamp on—

1. No stamp is necessary in case of complaint of cognizable offence 1873 Rat. 70, Court-fees Act 1870. Sch II, Art. 1 (b).
2. Complaints by public servants, Municipal officers or servant of Railway are exempt. 1 Cr. L. J. 193, 16 M. 423.

27. Withdrawal of.— See Withdrawal—5.

28. Who can make.

1. The complainant need not be eye witness of everything in the complaint. 1931 M. W. N. 1316.
2. If a general law is broken, every person can set the law in motion. 13 B. 600, 21 B. 536, 41 C. 1013, 20 C. 481, 18 A. 465, 1933 L. 884, 54 B. 146, 63 I. C. 464, 1929 L. 210, 1929 C. 639, 41 C. 1013, 1924 L. 286, 8 Cr. L. J. 213, 7 Cr. L. J. 342, 52 M. 79=1923 M. 1235, 1923 L. 510=9 L. 678, 53 C. 606. But see 24 P. R. 1869, where master was held not to be competent to lodge a complaint for an assault upon his servant.
3. It is not necessary that the person making the complaint should have personal knowledge of the offence. 1921 C. 561=61 I. C. 839=25 C. W. N. 357, 13 B. 600, 1931 N. 98, 1920 P. 163.
4. There is nothing in the definition of complaint which requires it to be made by an aggrieved party or only in non-cognizable cases. 1930 A. 820, 18 A. 465.
5. A Police Officer's report is not a complaint within S. 199, Cr. P. C., and a conviction under S. 498, I. P. C., without the complaint of the husband is illegal. 32 P. R. 1910 Cr.

Complaint—(concl'd.)

6. The fact that complainant is a servant of the Magistrate will not deprive the Magistrate of his jurisdiction to receive complaint. 9 B. 175.
7. An alien enemy who resides in the country by licence of the king can complain against crimes directed against his person or property. 1919 M. 851.
8. A convicted person can make complaint. 21 S. W. R. 13.
9. A Magistrate can make a complaint as a common informer. 1933 L. 884, 9 L. 678.
10. Where leave of Court is necessary to make a complaint on behalf of another, proceedings are illegal even if no objection is taken in the trial court. 1935 O. 6.

29. Who cannot make—

1. A complaint under Ss. 196 to 199, Cr. P. C. (for adultery, bigamy, enticing away married woman, defamation, etc.) must be made only by the persons specified therein. 13 B. 600, 1921 C. 627, 14 Cr. L. J. 409.
2. A complaint in respect of offences specified in clause (b) and (c) of S. 195, sub-section (1), Cr. P. C., can be made only by a court. 38 B. 642, 13 P. R. 1915 Cr., 19 P. R. 1917 Cr.
3. A complaint in respect of offences specified in S. 195, sub-section (1), Cl. (a) can only be made by a public servant. See S. 195, Cr. P. C.
4. A complaint under a Special or Local Law can be made by persons specified in the statute. 46 A. 158, 1932 A. 187, 1932 B. 256, 1922 L. 220, 17 Cr. L. J. 242, 1928 M. 969, 1928 L. 27=8 L. 613, 1930 N. 33.
5. Complaint by unauthorized persons under the Opium Act or Abkari Acts is not competent. 1929 M. 604=52 M. 613, 1918 C. 50, 1916 L. 295.
6. A complaint under Cantonment Act by an unauthorized person is bad in law. 1933 L. 590.
7. A complaint under Stamp Act by an unauthorized person is not competent. 1927 N. 202.
8. Similarly a complaint under Arms Act. 9 C. P. L. R. Cr. 26, 27 C. 692.
9. Similarly a complaint under S. 21, Cattle Trespass Act. 5 Bom. L. R. 205.
10. Similarly under Municipal Act. 1931 B. 141, 1919 A. 125, 20 C. 448, 9 Cr. L. J. 449, 3 P. R. 1892, 6 P. R. 1916 Cr., 4 L. B. R. 44, 8 L. 613=1928 L. 27.

30 Wrong heading of officer.

1. It is the substance of the complaint and not the heading that is to be regarded. 14 Cr. L. J. 425, 40 A. 41.
2. A complaint to the Collector and District Magistrate is proper. 40 A. 41.
3. A complaint addressed to the Collector is good in law. 14 Cr. L. J. 425.
4. A complaint to the Deputy Commissioner is valid. 8 P. R. 1884.
5. A complaint to the Assistant Collector is legal. 26 B. 193.
6. A complaint to the Lieutenant-Governor is valid. 11 Cr. L. J. 596.

31. When Magistrate has no jurisdiction. S. 201, Cr. P. C.

1. When a Magistrate finds that he is not competent to take cognizance of a case on a complaint made in writing to him, he shall return the complaint to be presented to the proper court, with an endorsement to that effect. 45 M. 839, 1926 P. 400, 4 Cr. L. J. 213.
2. He should not examine the complainant. 28 A. 268.
3. Where a Magistrate received the complaint in one capacity and transferred it to himself in the other capacity, there is nothing illegal. 1930 N. 291.

COMPOUNDING OF OFFENCES. S. 345, Cr. P. C.**1. After withdrawal of case by District Magistrate under S. 435.**

- Where a District Magistrate has called for record under S. 435, Cr. P. C., with a view to transfer it, the Magistrate's jurisdiction is suspended and cannot record composition and acquit accused. 49 B. 533 - 1923 B. 247=26 Cr. L. J. 996.

Compounding of offences—(contd.)

2. Agent—compounding by—

1. Court can acquit accused on the representation of an agent who had filed complaint on another's behalf, that he desires to compound the offence, without enquiring into agent's authority to compound. 1924 A. 778=83 I. C. 658=26 Cr. L. J. 98.
2. Where a person started proceedings under S. 498, I. P. C. as agent for the husband, he cannot compound the offence on behalf of the husband. 24 Cr. L. J. 120.
3. A complaint was filed by wife for cheating her husband and compounded by her. Subsequently husband filed another complaint for cheating. Held, the previous composition was invalid as not having been arrived at with the husband who was an-aggrieved party. 51 B. 512=1927 C. 410, 21 C. 103, 37 B. 369.
4. A compounded a complaint filed by his wife of grievous hurt without obtaining her signature on the application of compromise on the other party's passing a document that she can stay rent free in a house for lifetime. Held, that the consideration is not illegal and the agreement was not void merely for want of signature of the wife. 52 B. 693=1928 B. 305=112 I. C. 459, 37 A. 419 and 37 M. 385 Dist.

3. Aggrieved party—who can compound—

1. Any person may set the criminal law in motion but it is only the person specified in S. 345 who can compound the offence. 51 B. 512=1927 B. 410.
2. Where the person, who is hurt, is dead, the case under S. 325 cannot be compounded by the widow. 37 A. 419, (1892) 2 Weir 418, 37 M. 385, 31 A. 606, 18 Cr. L. J. 729.
3. Where hurt was caused to three persons, one of whom died, the remaining two cannot lawfully compound the offence as regards the deceased. 31 A. 606.
4. Only person who can compound a case under S. 498, I. P. C. is the husband of the woman. 1922 L. 177=69 I. C. 370, 1924 L. 330=24 Cr. L. J. 780.
5. Where there are several complaints, one complainant can compound the offence committed against himself but not the offence committed against others. 27 C. W. N. 168, 1923 C. 168=73 I. C. 322.
6. The offence of defamation can be compounded by the person defamed and not by a person aggrieved by the defamation. 25 B. 151.
7. Where a charge of defamation for imputing unchastity to a woman is instituted on the complaint of the husband, the husband cannot compound the offence. 14 M. 371.
8. Although a complaint under S. 498, I. P. C. is made by a person having the care of woman during her husband's absence under S. 199, still such person cannot compound the offence and the composition is illegal. 4 L. L. J. 488, 5 L. L. J. 183, 24 Cr. L. J. 120.
9. A charge of criminal trespass can be compounded by the person who is in actual possession of the property trespassed upon. 22 C. 123, 1924 M. 40.
10. A minor cannot compound an offence, 17 P. R. 1891; but under sub-section (4), it can be compounded with the permission of court by his guardian. 1929 N. 278.
11. Offence under S. 432 can be compounded by person restrained. 49 A. 484.
12. Where a person sends another man to Court to represent him in filing a complaint, the Court is justified in accepting the latter's statement. 1924 A. 778. See 24 Cr. L. J. 120.

4. Arbitration. See Arbitration—1.

5. Award of compensation on—

1. Withdrawal of a case is no bar to award of compensation under S. 250. 24 P. R. 1883 Cr., 30 P. R. 1910 Cr.
2. Compensation is not awardable, where accused is acquitted on offence being compounded. 19 P. R. 1888 Cr.

6. Composition with some accused.

1. Compounding of an offence with two of the accused does not in law have the effect of acquittal of the remaining accused and does not stand in the way of their conviction. 1 L. 169=121 P. L. R. 1920=56 I. C. 229, 7 L. 344=1926 L. 424=94 I. C.

Compounding of offences—(contd.)

144, 43 A. 483, 1921 A. 35=61 I. C. 209, 41 M. 323, 45 B. 345=59 I. C. 199, 1921 B. 165, 84 I. C. 62=1921 S. 101. *Cont.* 1923 P. 348=67 I. C. 592, 39 M. 604, 7 C. W. N. 176. The contrary view is no longer a good law.

2. Where in a joint complaint relating to distinct and independent transactions, there is composition with respect to one transaction, it does not amount to acquittal with reference to the offence committed in the other transaction. 1930 A. 92=1930 A. L. J. 85=30 Cr. L. J. 1149.
 3. It is open to the complainant to compound the case with some and to proceed with the case against the rest. 22 Bom. L. R. 1221, 41 M. 323, 84 I. C. 62, 1933 C. 552, 1926 C. 795 Dist.
- 7. Compounding in appeal or Revision.** S. 345 (5-A), Cr. P. C.
1. The composition of offence is permissible only up to the time of judgment and not after. An appellate Court is not bound to recognize a composition entered into by parties. 53 I. C. 823=20 Cr. L. J. 823.
 2. The High Court may allow an offence under S. 498, I. P. C., to be compounded in revision. 24 Cr. L. J. 590, 73 I. C. 334=1924 O. 260, 46 A. 91, 39 M. 604, 67 P. L. R. 1904. *Cont.* 42 A. 474, 35 P. R. 1918 Cr.
 3. Where the offence is compoundable with the permission of the Court and the Magistrate refuses to allow composition and does not rightly exercise discretion, the High Court can allow it in Revision. 1929 P. 512=31 Cr. L. J. 607.
 4. Composition is allowed in appeal with the permission of appellate Court. 37 A. 127, 52 C. 347, 55 C. 1190, 1920 M. 245. *See* 1934 S. 122.
 5. When an accused was acquitted under S. 147 and convicted under S. 325, the compromise can be effected in the appellate Court. 1929 C. 96.
 6. The Chief Court sitting as Court of Revision has no power of allowing composition of an offence. 35 P. R. 1918 Cr., 29 M. L. J. 521. *Cont.* 32 A. 153, 43 C. 1143.
 7. High Court will allow composition in revision if parties are near relations, even when lower Court refused permission. 1934 L. 317 (1)=35 Cr. L. J. 579.
 8. Compromise after hearing appeal is too late and does not come under S. 345. Accused was released under S. 562, Cr. P. C. 1933 A. 434=34 Cr. L. J. 925.
 9. Where accused was convicted of non-compoundable offence but the appellate Court considers that he should be convicted of compoundable offence, he should be given opportunity to compound the offence if he can, before being convicted of the same. 3 Oudh Cases 314. If this opportunity was not allowed High Court allowed it in revision. 11 Cr. L. J. 496.
 10. S. 435 (5-A) empowers High Court to allow compounding offence in revision. 46 A. 491, 1930 L. 272, 1929 P. 512, 1929 N. 278, 55 C. 1190, 1934 S. 122.
 11. Where all the circumstances were not considered, High Court set aside the compromise in revision. 15 Cr. L. J. 553.
 12. Where an order of acquittal has been passed on invalid composition, it may be set aside in revision. 24 Cr. L. J. 120=71 I. C. 248.
- 8. Compounding before trial.**
1. Compounding of offence under S. 498 before Police is competent. 22 P. L. R. 1910.
 2. An offence of wrongful restraint is compoundable by the person restrained and it is not necessary that a composition should be arrived at after a complaint is filed in Court. 49 A. 484=1927 A. 375=28 Cr. L. J. 495, 41 M. 685.
 3. Where one party to a compromise resiles from it, the Court should take evidence concerning the factum of compromise. 39 M. 946, 41 M. 685, 1931 L. 402, 14 Cr. L. J. 292. If no inquiry is held, order is bad in law. 1932 S. 7=33 Cr. L. J. 109.
 4. Composition of compoundable offence out of court operates as a bar to prosecution. 41 C. 14, 39 M. 946, 22 P. L. R. 1910, 14 Cr. L. J. 292, 41 M. 685, 49 A. 484.
 5. Offences which can only be compounded with the permission of Court, cannot be compounded before the criminal proceedings are instituted in Court. 16 I. C. 655 and the jurisdiction of court to try the case is unaffected. 1928 L. 232=9 L. 400,

9. Compounding—what is. See—17.

Giving accused a document saying "I withdraw case against the accused" is compounding the case. 45 A. 145=1923 A. 474=24 Cr. L. J. 758.

10. Difference between withdrawal and compromise. See Withdrawal—4.

11. Duty of Court—permission.

1. When deed of composition is filed by the parties, the Magistrate should at once acquit the accused and not adjourn the case. 52 A. 254=1930 A. 409, 29 P. R. 1914, 45 A. 145, 1931 L. 402 (1)=133 I. C. 448, 1921 P. 290.
2. Determination whether or not offence is compoundable depends on offence directly charged in complaint and not that which might have spelled out of the complaint. 125 I. C. 385=1930 O. 196, 20 C. W. N. 946, 89 I. C. 900.
3. Before composition is allowed, the Court must be satisfied that it is legal and valid in law. 122 I. C. 118=1929 B. 375=31 Cr. L. J. 353.
4. If the accused denies that the case has been compounded the Magistrate must inquire into it. 1932 S. 7=135 I. C. 271=33 Cr. L. J. 109.
5. When parties amicably arrive at a composition at an early stage and the offence is not so serious Court should not refuse permission. 65 I. C. 437=1922 L. 138.
6. The Magistrate has to exercise his own discretion whether a compromise is to be allowed or not. He cannot refer the case to the District Magistrate. 1930 L. 272, 1932 M. W. N. 1088, 1935 L. 226, 1926 C. 590, 1922 L. 138.
7. In case governed by S. 345 (2), the permission of Court is essential for compromise. Without such permission the compromise is of no legal effect. 9 L. 400=1928 L. 232=29 Cr. L. J. 585, 93 P. L. R. 1909, 41 M. 685, 39 M. 946 Dist.
8. When the Magistrate declined to grant permission, High Court granted it, as it was sought at an early stage. 89 I. C. 385=1925 P. 583=26 Cr. L. J. 1345.
9. If an accused person pleads composition out of Court, the Court must enquire into it and if proved, it bars the jurisdiction of the Magistrate. 41 C. 14, 41 M. 685.
10. If a party resiles from a composition, Court must enquire into the matter. 41 M. 655.
11. A Magistrate is not bound to entertain application at a late stage, when some of the offences are not compoundable. 1929 B. 375, 122 I. C. 118, 16 B. L. R. 939, 17 C. W. N. 948, 1923 A. 474, 1922 L. 138 Dist.
12. A Magistrate before whom case is pending cannot make reference to another Court for instructions whether to accept the compromise or not. 1935 L. 226=35 Cr. L. J. 1372=151 I. C. 532.
13. When parties are near relatives, permission to compound an offence under S. 321 should be allowed. 1934 L. 317 (1), 1922 C. 191, 1929 N. 278.
14. In allowing compromise, a Magistrate may impose a condition as to payment of some compensation to the injured person. 1922 L. 138=23 Cr. L. J. 85.
15. Mere fact that a compromise is filed in Court is no ground for the reduction of sentence. 12 Cr. L. J. 243.

12. Effect of—

1. Where parties put in an agreement signed by both parties, the Magistrate has no power to call for further evidence. 16 Bom. L. R. 939=16 Cr. L. J. 88.
2. Composition out of Court has the effect of barring prosecution. 41 C. 14.
3. A Magistrate cannot refuse a composition in a compoundable case. 30 P. R. 1910 Cr. But the Magistrate must make up his mind that only a compoundable offence has been proved. (1894) Rat. 69, 16 C. P. L. R. 178.
4. In a compoundable case, the Court becomes *functus officio* after composition. 112 I. C. 562=29 Cr. L. J. 1058, 1921 P. 230=22 Cr. L. J. 675.
5. When case is compoundable with the permission of the Court, the composition does not mean hushing up the matter. 1929 P. 512=124 I. C. 95.

Compounding of offences—(contd.)

6. Once a composition has been effected, complainant cannot be permitted to withdraw from it. 52 A. 254=1930 A. 409, 1925 L. 159=25 Cr. L. J. 810, 1921 C. 403.
7. After the petition of compromise was filed, the Court ordered the parties to appear on the next date as the injury had not yet healed up. Held, that after the order of compromise was passed, the Court became the *functus officio*. 63 I. C. 611=1921 P. 290=22 Cr. L. J. 675.
8. The composition effected is a complete bar to a civil suit for damages. 6 S. L. R. 284.
9. A composition has the effect of acquittal and not a discharge. It is a complete bar to prosecution of the accused for the same offence. 22 P. L. R. 1910, 41 M. 323, 1924 A. 778, 21 C. 103, 14 Cr. L. J. 292, 1934 L. 317.
10. The compounding of an original charge is not a conclusive answer to a charge made against the complainant under S. 211, I. P. C. 11 C. 79, 19 P. R. 1888.
11. Once an accused is charged for compoundable offence and a compromise petition is presented, Court has no power to alter the charge. 29 P. R. 1914 Cr.
13. In a case under S. 498, I. P. C. See Enticing away married woman—7.
14. Of non-compoundable offences. Ss. 213-214, I. P. C. See Gift to screen offences from legal punishment—1.
 1. The offence of rioting cannot be compounded. 11 P. R. 1907 Cr.=6 Cr. L. J. 336.
 2. It is against public policy to compound or withdraw a non-compoundable offence. 53 C. 51, 40 C. 113, 1929 A. 456, 22 C. W. N. 172 (n) 1914 O. 278, 23 B. 326.
 3. Withdrawal from prosecution in a non-compoundable case has not the effect of acquittal. 1 B. 64.
 4. Agreement entered into between complainant and accused for the refund of money embezzled was not allowed to be pleaded as bar to prosecution. (1886) 1 Weir 462, (1883) 1 Weir 465.
 5. To determine whether an offence is compoundable or not, the offence charged in the complaint and also by the Court must be considered. 1930 O. 196, 1929 A. 456.
 6. Facts existing at the date of application should be considered. 1925 N. 395=26 Cr. L. J. 1428.
 7. When once the process is issued in a non-compoundable case, Court must require the complainant to carry his prosecution to the end. 3 A. 283, 1927 R. 174.
15. Parties—relatives.

Where parties are near relatives (first cousin's) it is expedient in the interest of justice to allow composition of an offence under S. 324. If the lower Court refused permission, High Court can allow it in revision. 1934 L. 317 (1)=35 Cr. L. J. 579.
16. Stage of—
 1. A compoundable offence can be compounded at any time before passing of the sentence. 112 I. C. 562=29 Cr. L. J. 1058, 45 C. 816.
 2. The fact that the prosecution evidence is closed and charge is framed is no bar to the composition of an offence. 29 Cr. L. J. 1058=112 I. C. 562.
 3. An offence of wrongful restraint is compoundable by the person restrained and it is not necessary that a composition should be arrived at after a complaint has been filed in Court. 49 A. 484=1927 A. 375=101 I. C. 671.
 4. Compromise can be effected in appeal. 55 C. 1190=1929 C. 96.
 5. Compromise can be permitted in Revision by High Court. 46 A. 91, 39 M. 604.
17. What amounts to.—See Arbitration.
 1. A composition is an arrangement or settlement of differences between the injured party and the accused. 45 B. 346=1921 B. 166.
 2. Mere permission to withdraw the case is not compounding. 4 Bom. L. R. 718, 51 B. 512.
 3. An incomplete arrangement or mere arrangement to settle their dispute in future

Compounding of offences—(concd.)

as the result of some action by one of them is not compounding. 41 M. 685, 1925 M. 1211.

4. If parties refer their dispute to arbitration and award is given it amounts to composition. 1925 M. 1211=26 Cr. L. J. 1594, 1926 C. 266=26 Cr. L. J. 1584.
5. If both parties once resile from their arrangement, accused cannot plead composition afterwards. 22 C. W. N. 172 (n).
6. Agreement to be bound by the evidence on oath of a certain witness is not enforceable in criminal law. 13 B. 389.
7. Monetary consideration is not necessary. It may be even apology. 5 L. 239, 21 C. 103, 39 M. 946. It may be without consideration. 9 P. R. 1896 Cr., 10 Cr. L. J. 228, 45 A. 145=1923 A. 474.
8. Compromise must be with the free will of parties. 21 C. 103.

18. Withdrawal of compromise petition—

1. When the parties have filed a petition of compromise they cannot afterwards be allowed to withdraw it. 39 M. 946, 41 M. 685, 3 C. W. N. 322, 52 A. 254.
2. A composition arrived at is complete as soon as it is made, and the accused is entitled to acquittal even though one of the parties later on resiles from it. 33 C. L. J. 226, 1921 C. 403, 14 Cr. L. J. 458=20 I. C. 618.
3. If parties compromised before the Local Commissioner making inquiry under S. 202 but resiled before the Magistrate, accused cannot afterwards plead compromise. 22 C. W. N. 172 (n).

19. Who can compound. See—3.

COMPROMISE. See Compounding of offences.

COMPULSION—S. 94, I. P. C. See Threat.

1. Accused helped to remove the dead body from his master's house who threatened to kill him if help was refused, the accused is guilty under S. 201 but is protected by S. 94, I. P. C. 47 A. 306=86 I. C. 152=1925 A. 315=26 Cr. L. J. 876.
2. Compulsion by threats of instant death is good defence except for murder and offences against the state. Murder in the above does not include abetment thereof. 52 C. 112=1924 C. 1031=26 Cr. L. J. 11, 1912 M. W. N. 1108.
3. Accused admitted having perjured themselves to incriminate a person of murder, because they had been so tutored by the Police, the defence was rejected as they were under no compulsion to make the statements which would have had the effect of sending an innocent man to gallows. 10 W. R. 48.
4. Accused pleaded that they gave bribe to the classers of revenue survey who threatened to raise the assessment, cut down hedges and to erect new boundary marks. Held, they were guilty as being accomplices. 14 B. 115 (131).
5. A Police man is no more justified in torturing a man to death simply because he had been ordered to do so by his superior, than a robber can justify his act on the plea that he had to obey his fellow confederates. 20 B. 215, 20 B. 394.
6. A person who by threats of death is induced to do an act in order to facilitate the commission of murder cannot be protected by S. 94 which does not apply to cases of murder. He is an accomplice. 19 I. C. 207=14 Cr. L. J. 207.
7. Compulsion is no defence in British India to a charge under S. 121, I. P. C. 9 R. 404=1931 R. 235=1931 Cr. C. 875.
8. If accused voluntarily subjected himself to threats he cannot avail of S. 94. 1933 R. 204.

CONCEALING AN ABDUCTED PERSON. S. 368, I. P. C.

1. Essentials and Evidence.

1. A person who kidnaps and then wrongfully confines or conceals the person kidnapped secretly is not liable under S. 368, though he may be guilty under S. 365. 1926 O. 560=227 Cr. L. J. 1200, (1886), 6 W. R. 17. Cr.
2. Where a coolie girl, who was helping her mother by working was asked by a woman

Concealing an Abducted Person—(concl.)

to accompany her after promising to give her work and she accompanied her to her house and was detained the whole day. Accused took her away at night to a solitary bungalow and cohabited with her for two days after which she was permitted to return to her house. Held, that the accused was guilty under S. 368 and the procuress under S. 363. 6 Bom. L. R. 785.

3. Where A on some pretext took away a girl of 11 years and sold her to C, who took her to his relation B. B. kept her for a month. C died during the trial. Held, that A was guilty under S. 363 and B under S. 368. 7 W. R. 56.
4. To constitute offence under S. 368, it must be proved that the accused concealed or kept the girl in wrongful confinement. 1926 L. 384=93 I. C. 1050.
5. Wrongful confinement implies a withdrawal of that person from the actual observations of others by removal or otherwise. It does not include merely giving false information about such person. 10 P. R. 1874 Cr.
6. If the girl is not kept out of the sight of the people, there is nothing to suppose that the accused is wrongfully concealing her. 5 N. W. P. H. C. R. 189 and 133, 15 C. P. L. R. 185.
7. For wrongful confinement consent of minor girl is immaterial. 7 P. R. 1894 Cr.
8. Intention or knowledge that the abducted minor girl was to be forced to illicit intercourse is the gist of the offence. 28 Cr. L. J. 584=1927 L. 727.
9. Conveying a kidnapped person from place to place falls under S. 368. 13 P. R. 1893 Cr.
10. On each occasion a woman is persuaded to indulge in illicit intercourse she is "seduced," consequently, although a woman has lost her chastity and become a prostitute she can be seduced again for the purpose of S. 368. 1927 Sind 104=99 I. C. 98=28 Cr. L. J. 66.
11. Kidnapped child was left in the house of accused. He sent information to the guardian. Held, he was not guilty. 1933 L. 392.
12. It is a debatable point whether the offences under Ss. 366 and 368 form part of the same transaction. 1932 L. 517.

2. Knowledge.

1. If there is ignorance of abduction on the part of a person concealing a minor girl, no offence under S. 368 is made out. 19 P. R. 1867 Cr.
2. The proper charge to Jury would be to place the direct evidence of knowledge first and then place the suspicious circumstances from which an inference of knowledge can be drawn. 1926 C. 226=87 I. C. 845=26 Cr. L. J. 1021.
3. Knowledge means the facts which the accused himself observed or which were communicated to him by persons whose veracity he has no reason to doubt. 8 O. W. N. 1325=1932 O. 28=33 Cr. L. J. 275.

3. Jurisdiction and Procedure.

1. Wrongful confinement is the essence of this offence. A person convicted under S. 368 or its abetment cannot again be convicted on the same facts under S. 343. 1864 W. R. 21.
2. A person acquitted under S. 368, may still be liable for cheating or abetment of bigamy. 7 P. R. 1894, 13 P. R. 1904 Cr.
3. An offence under S. 368 is not triable exclusively by Sessions Judge. 1935 A. 63=152 I. C. 550=36 Cr. L. J. 117.
4. If a person is abducted at B and concealed at S, offence under S. 368 can be tried at both places. 1933 O. 45=34 Cr. L. J. 620.

CONCEALING AN OFFENDER. S. 212, I. P. C. See Harboursing offender—4.

CONCEALING DESIGNS TO COMMIT AN OFFENCE. Ss. 118-119-120, I. P. C.

1. While a person intends to facilitate or knowing that he will be likely to facilitate the commission of an offence by another, he is guilty. 1 Bom. L. R. 351.
2. The concealment must be the result of some conduct directed to that end and

Concealing designs to commit an offence—(concltd.).

different from mere passive non-disclosure. The mere denial of existence of design is not concealment. 28 A. 302, 34 P. R. 1882, 14 W. R. (Cr.) 2.

3. The illegal concealment by act or omission, under S. 120, I. P. C., has reference to the existence of design on the part of third persons to fabricate evidence. 1 Ind. Jur. O. S. 105.

CONCEALING OR DISHONEST REMOVAL OF PROPERTY. Ss. 421—424, I.P.C.

1. By judgment-debtor.

1. A judgment-debtor removing standing crops attached in execution of a decree is guilty under S. 424 and not of theft. 22 M. 151, 1 Bom. L. R. 515, 8 M. L. J. 259.
2. Concealment of property by debtors or taking away of property by others to avoid its attachment if done with a dishonest intention is an offence under S. 424. 1930 M. 670=1930 M. W. N. 347=31 Cr. L. J. 1096.
3. Since a village court cannot attach crops which are not moveable within the meaning of S. 52 by virtue of Madras General Clauses Act and S. 22, I. P. C., there is no fraud in removing such crops and S. 424 does not apply. 1930 M. 509=58 M. L. J. 509=127 I. C. 296=31 Cr. L. J. 1196.
4. Accused's crops were attached in execution of a decree against his uncle and he filed a case that the attachment was illegal. Held, the crops could not be considered to have been removed with the intention of causing wrongful loss to decree holder. 1929 P. 520, 1921 L. 185.
5. If attachment is illegal, conviction for dishonest removal of property attached is bad. 1928 R. 285, 25 M. 729, 1933 A. 46=55 A. 119.
6. If the provisions of O. 21, R. 44, are not complied with, the attachment is illegal and therefore removal of crops by judgment-debtor is no offence under S. 424. 1934 A. 711=35 Cr. L. J. 1307, 1931 A. 142. Cont. 1936 A. 364=37 Cr. L. J. 695.
7. If the attachment is illegal the property does not pass from judgment-debtor to court. 1931 A. 142, 1934 A. 711=35 Cr. L. J. 1307.
8. Judgment-debtor is entitled to remove crops not validly attached. Mere removal does not prove dishonesty. 1936 Sind 20=37 Cr. L. J. 485, 22 M. 151, 1930 M. 670, 1 Bom. L. R. 515 and 1933 Sind 90 Diss.

2. By Partner.

A partner removed partnership books at night and when questioned denied it, he was guilty under S. 424. (1873) 21 W. R. 10 Cr.

3. By tenant.

1. If a tenant removing the crops of a field which he holds under the *batai* system acts dishonestly, he is liable under S. 424. 35 I. C. 401=1 P. L. J. 353, 40 I. C. 335=18 Cr. L. J. 687, 38 M. 793, 2 L. L. J. 99=22 Cr. L. J. 142.
2. If ryots holding land on *Varan* tenure remove crops for the purpose of protecting them from injury or damage owing to delay or refusal on the part of zamindar to perform his part of division. It is not a dishonest removal. 26 M. 481.
3. But in case of dishonest removal the ryot will be punished. 38 M. 793, 26 M. 481.
4. If a distraint is made under the Rent Recovery Act, for the arrears of rent and the property is dishonestly removed, before convicting accused, it must be found that the distraint is legal. 25 M. 729.
5. If a partner in cultivation (*Bataidar*) dishonestly removes a joint crop, with intent to appropriate it, in derogation of the right of his partner, he is guilty under S. 424. 38 M. 793, 35 I. C. 491, 59 I. C. 654.

4. Civil Nature.

1. Removal during *bona fide* dispute of property is no offence. 3 L. L. J. 99=6 P. W. R. 1921 Cr.
2. S. 424, Penal Code, is sometimes abused and the civil rights are disposed of in the Criminal Courts. This should be checked as much as possible. 1 Weir 483.
3. S. 424 must be strictly construed, otherwise it is likely to trench upon a number of

Concealing or Dishonest Removal of Property—(concl'd.)

cases which are of civil nature. 25 I. C. 514, 1914 M. W. N. 791.

5. Essentials and Evidence.

1. Unless dishonesty is proved, the conviction under S. 424 cannot be sustained. 1921 L. 185=59 I. C. 654, 1921 P. 506.
2. If a person claiming title to a property attached in execution of a decree against another, removes the same, the matter whether such property belonged to the accused or not has to be determined by Magistrate before deciding upon conviction. 1930 A. 329=124 I. C. 716, 22 M. 151 Dist.
3. Removal of crops to avoid illegal distraint is no offence. 25 M. 729.
4. S. 424 is intended to punish fraudulent debtors and accomplices and not persons who claim as heirs and deal with the property. 1924 M. W. N. 791.
5. S. 424 is restricted to fraudulent concealment or removal of property and not to wanton destruction, which is punishable under S. 425. See S. 425 ill. (d).
6. S. 424 includes cases of fraudulent concealment of property whether fraud be practised on creditors or partners. 21 W. R. 10.
7. Landlord was entitled to nine annas of the value of all trees cut by tenant after sale. To avoid this payment accused cut some tree. Held guilty under S. 424. 57 I. C. 278, 21 Cr. L. J. 609.
8. If *bona fide* claim of right is raised accused should be acquitted. 1 P. L. T. 318.
9. There must be evidence of the persons intended to be defrauded by the concealment. 16 P. R. 1868.
10. Attachment not in accordance with O. 21, R. 44, does not transfer possession to court. But attachment effected by court is presumed to be proper unless contrary is proved. 1936 A. 364=37 Cr. L. J. 695.
11. Person removing or concealing his crop to defraud creditors is guilty of offence even if property has not passed into possession of court. 1936 A. 364=37 Cr. L. J. 695, 1934 A. 711=35 Cr. L. J. 1307.

6. Jurisdiction.

1. The Presidency Towns Insolvency Act does not take away a Magistrate's jurisdiction to try the insolvent under Ss. 421, 424. 6 R. 664=1929 R. 14, 35 B. 63.
2. The fact that the act can be equally dealt with under a local Act, does not limit the operation of S. 424. 57 I. C. 278.

7. Procedure.

If on complaint under S. 424, the complainant and the opposite party are joint proprietors of a property about which a civil suit is pending, the Magistrate may discharge the accused, allowing them to deposit the proportionate value of the complainant's share of property and allow them to retain custody of property or make it over to the complainant on his depositing the value of accused's share. 1929 P. 513.

CONCEALMENT OF BIRTH. S. 318, I. P. C.

Definition.

Whoever by secretly burying or otherwise disposing of the dead body of a child, whether such child die before or after or during its birth intentionally conceals or endeavours to conceal the birth of such child shall be punished. S. 318, I. P. C.

Essentials and Evidence.

1. Where the birth took place in a hospital and was attended by nurses and others and it was known to third accused and there was no evidence that the twins died. Held there was no concealment of birth under S. 318. 1935 C. 454=39 C. W. N. 604.
2. A woman is not bound to announce that she is going to have a child and if the child lives she is quite at liberty to keep its existence secret. *Mayne's Criminal Law of India, Ed. 4, P. 515.*
3. Concealment of birth sought to be checked is that which would keep the world at large in ignorance of the birth of a child. 2 Cox C. C. 409 cited in 1935 C. 454.
4. A false announcement of birth to some person does not render subsequent secret

Concealment of Birth—(concl'd.)

disposal innocent. 1 Mood C. C. 480. Cited in 1935 C. 489.

5. Leaving a baby in a field to die of exposure, where the dead body was subsequently found, is not secretly disposing of the dead body of a child. 10 Cox 448, cited in 1935 C. 489.
6. The offence under this section cannot be committed, unless the child has arrived at the stage of maturity, at the time of the birth, and that it might have been a living child. 4 M. H. C. App. 33, 2 C. P. L. R. 153, 3 Cr. L. J. 432, 1 Bom. L. R. 155, 1 Weir 333-334.

CONCEALMENT OF FACT. See Cheating.—12.**CONCOCTED EVIDENCE.** See Evidence.—3.**CONCUSSION.** See Wound.—2.**CONDUCT.** S. 8, Evidence Act.**1. After the commission of offence.**

1. If the accused goes to the spot after the occurrence and accompanies the dead body to the Morgue, his conduct is that of an innocent man, unless it is shown that he had no alternative but to accompany it. 1935 C. 591 (594)=36 Cr. L. J. 1254.
2. The conduct of accused person immediately after the commission of the crime is a relevant fact. He can lead evidence that at the very time he was accused he gave an explanation of his innocence. 1935 Sind 145 (165)=1935 Cr. C. 753.
3. The statement of an accused, although it may amount to an admission in his favour, is relevant otherwise than an admission under S. 21, clause (iii) as negating any inference that may be drawn against him as to his guilt in consequence of his alleged silence. 1935 Sind 145 (165).
4. The conduct under S. 8 is conduct which is directly and immediately influenced by a fact in issue or relevant fact and it does not include actions resulting from some intermediate cause, such as questions or suggestions by others. 7 A. 385.
5. The conduct of a person having no part in crime and not called as a witness is not relevant fact under S. 8. 1935 N. 81.
6. When joint acts of several persons are sought to be proved, in order to draw an inference from such conduct, evidence should be led with some degree of particularity with regard to each one of the persons concerned in the act. 1935 C. 184=1935 Cr. C. 241, 1932 B. 297=59 C. 1040=33 Cr. L. J. 546 and 6 A. 509. Rel. on.

1.A. Confession by. See Confession.—7.**2. Deception by—**See Cheating.—19.**3. During trial.**

1. Where an accused is clearly guilty and instead of throwing himself at the mercy of the Court throws mud on respectable witnesses, his conduct should be considered by the Magistrate in awarding sentence. 1929 Sind 253=1929 Cr. C. 682.
2. A thief imputing unchastity to complainant's wife aggravates his offence. 13 P. L. R. 1913.
3. Presumption of innocence of accused is not affected by the conduct of the accused in the trial, as to how he pleads or fails to plead in the proceedings. The subsequent conduct or statement of accused may affect his credibility. 46 A. 64=1924 A. 229=25 Cr. L. J. 327.

4. Evidence of.—

1. It is difficult to believe that a grown up girl would have submitted to being carried about and raped without protesting especially when it appears that she was now and then left by herself. 1931 L. 401=32 P. L. R. 98=133 I. C. 560.
2. A statement made by the accused to the Police immediately after they were seized explaining the circumstances which brought them to the scene of crime, when at variance with that made by them in Court, is admissible as showing that conduct of accused was not that of innocent persons. 1932 Sind 16=25 S. L. R. 391, 20 S. L. R. 74=1926 Sind 151=27 Cr. L. J. 456 Fell.

Conduct—(contd.)

5. Instances of relevant—.

1. Absconding. See Absconding. 62 I. C. 545=22 Cr. L. J. 529, 13 M. 426 (432), 9 A. 528, 1930 O. 324=126 I. C. 684, 2 C. W. N. 81, 1934 A. 776=35 Cr. L. J. 919, 1935 Pesh. 75.
2. Agitated demeanour. 1925 M. 574=26 Cr. L. J. 840.
3. Antedating document to support plea of alibi. 13 M. 426 (432).
4. Attempting to alter a document to fit in with one's defence. 1934 L. 695=35 P. L. R. 738.
5. Attempts to stifle justice by bribing or tampering with the officers of justice or by preventing the presence or procuring the absence of witnesses. S. 8, ill (e) Evidence Act.
6. Being in possession of fruit of crime. 13 M. 426, S. 8, ill (i), Evidence Act.
7. Concealing or destroying evidence. S. 8, ill, (e and i) Evidence Act.
8. Concealing one's identity or disguising one's person. 13 M. 426 (432).
9. Delay in prosecuting. 14 B. L. R. 386. See Delay.
10. Fabricating false evidence. 13 M. 426.
11. Feigning insanity. 3 W. R. Cr. 23 (24).
12. Omission to make protestation of innocence when accused of an offence or when subjected to severe treatment. 22 C. 391.
13. Payment of embezzled money to the person to whom it is due (not necessarily evidence of guilt). 1930 O. 324=126 I. C. 684.
14. Pointing out places connected with the offence. See Discovery.
15. Pointing out stolen property. See Discovery.
16. Production of instrument of crime. See Discovery.
17. Production of stolen property. See Discovery.
18. Proof of innocence—Anything which tends to explain the accused's conduct and furnishes a notice other than guilty conscience is relevant under S. 9, Evidence Act. 62 I. C. 545=22 Cr. L. J. 52.
19. Terms and manner of making complaint to others. (Crying, etc). 1925 N. 74=83 I. C. 142=23 Cr. L. J. 1214.
20. The conduct of accused person immediately after the commission of crime is relevant fact. He can lead evidence that at the very time he was accused he gave an explanation of his innocence. 1935 Sind 145 (165)=1935 Cr. C. 753.

6. Of Complainant—.

1. A person is seen running down a street in a wounded condition, naming his assailants and the circumstances under which injuries were inflicted. Held, whatever he says and does may be proved as whole. 7 A. 383.
2. Statement of ravished girl immediately after the rape, to witnesses who saw her crying and who asked her the reason thereof is admissible under S. 8, to corroborate the girl under S. 157, Ev. Act. 25 Cr. L. J. 1214=1925 N. 74, 1926 P. 58=26 Cr. L. J. 1475, 4 L. L. J. 491=1921 L. 258.
3. If the aggrieved person does not make a complaint but only makes a statement it is not admissible under S. 8, as it does not explain or accompany any conduct. S. 8, ill (j) and (k).
4. A person who was robbed made a statement to Chaukidar or Panch. Held, it was admissible under S. 8 as part of the *res gestae*. 6 P. 747=1923 P. 162=29 Cr. L. J. 106.
5. The complaint should be made soon after. A complaint made 8 days after the occurrence was held admissible while one made three weeks after was rejected. *Phipson 7th Ed. 111, R. V. Hedges 3 Cr. App. R. 262.*
6. If a ravished girl only answers questions it is not a complaint. 1926 P. 58=59 I. C. 1043, 1930 L. 84=120 I. C. 539. See 17 N. L. R. 189.

Conduct—(contd.)

7. Making a complaint under S. 8 should be treated as evidence of the facts stated, and are merely evidence of non-consent and of the consistency of the conduct of the complainant with the story told in the witness box. 1931 M. 233=131 I. C. 456; 1925 N. 74=25 Cr. L. J. 1214, 43 I. C. 443.
8. Where the complaint is covered by S. 8, the complaint may be proved even though the complainant has in the meantime died or cannot be found. 1928 P. 162=6 P. 747=29 Cr. L. J. 106.
7. Of Prosecutrix in rape case—. See Rape
8. Person whose conduct is relevant.
 1. A person against whom an offence is committed, is not a party in a case cognizance of which is taken on Police report, but the conduct of such person is relevant under S. 8 as he is a "person an offence against whom is the subject of any proceedings." 7 A. 385.
 2. A letter written by a relation of the accused, referring to an attempt to raise money to buy off the prosecution, is inadmissible against the accused, and cannot be used as admission against him, unless it is shown that it was written with his knowledge and authority. 1925 A. 405 (408-409)=26 Cr. L. J. 881=86 I. C. 817.
 3. S. 8 does not apply to the conduct of a witness. What a witness states at the time of the occurrence in respect of an occurrence itself is *res gestae* under S. 6. But a statement with regard to an event which took place a year ago would not be part of *res gestae*. 1926 C. 139 (145)=53 C. 372.
 4. The conduct of a person who is neither party nor witness is entirely irrelevant. 17 N. L. J. 274.
 5. The conduct of complainant is relevant. 1925 N. 74=25 Cr. L. J. 1214, 30 I. C. 292.
 6. The fact that complainant at first said that certain persons were the real culprits, is relevant. 25 P. W. R. 1910 Cr.
9. Previous.
 1. Prosecution cannot lead evidence that the accused has been guilty of criminal acts other than those covered by indictment, tending to show thereby that the accused is a person likely from his criminal conduct or character to have committed the crime. 97 I. C. 1041=1927 Sind 28=27 Cr. L. J. 1217.
 2. Evidence of previous or subsequent defalcations whether they are subject matter of the charge or not is admissible to prove guilty intent and also to anticipate the defence of the non-existence of such intent. 1927 S. 28=27 Cr. L. J. 1217.
 3. In a trial for murder, evidence was given that on a previous occasion accused conspired together, murdered a person and implicated their enemies. Held, the evidence is not admissible under S. 8, S. 9, S. 14, or S. 54, Evidence Act. But it can be admitted to explain the conduct of falsely implicated persons in absconding. 22 Bom. L. R. 1274.
 4. The fact that the complainant at first said that a certain person was the real culprit is relevant. 25 P. W. R. 1910 Cr.=11 Cr. L. J. 425.
 5. A Judge cannot take judicial notice of the previous conduct of the accused and import his personal knowledge about it in the case. 1931 S. 127, 38 C. 153, 36 M. 168.
 6. Preparations and previous attempts to commit the offence are admissible as previous conduct. S. 8, ill. (c) and ill. (d), Evidence Act.
10. Production of stolen property.

Fact of production of share of stolen property is admissible as conduct under S. 8. 1932 B. 286, 14 B. 260 Rel. cn. 11 B. H. C. R. 242 and 1930 B. 244 Ref.
11. Recovery of document from accused's possession.
 1. A document becomes evidence when it is written by or is in the possession of the person against whom it is sought to be proved, or when it becomes admissible under S. 10 as the act or writing of a co-conspirator. 16 I. C. 257.
 2. The fact of possession of a document is relevant under S. 8, Evidence Act. In

Conduct—(contd.)

such a case the document is original and not secondary evidence, as it is relied on as a piece of evidence found in accused's possession. 1923 B. 77=23 Cr. L. J. 322.

12. Signs and Gesticulation as—

1. Signs made by a person, unable to speak, in reply to questions asked are mere statements and not relevant as conduct. 7 A. 385.
2. Gesticulations of a deaf and dumb person are not admissible as conduct. 5 O. C. 246.

13. Silence as— S. 8, ill. (g), Evidence Act.

1. The statement of an accused, although it may amount to an admission in his favour, is relevant otherwise than an admission under S. 21, Cl. (iii) as negating any inference that may be drawn against him as to his guilt in consequence of his alleged silence. 1935 Sind 145 (165).
2. Silence does not amount to admission unless the occasion is such that a contradiction or explanation may reasonably be expected. 28 B. 479, 2 Q. B. 534.
3. If the injured person named the prisoner as his assailant to a third person in the presence of the prisoner, and the prisoner did not deny that he had done the act complained, the statement was admissible under S. 8. 10 C. 302. See 12 L. C. 87.

14. Statements affecting—

1. Statements made to a party, or in his presence and hearing, which affect his conduct is relevant. S. 8, Expl. II, Evidence Act.
2. The statement in order to be admissible must affect the conduct of the party, and the conduct which is thus affected must itself be relevant. 30 Cr. L. J. 681.
3. A Police Officer stated to the complainant in the presence of accused that accused was going to show various places connected with the theft and thereupon he did show the places, it was held that conduct of the accused was not affected by the statement of the Police Officer and was inadmissible as confession as no discovery was made. 52 I. C. 601=20 Cr. L. J. 681. See 152 J. C. 473.

15. Statements explaining or accompanying relevant—

1. Supposing a person is seen running down a street in a wounded condition and calling out the name of his assailant, and the circumstances under which injuries were received. Here what he says and does can be proved as a whole. 7 A. 383.
2. Statements made by an accused at the time of pointing out places connected with the crime, are admissible and only those parts which are essential complement of acts done or refused to be done. 3 B. 12, 1933 N. 136=34 Cr. L. J. 505.
3. The statement and the act must be so blended together as to form a part of thing observed by the witnesses. 1933 N. 136=34 Cr. L. J. 505=143 I. C. 17.
4. If a statement does not explain or accompany any relevant conduct, it is inadmissible. 54 M. 931, 45 I. C. 904.
5. If a girl immediately after rape is seen by witnesses crying, and on being asked says that she has been ravished, the statement is admissible as explaining the act of crying. 1925 N. 74=25 Cr. L. J. 1214=82 I. C. 142. See 4 L. L. J. 491=1921 L. 258.

16. Statement of accused as— See Statement to Police.

1. Though the statement of accused to the Police may be inadmissible under S. 162, Cr. P. C., evidence of their conduct is admissible under S. 8. 1932 M. 391.
2. A statement made by accused immediately after they were seized explaining the circumstances which brought them on the scene of occurrence can be proved if at variance with that given in court, in order to show that the conduct of accused was not that of an innocent person. 1932 Sind 16=25 S. L. R. 391, 1926 Sind 151=27 Cr. L. J. 456 foll.

17. Subsequent. See Cheating—39.

1. The mere fact that an accused pointed out several places to a Magistrate, where various incidents narrated by approver took place is not admissible as evidence of conduct and is valueless in determining his guilt. 1929 L. 794=31 Cr. L. J. 269.
2. Different persons are differently constituted and some though innocent deliberately

Conduct—(concl'd.)

abscond rather than face the trial, and some do other equally foolish things such as make a false admission of guilt or pay off the amount alleged to be stolen or embezzled in the vain hope that they may escape a criminal prosecution or get off with a light punishment. Such subsequent conduct cannot dispense with the positive proof of the guilt of accused. 1930 O. 324=31 Cr. L. J. 1081.

3. If the raped girl went to her relatives straight after the occurrence and complained on her own initiative about the rape, her conduct has a direct bearing but if she only answered questions put to her, her statement would be hearsay. 1926 P. 58=89 I. C. 1043=26 Cr. L. J. 1475.
4. S. 8 does not render a statement by a woman raped admissible, when there is nothing to confirm or corroborate it. 1930 M. W. N. 702.
5. The mere fact that the statement is made in answer to a question is not of itself sufficient to make it inadmissible as a complaint. 1921 L. 258.
6. Where a tender girl who was raped, made a statement just after the occurrence crying and weeping, it is admissible under S. 8, as explaining the act of crying and by way of corroboration under S. 157. 1925 N. 74=25 Cr. L. J. 1214.
7. The evidence of absconding is admissible to show the conduct of the accused, which implies that he is concerned in the crime. 22 Cr. L. J. 529.
8. Where the accused after a murder was committed, was in a very agitated state of mind and made a statement which led to his being asked to show the spot where the weapon was concealed. Held this evidence of conduct under S. 8 rendered highly probable the oral evidence in the case. 1925 M. 574=26 Cr. L. J. 840.
9. Where an accused was sent up before a Magistrate under S. 164, Cr. P. C., to have his confession recorded but made a statement. Held, the statement was admissible as evidence of conduct. 6 P. 747=1928 P. 162=29 Cr. L. J. 106.
10. If an accused points out the spot where the stolen property is concealed, it amounts to conduct, proof of which is admissible under S. 8, 35 I. C. 962.
11. An informer's statement to the Police that he purchased opium from accused is not admissible, but finding of marked coins on the accused and opium on the informer are circumstances in the case, from which it may be inferred that the accused sold the opium. 12 Cr. L. J. 479=12 I. C. 87.
12. Statement accompanying conduct and explaining such conduct are relevant. 45 I. C. 904.
13. The fact that the complainant at first said that a certain person was the real culprit is relevant. 25 P. W. R. 1910 Cr.=11 Cr. L. J. 425.
14. [In a trial under S. 147, the subsequent conduct of accused cannot be taken as evidence under S. 8. 54 I. C. 775=21 Cr. L. J. 167.
15. The evidence of conduct of an accused person, unless it is incompatible with his innocence, is, in fact a make weight and care may be taken that it may not have an exaggerated effect. 1923 P. 13=72 I. C. 961=24 Cr. L. J. 497.
16. Subsequent conduct of the accused is admissible to show his state of mind and that he knew he was party to cheating. 1922 A. 244=23 Cr. L. J. 671.
17. The evidence of an accused person's conduct may be used as corroboration of an approver's story. 10 L. 265=1928 L. 681=111 I. C. 435=29 Cr. L. J. 851.
18. Paying back embezzled money is relevant as subsequent conduct 1930 O. 384=31 Cr. L. J. 1081=126 I. C. 684.

CONDUCTING PROSECUTION.—See Prosecution—4.**CONFISCATION.—See Escheat—Disposal of Property—4.****CONFESSION.****1. Acceptance in Part.**

1. Confession must be read and accepted as a whole, unless there is evidence to contradict any portion thereof, in which case such portion may be rejected. 1926 L. 554, 46 I. C. 705, 53 I. C. 145, 1930 O. 113=31 Cr. L. J. 575, 1934 L. 620, 52 A. 1011, 1933 R. 326, 1934 L. 673, 1933 R. 204, 1930 A. 192, 52 A. 1011.

Confession—(contd.)

2. If a Court believes the confession, it need not accept the circumstances alleged by the accused in extenuation. It can believe that part which tells against him and reject that part which tells in his favour. 1930 M. W. N. 785.
 3. If an accused is to be convicted on his own confession, it must be taken as a whole. It would be unsafe to use the part against him and discredit the part in his favour. 1928 M. 493=109 I. C. 605, 39 C. 855, 21 C. 955, 88 I. C. 555.
 4. A Court of Law cannot pick out different statements made by an accused person and piece them together so as to make a new statement. 75 I. C. 152.
 5. When certain facts are deposed to as discovered in consequence of information received from the accused, so much of the information as relates distinctly to the fact thereby discovered, will become admissible. 49 C. 167.
 6. When the only account as to what happened on the night of murder is given by the accused himself and it is contained in a statement which amounts to an admission, the statement should be accepted in its entirety and if it establishes any mitigating circumstances, the accused must get the benefit of it. 1930 L. 269=121 I. C. 178=31 Cr. L. J. 226=31 P. L. R. 35.
 7. All the parts of a confession are not entitled to equal weight. If sufficient grounds exist the part that charges the prisoner may be believed and while that which is in his favour may be rejected. 98 I. C. 178=1926 O. 618=27 Cr. L. J. 1282, 40 C. 873, 1926 L. 554=28 Cr. L. J. 39, 53 I. C. 145, 1934 O. 222.
 8. Court must accept or reject confession as a whole. It cannot accept inculpatory portions and reject exculpatory portions. 1935 L. 671=156 I. C. 529=36 Cr. L. J. 966, 52 A. 1011 Rel. on.
 9. Where there is no other evidence to show affirmatively that any portion of the exculpatory element in the confession is false, the court must accept or reject the confession as a whole. 1931 A. 1=52 A. 1011=32 Cr. L. J. 362=129 I. C. 258, 1933 L. 232=34 Cr. L. J. 318.
 10. The entire confession of an accused need not be rejected if part of it has been found to be false, 1934 O. 222=35 Cr. L. J. 894, 1926 O. 618 foll., 1933 O. 226 Dist.
- 2. Admissibility of.—***See Confession by Co-accused, Confession to Police Officer.*
1. A Judge should decide the question of admissibility of confession first and then exclude it from the record if inadmissible and keep its terms from the assessors. 31 I. C. 767=18 Cr. L. J. 383.
 2. In case of doubt as to the admissibility of confession, the Court should lean in favour of accused. 52 C. 67=1925 C. 537=26 Cr. L. J. 782.
 3. Admissibility of a confession is a matter which is to be decided after a full consideration of the evidence and the particular circumstances of each case. 1923 L. 676=29 Cr. L. J. 385, 1923 P. 13 Appr., 1925 L. 605 and 1925 C. 587 Dist.
 4. Confession made to Police is admissible in civil proceedings. 32 I. C. 18.
 5. Admissibility of confession must be decided before contents of confession are looked at. 1925 A. 606=86 I. C. 1001=26 Cr. L. J. 937.
- 3. Before Coroner.**
- A statement made voluntarily by an accused, a suspect in inquest proceedings before coroner is admissible against him on his trial for the offence. 1923 B. 52=130 I. C. 107=29 Cr. L. J. 651, 50 B. 111=1926 B. 151.
- 4. Before the Prosecution Evidence is recorded.**
- A confessional statement of the accused before examination of all the witnesses is inadmissible. 1930 L. 454=123 I. C. 540=31 Cr. L. J. 533, 50 C. 223.
- 5. Before villagers.—***See—17.*
- 6. By co-accused.—***See Confession by co-accused. S. 30, Evidence Act.*
- 7. By Conduct.**
1. Mere conduct is not confession. An assertion may be made by nod or gesture. 1925 L. 111=27 Cr. L. J. 552.

Confession—(contd.)

2. A confession made by nod or gesture will be inadmissible if it is covered by S. 24 if made by mouth. 42 I. C. 1002, 14 B. 260, 37 C. 467.
3. Where the accused was not shown to understand English and he was asked in broken English whether he committed rape and he nodded his head and salammmed in reply, it was held that conduct did not amount to an oral confession. 1930 L. 84=120 I. C. 539.
4. Making of counterfeit coin before Police Officer is not confession by conduct and is not inadmissible under Ss. 25-26. 1931 A. 9=32 Cr. L. J. 1006.
5. Giving a specimen of one's writing on a blank paper for comparison of hand-writing is neither a confession nor a statement. 56 B. 304=1932 B. 406.
8. **By deception or under promise of secrecy.** S. 29, Evidence Act.
 1. Where confession was obtained from accused on being told that his brother-in-law had given out that he was guilty. Held, it was admissible. 20 W. R. Cr. 33.
 2. The mere fact that recording Magistrate did not give warning to accused under S. 164, it does not under S. 29 invalidate the confession. 55 M. 711=1932 M. 431, 1932 M. 748, 1933 Sind 166, 1933 O. 414. See 14 L. 290.

9. Collective confession.—See Admission.**10. Conflicting with evidence.**

1. Admission by a party in a case in which charge is baseless and prosecution is carried only to harass a party, is not voluntary and therefore not binding. 1930 L. 364=120 I. C. 615=31 P. L. R. 765.
2. If the details in the confession are in conflict with evidence for the prosecution and confession was retracted on the first possible occasion. Held, it was not genuine. 1923 L. 429=75 I. C. 762=25 Cr. L. J. 58.

11. Conflicting with medical evidence.

Confession conflicting with medical evidence and probably induced by Police should not be relied upon. 3 P. R. 1867 Cr.

12. Definition of.

confession is an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed the crime. *Stephan's Digest*, Art. 27, 1930 A. 29=120 I. C. 257=31 Cr. L. J. 26, 16 P. R. 1886 Cr., 20 P. R. 1905 Cr., 6 B. 34, 14 B. 260 (263), 6 A. 509 (539).

13. Distinction between admission and—. See Admission.**14. Doctor—confession to.**

1. Confessional statement of the doctor that his report was made out according to the instructions of the petitioner was not admissible inasmuch as its maker had already rendered himself liable to criminal prosecution, at the time when it was made. 25 Bom. L. R. 248. *Cont.* 1935 C. 26=155 I. C. 261=38 C. W. N. 1015, where it was held that although it is inadmissible under S. 32(3), Evidence Act, yet is admissible under S. 10 to prove a conspiracy.
2. A medical attendant is held not to be a person in authority under S. 24. 4 Cr. L. J. 49.

15. Evidentiary value of—. See—17.

1. The law does not require that a confession should be corroborated. It is for the Court to see whether it believes the confession or not. 52 I. C. 881.
2. The fact that a statement made by an accused under circumstances of hope, fear or otherwise, goes only to minimise its weight. 15 Cr. L. J. 326.
3. A confession to be of value must be voluntary or without any pressure. 35 A. 260.
4. A statement of the accused containing allegation that it was not voluntary, cannot be taken to be voluntary one simply because he signed it. 37 C. 735.
5. The confession and other statements which a prisoner has made in verification, and the deposition he has given before the Magistrate are all evidence against him. 38 C. 169. See 46 C. 700.

Confession—(contd.)

6. Where the Magistrate in whose presence a confession is made, is called as a witness and deposes that it was made fearlessly and willingly and not in the presence of a Police man, it is voluntary and can be acted upon. 2 L. L. J. 653.
 7. If the case entirely rests on confession and the manner in which confession was obtained, is uncertain, the accused should get benefit of doubt. 1930 L. 88=119 I. C. 420=30 Cr. L. J. 1080.
 8. All the parts of a confession are not entitled to equal weight. Some portion of it may be believed, while the rest may be rejected. 1926 O. 618.
 9. Confession made to respectable persons and not obtained as a result of duress is sufficient to convict a man. 28 Cr. L. J. 104=99 I. C. 232.
 10. Were threats are made to the accused but the accused makes the statement deliberately and uninfluenced by the threats S. 24 does not apply. 49 B. 642.
 11. Where there is reason to apprehend that the influence of the Police is still continuing on the mind of accused, confession has little weight. 1934 A. 81=56 A. 302.
 12. Conviction can be sustained solely on confession. But court expects some corroboration as act of prudence in case of retracted confession. 1934 L. 89.
 13. In case of deliberate confession by grown up man, statement can form basis of conviction. 1934 O. 405=35 Cr. L. J. 1113.
 14. Voluntary confession in serious offences is rare. 55 A. 91.
- 16. Extorting.—***See* Wrongful Confinement.
- The Indian Police also whose duty is to make the preliminary report on criminal cases are still credited with suppressing incriminating evidence for a monetary consideration, as well as with extorting false confession by torture or threat through mistaken zeal or other motive all tending to obscure the truth. Five men were arrested and maltreated by constables of Bengal at night and they confessed that they had committed the murder. When the trial began the missing man came into court. *Lyon's Med Jur.* 1904, P. 18.
- 17. Extra judicial.—***See* Confession by inducement—6.
1. Extra judicial confessions are not entitled to any weight, because it is impossible to ascertain the exact words used by the person. 1928 L. 858=111 I. C. 449, 14 P. R. 1911 Cr., 1932 O. 324.
 2. Although evidence of admission of guilt to villagers is sufficient to justify the conviction, still the evidence must be closely scrutinized. 117 I. C. 737=30 Cr. L. J. 829=1929 O. 272, 112 I. C. 897, 1929 O. 167.
 3. Extra judicial confession must be true and not a fabricated one to provide additional evidence for what rightly or wrongly the investigating officer considers to be a weak case. 117 I. C. 737=30 Cr. L. J. 829=1929 O. 272.
 4. It is not safe to base conviction on extra judicial confession. 1928 L. 858=111 I. C. 449=29 P. L. R. 486, 14 P. R. 1911 Cr.
 5. Confession before villagers who are trustworthy witnesses may be as strong evidence against accused as confession before Magistrate and requires no corroboration. 112 I. C. 897=30 Cr. L. J. 33=1928 O. 393.
 6. Extra judicial confession by boys cajoled or frightened, but retracted before the Committing Magistrate does not prove a case against persons jointly accused with the boys. 14 P. R. 1911 Cr.
 7. Extra judicial statement cannot be proved by a vague general statement. It need not contain the exact words of the accused. 5 L. 140=1924 L. 498=25 Cr. L. J. 914.
 8. Confession to respectable person and not obtained as a result of duress is sufficient to convict the confessor. 91 I. C. 232=28 Cr. L. J. 104=1928 O. 393.
 9. A retracted extra judicial confession in law can be sufficient basis to support a conviction, though it must be dealt with caution. 1929 Sind 253.
 10. Where the accused in full possession of his faculties make admission of guilt to various persons, they are not ineffective only because they are subsequently retracted. 1926 O. 622=98 I. C. 250, 1925 A. 627, 89 I. C. 903=24 Cr. L. J. 1431.

Confession—(contd.)

11. Extra judicial confession must be received with care and caution. 1932 O. 324=33 Cr. L. J. 45, 1928 L. 858=111 I. C. 449, 12 Mys. L. J. 73.
12. Confession made to crowd is admissible. The mere fact that Police man is one of crowd, it is not inadmissible. 1934 A. 132=147 I. C. 630.
13. A confession recorded by a Magistrate of Native State can be admissible as extra judicial confession. 1934 Sind 103, 1925 B. 529=49 B. 642.

18. In Extradition Proceedings.

Evidence given voluntarily by accused on his own behalf in extradition proceedings in a foreign country, without claiming any privilege under S. 132, Evidence Act, is admissible against him as an admission on his trial in British India. 1928 Sind 15=112 I. C. 50.

19. In Police custody.—See Confession by inducement—5.**20. Presumption as to genuineness of—** S. 80, Evidence Act.

1. Presumption under S. 80 as to confession arises only if it has been taken according to law. It then proves itself by mere production. 1934 A. 81, 6 L. 415=1925 L. 605, 1925 L. 315, 52 C. 67.
2. If formalities under S. 164, Cr. P. C., are not complied with, S. 80 does not apply. Cr. A. 1341 of 1934 (Lah.), 6 L. 415, 52 C. 67, 7 C. W. N. 220.

21. Proof of.—

1. Confession made in the course of trial or inquiry must be reduced into writing, *vide* S. 364, Cr. P. C. Oral evidence is inadmissible except to the limited extent mentioned in S. 533. 35 A. 260, 45 M. 230.
2. There was a difference of opinion whether confession made to a Magistrate during Police investigation should be reduced into writing as required by law or not. 14 L. 290=1933 L. 716, 45 M. 230, 1934 A. 351, 1934 A. 81 *Cont.* 49 C. 167, 17 C. 862, 2 C. W. N. 702, 1932 B. 533, 49 B. 642.
3. The matter has been finally decided by the Privy Council. It has been held that where Magistrate has neither acted nor purported to act under Ss. 164-364 and nothing has been tendered in evidence as recorded or purporting to be recorded under Ss. 164-364, oral evidence of Magistrate is not admissible. 1936 P. C. 253 (2), 14 L. 290=1933 L. 716, 1936 L. 247=16 L. 912, 21 P. R. 1881, 11 P. R. 1918, 1934 A. 81=56 A. 302 and 1922 M. 40 impliedly overruled. 1936 R. 350.

22. Retracted.—See Accomplish—7.

1. It is unsafe to base a conviction of murder on the retracted confession unless it is corroborated by trustworthy evidence. 75 P. L. R. 1917, 38 B. 156, 36 I. C. 133 70 P. L. R. 1918, 1934 L. 715, 1932 L. 557, 1932 A. 228, 1933 L. 388=1934 Sind 172, 1934 O. 405, 1934 L. 89, 1934 O. 388, 1934 L. 8, 1932 Sind 201=34 Cr. L. J. 147, 1932 B. 533, 1930 P. 289, 1930 N. 259, 57 C. 488=1930 C. 633, 1930 L. 257=11 L. 106, 38 C. 559, 18 A. 78, 46 I. C. 1005.
2. Where the accused makes a confession after all the precautions necessary have been taken by the Magistrate, and the confession has been made voluntarily, and there is any sufficient reason for believing that the confession is true. Cr. L. J. 1258, 1927 O. 369, 1929 O. 167=30 Cr. L. J. 360, 1932 O. 321.
3. Accused can be convicted on retracted confession, if the Court thinks that it is voluntary and true. 1930 A. 29=120 I. C. 257, 30 P. R. 1914 Cr.
4. It is a rule of practice not to rely on a retracted confession unless corroborated. 57 C. 488=1930 C. 633=126 I. C. 547=1930 Cr. C. 969.
5. Where a retracted confession is the sole evidence against the accused, it can be of little value especially remembering the competition for a pardon which sometimes occurs where a number of persons are suspected of an offence and some have already confessed or are believed to have confessed. 26 P. R. 1916 Cr., 1927 L. 682, 6 P. W. R. 1916 Cr.
6. A confession made by an accused before the Committing Magistrate, which he retracts is of no value as evidence against him. 15 P. W. R. 1915 Cr.

Confession—(contd.)

7. A confession retracted at an early date must be very carefully scrutinized before it is accepted by Court. 25 P. W. R. 1909 Cr.=153 P. L. R. 1909.
8. There is no rule of law requiring a retracted confession to be supported by corroborative evidence in material particulars. The use to be made of such a confession is more a matter of prudence than of law. 19 Cr. L. J. 361, 57 C. 483, 71 I. C. 497, 1929 B. 327, 1925 A. 627=26 Cr. L. J. 1431, 81 I. C. 62, 19 B. 728, 38 C. 559.
9. A retracted confession uncorroborated in material points by other reliable evidence is of no value. 58 I. C. 49, 22 Bom. L. R. 1274.
10. A conviction based on an uncorroborated confession is not bad, if the surrounding circumstances point to the confession having been the outcome of a voluntary act on the part of the confession. The fact that it was retracted before the Committing Magistrate would not deprive it of its voluntary character. 20 Cr. L. J. 562.
11. Where an accused when retracting a confession alleges ill-treatment and inducement by Police to extract the confession, the onus is on him to prove such ill-treatment and inducement. 22 C. W. N. 809=47 I. C. 811=19 Cr. L. J. 959, 1932 Sind 201, 6 L. 415, 27 Cr. L. J. 983, 1923 P. 13, 52 I. C. 50, 25 B. 168.
12. Conviction can be based on retracted confession if the confession was voluntary. 1930 L. 88=119 I. C. 420=30 Cr. L. J. 1080, 1929 M. W. N. 791, 104 I. C. 247=1927 L. 682, 103 I. C. 800, 6 L. 415, 75 I. C. 152=25 Cr. L. J. 904, 81 I. C. 62, 30 P. R. 1914, 1929 B. 327, 1929 M. 837, 3 Bom. L. R. 441, 52 I. C. 881, 1934 L. 715, 1934 L. 89, 55 M. 903, 1931 O. 412=33 Cr. L. J. 16, 1929 M. 827, 1930 A. 29, 1922 P. 492, 52 I. C. 50, 21 M. 83, 19 B. 728, 23 B. 316, 29 A. 434, 20 A. 133.
13. A retracted confession need not be supported in independent and material particulars. 81 I. C. 62=25 Cr. L. J. 574, 23 B. 316, 29 A. 434 and 21 M. 83 Foll.; 10 M. 295 and 12 M. 123 Diss. from, 1930 M. W. N. 785, 1929 M. 837.
14. Conviction based on a retracted confession which was voluntary and sufficiently corroborated is legal. 1927 L. 780=103 I. C. 112=28 Cr. L. J. 656.
15. If the retracted confession is not corroborated and there are suspicious circumstances, the accused should be acquitted. 101 I. C. 479, 1928 L. 329=107 I. C. 614.
16. Where the confessions do not stand uncorroborated, and the accused are unable to explain away their confession though retracted, the confessions alone are sufficient to convict them. 98 I. C. 250=27 Cr. L. J. 1306=1926 O. 622.
17. A confession is sufficient to base conviction, though retracted at the first possible opportunity, if corroborated by the production of articles for which the accused can offer no explanation. 11 L. 106=1930 Lah. 257=30 Cr. L. J. 1046.
18. The weight to be given to a retracted confession depends on the circumstances under which the confession was made and retracted, including the reasons given by the prisoner for its retraction. 1930 N. 239, 24 Cr. L. J. 904=75 I. C. 152, 70 A. 133, 1931 O. 412=33 Cr. L. J. 16, 96 I. C. 647, 1925 L. 605, 6 L. 415, 21 M. 83.
19. The mere fact that a confession is retracted is not sufficient to make it appear that it was unlawfully induced. 11 L. L. J. 5, 96 I. C. 647.
20. Where the accused in full possession of his faculties makes admission of guilt to various persons, they are not ineffective only because they are subsequently retracted. 98 I. C. 250=27 Cr. L. J. 1306=1926 O. 622, 1925 A. 627.
21. Little or no weight should be attached to retracted confession. 1927 P. C. 215=8 L. 230.
22. The retracted confession of an accused has no evidentiary value against a co-accused but it can be taken into consideration along with other evidence against the accused. 1935 O. 354=155 I. C. 527=36 Cr. L. J. 767.
23. Pointing out places and things is no corroboration of retracted confession. 1936 A. 373.
24. If a grown up man makes a confession, he can be convicted on it even though he subsequently retracts it. 1935 O. 354=155 I. C. 527=36 Cr. L. J. 767.
25. In a case of poisoning by wife, a retracted confession is sufficiently corroborated by the recovery of articles stained with poison. 15 L. 310=1934 L. 150 (2).

*Confession—(concl'd.)***23. Persons taking part in investigation.** See Confession to Police officers—9.**24. Value of—.**

1. There are five classes of confession. (1) Recorded with formalities under Ss. 164-364. (2) Imperfectly recorded and cured by S. 533, Cr. P. C. (3) Where defect is not cured and confession is proved by evidence of Magistrate. (4) Where Magistrate refuses to record confession but hears it. (5) Where accused appears on his own accord and makes oral confession. Held, (1) and (2) are weighty, (3) less weighty and (4) of little weight. The weight to be attached to (5) depends on circumstances. 1936 L. 247=16 L. 912=162 I. C. 80+. Overruled by 1936 P. C. 253 (2).
2. Confession made to Police can be used to contradict the confessor when he is examined as a defence witness. 61 C. 967=1934 C. 616.

25. Voluntary—. See Confession or statement (Recording)—14.

1. Voluntary confession in serious offences is rare. 55 A 91, 6 A. 509.
2. A confession which is voluntary is admissible, even if it is false. 1934 C. 853, 154 I. C. 273, 52 C. 67=1925 C. 587, 4 Cr. L. J. 332.

26. What is and what is not—. See Admission.

1. A statement in which accused admits seeing the preparation for crime but denying participating in it or protesting against it is not confession. 7 A. 646, 41 C. 601, 16 P. R. 1886.
2. A statement that articles of murdered man were given to him by another person is not confession. 15 C. 589. See 16 P. R. 1886 Cr.
3. In a case of theft if the accused says he took away the thing in joke it is not confession. 1934 P. 651.
4. Accused was asked whether stolen camel and thief were in his house. He denied it falsely. Held, it was inadmissible as confession as prosecution relied upon it. 16 P. R. 1906 Cr.
5. Exculpatory or explanatory statement containing damaging or incriminating admissions is confession. 49 B. 642, 46 B. 961, 43 I. C. 605, 6 B. 34, 19 B. 363, 14 B. 260.
6. An admission of being present at the time and the place of murder is confession. 22 Cr. L. J. 68=59 I. C. 324.
7. A statement by accused that articles produced by him belong to deceased is confession. 5 L. L. J. 128.
8. A statement by accused that he burned the cloth of deceased and showing the place is confession. 50 B. 683=1926 B. 513.
9. A promise to restore stolen property is confession. 16 P. R. 1906.
10. Admitting that stolen property is in one's own possession is confession. 1934 L. 695.
11. A statement in which accused claimed the box containing opium, is confession. 11 Cr. L. J. 153.
12. Admission by accused that he received the incriminating things from another might amount to confession. 46 B. 961, 19 B. 363, 6 B. 34.

CONFESSION OR STATEMENT—(RECORDING OF). Ss. 164—364, 533, Cr. P. C.**1. Applicability of S. 164, Cr. P. C.**

1. S. 164 does not enable the Police Officer, who has obtained an incriminating statement from a person, to send such person practically under custody to a Magistrate to have his statement recorded. 27 C. 295.
2. A statement recorded in an inquiry conducted by Criminal Investigation Department before the sanction of Government under S. 197, Cr. P. C. is obtained is not covered by S. 164. 1927 Bom. 501=106 I. C. 100, 19 B. 51.
3. S. 164 does not apply to confessions recorded in investigation conducted by Police in Calcutta. 52 C. 67, 5 P. 171.
4. A confession made to a Magistrate of Native State and duly recorded is admissible in

Confession—(contd.)

7. A confession retracted at an early date must be very carefully scrutinized before it is accepted by Court. 25 P. W. R. 1909 Cr.=153 P. L. R. 1909.
8. There is no rule of law requiring a retracted confession to be supported by corroborative evidence in material particulars. The use to be made of such a confession is more a matter of prudence than of law. 19 Cr. L. J. 861, 57 C. 488, 71 I. C. 497, 1929 B. 327, 1925 A. 627=26 Cr. L. J. 1431, 81 I. C. 62, 19 B. 728, 38 C. 559.
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19. The mere fact that a confession is retracted is not sufficient to make it appear that it was unlawfully induced. 11 L. L. J. 3, 96 I. C. 647.
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Confession or statement—(Recording of)—(contd.)

evidence in British Courts. 2 P. R. 1909, 22 B. 235, 12 A. 595, 8 P. R. 1907.

5. In case of confession to Magistrate the record is admissible under S. 190, Cr. P. C. and not under S. 164. 1932 M. 500 = 33 Cr. L. J. 586.

2. Applicability of S. 364, Cr. P. C.

1. The rules laid down in S. 364 are applicable to the examination of the accused under S. 342, Cr. P. C. 4 Bom. L. R. 461, 1 Bur. L. R. 320.
2. S. 364 applies only to examination of accused during inquiries and trials, and not during investigation, which are governed by S. 164. 10 B. H. C. R. 166. See 1 B. 219, 1883 A. W. N. 243.
3. S. 364 applies to the statement of accused. It does not apply to the statement of a person against whom inquiry under S. 202 is being conducted. 32 C. 1085.
4. S. 364 does not apply where there has been no examination of the accused. 11 S. L. R. 52.

3. Certificate or memorandum.

1. The absence of the certificate in the recorded examination of the accused is not necessarily fatal to its admissibility. It can be cured by examining the Magistrate. 7 B. H. C. R. 50, 1930 L. 534 = 129 I. C. 289, 60 I. C. 56, 17 P. R. 1915 Cr.
2. A defect in the certificate can be cured by examining the Magistrate or some other person who was present when the statement was recorded. 3 C. W. N. 387, 22 M. 15, 23 B. 221, 3 P. 872, 45 A. 166, 2 P. R. 1909 Cr., 5 C. 598.
3. The certificate need not be in the hand-writing of Magistrate. It is sufficient if it is signed by him. 8 W. R. 55.
4. A confession does not become unworthy of credit, merely because the memorandum prescribed by law is not written in the exact form. 3 A. 338.
5. The memorandum is no conclusive proof that confession was voluntary. 13 C. W. N. 861, 73 I. C. 257 = 24 Cr. L. J. 561 = 1922 O. 302.
6. A confession without a memorandum that it is voluntarily made is bad in law, and cannot be admitted in evidence. 6 B. 228, 1 B. 219, 7 C. W. N. 220.
7. It is most advisable, that the Magistrate should record a memorandum of enquiry showing what steps he has taken to fully satisfy himself that an accused person is confessing voluntarily. 2 L. 129.
8. An English memorandum required by S. 364 is not necessary in respect of a confession under S. 164. 14 C. 539.
9. When there is no positive evidence that the precautions required by S. 164 were not taken and the certificate required by sub-section (3) is duly appended, the presumption is that the precautions described in the section were duly taken. 1927 L. 682.
10. If a confession is tendered in evidence, which contains a memorandum required by S. 164 (3), a presumption arises under S. 80 of the Evidence Act that all formalities were performed and the document containing the confession is admissible without further proof. 6 L. 415 = 1925 L. 605 = 7 L. L. J. 482.
11. If the defect in the memorandum is of form and not of substance. S. 533, Cr. P. C., will apply and it will be cured. 6 L. 415 = 1925 L. 605 = 7 L. L. J. 482.
12. The effect of omission of a certificate by the Magistrate as to the voluntary nature of the confession is to render the record of confession inadmissible in evidence. 45 I. C. 267 = 19 Cr. L. J. 507, 8 Bom. L. R. 950.
13. When a Magistrate recorded a certificate that the confession was not voluntary, it was held that it was not admissible in evidence. 16 Cr. L. J. 740.
14. A confession not recorded as provided by S. 164 cannot be proved by the evidence of Magistrate. 49 C. 167.
15. Where the Magistrate appended the certificate on old form prescribed before the amendment of S. 164, the irregularity is curable. 1931 L. 196 = 32 Cr. L. J. 579.

4. Copy of confession.—S. 74, S. 80, Evidence Act.

1. Statements recorded under S. 164, Cr. P. C., are public documents, and the public

Confession or statement—(Recording of)—(contd.)

servant in whose custody those documents are is bound to issue copies thereof. 1932 A. 327=130 I. C. 330=33 Cr. L. J. 752=117 I. C. 377.

2. Certified copies of confession are admissible to prove act of Magistrate recording it. Presumption of truth of circumstances arises under S. 80, Evidence Act. 56 A. 302=1934 A. 81 (84).

3. Copies do not prove identity of accused. 56 A. 302=1934 A. 81.

5. Custody of accused after confession.

Persons making confession should be returned to jail and not to custody of police. 1934 O. 19=35 Cr. L. J. 664=148 I. C. 475, 1934 O. 151. It may damage the whole case. 1936 L. 278=37 Cr. L. J. 493, 1936 L. 357=17 L. 419.

6. Discretion to record.

The Magistrate may record the confession or statement; it is not obligatory on him to do so. 11 P. R. 1905, 21 Bom. L. R. 1065, 45 M. 230.

7. Evidentiary value of—. See Confession=15.**8. Handing over confession to Police Officer.**

Where a Magistrate after recording confession made it over to Police Officer. Held, that the procedure was objectionable. 1931 L. 408=132 I. C. 185=32 Cr. L. J. 818, 1936 L. 341=37 Cr. L. J. 504.

9. Incomplete chalan—Confession during.—

1. An incomplete chalan was placed before a Magistrate who recorded formal evidence against an absconder. On the adjourned hearing the absconder was arrested and his confession was recorded under S. 164. Held, it was admissible. 135 I. C. 209=1932 L. 103, 37 C. 467, 110 I. C. 329, 1930 L. 454=31 Cr. L. J. 533.

2. A was charged with murder. Before the Police investigation concluded an incomplete chalan was placed before the Committing Magistrate who after examining some witnesses recorded the statement of the accused under S. 342, Cr. P. C., who confessed his guilt. But when again examined he denied having committed murder and attributed his first confession to the promise of pardon by the Police and also to ill-treatment by the investigation officer. It was found that incomplete chalan was put in with the object of avoiding mandatory provisions of S. 164. Held, that an attempt by Police to get over the mandatory provisions of S. 164 must be deprecated and the confession must be excluded. 1928 L. 724=110 I. C. 329=29 P. L. R. 388=29 Cr. L. J. 697=10 L. L. J. 311.

10. Inspection of—. Whether Public Document.

1. An accused is entitled to inspect statements of prosecution witnesses recorded under S. 164 1932 A. 327=139 I. C. 330=33 Cr. L. J. 752.
2. Record of confessions of accused made by a Magistrate outside British India are probably public documents within the meaning of S. 74. 23 Cr. L. J. 673=69 I. C. 257, 12 A. 595.

11. Irregularities in. S. 533, Cr. P. C.

1. The defect which S. 533 intends to cure is one not of substance but of form only, e.g., when the Magistrate has omitted to sign the certificate or has omitted to state in the certificate that the statement was taken in his hearing. 2 C. W. N. 702, 17 P. R. 1915 Cr., 1930 O. 449 *Cont.* 23 Bom. 221, 21 Bom. 495.
2. S. 533 does not cure a defect where a statement has been neither signed by the accused nor certified by the Magistrate. 9 M. 224, 17 C. 862.
3. S. 533 has no application, where no record has been made of confession. 35 A. 260.
4. Where a Magistrate inadvertently omits to certify the voluntariness as required by S. 164, such defect may under S. 533 be cured by the examination of the Magistrate. 12 Cr. L. J. 15, 1930 L. 534, 60 I. C. 56, 45 A. 166.
5. A confession not recorded as provided by S. 164, Cr. P. C., cannot be proved by the evidence of Magistrate. 49 C. 167.
6. A Magistrate in whose presence a confession was taken may be examined as a witness and the irregularity in not taking down a confession himself can be cured by

Confession or statement—(Recording of)—(contd.)

- S. 533. 2 P. R. 1900 Cr., 1934 L. 14=151 I. C. 745.
 7. If the Magistrate fails to record questions and answers, the defect can be cured under S. 533. 120 I. C. 350=1920 Bom. 327=31 Bom. L. R. 565.
 8. Non-compliance with the formalities as to the verification at the end of confession is a curable irregularity. 85 I. C. 833.
 9. Deposition of a Magistrate that he complied with all the requirements of S. 164, cures a defect in their compliance. 113 I. C. 65, 6 L. 415, 6 L. 58.
 10. S. 533 cures a formal defect of taking down confession in the narrative form and translating it to the accused. 45 A. 166, 23 Bom. 221 Foll. 17 C. 862 Diss.
 11. S. 533 cures the defect of want of proper certificate. 1930 L. 534.
 12. S. 533 plainly provides that notwithstanding anything contained in S. 91, Evidence Act, such statement shall be admitted, if the error has not injured the accused as to his defence on the merits. 7 R. 759, 18 C. 549, 21 B. 495 and 32 C. 550 Ref. 9 M. 224 Dist. 17 C. 862 Diss. from.
 13. Exact words of the warning are not very material, provided the Magistrate explains, and person making the statement clearly understands that he need not make a confession. 1925 L. 448=26 Cr. L. J. 1458. But See 1934 O. 151.
 14. Where there is no record that Magistrate gave any warning to the accused, the confession so recorded is extremely defective, though it can be remedied under S. 533. 60 I. C. 56=22 Cr. L. J. 200.
 15. Where the statement is not recorded in strict compliance with the law, S. 533 can be resorted to if accused is not injured in his defence. 7 R. 759, 18 C. 549, 21 B. 95, and 32 C. 550 Rel.; 9 M. 224 Dist.; 17 C. 862 Diss. from.
 16. If questions are not put, the confession is 'not duly' made. But the irregularity can be cured by taking evidence that there was no inducement, etc., provided the accused is not prejudiced. 56 A. 302=1934 A. 81=147 I. C. 390, 55 A. 91=1933 A. 31, 54 A. 350=1932 A. 228 and 1931 A. 609=32 Cr. L. J. 1052 Ref.
 17. Accused was produced before Magistrate for remand. He was questioned and admitted his guilt. Magistrate wrote it on the back of application. The defect was cured by examination of Magistrate as witness. 1934 R. 78=35 Cr. L. J. 823. 55 M. 711 and 1933 A. 440 Rel. on.
 18. Where confession of several accused is recorded, one may not hear the statement of another. 1934 O. 151.
 19. Rules issued by Government for recording confession are meant only for guidance of Magistrate and have not the effect of law. 1933 O. 299=34 Cr. L. J. 838.
 20. Confession made under hope of pardon though improperly recorded under S. 164 can be proved. 1933 L. 987, 1933 L. 716.
 21. Where Magistrate has neither acted nor purported to act under S. 164 or S. 364 and nothing has been tendered in evidence as recorded or purporting to be recorded under Ss. 164—364, oral evidence of Magistrate is not admissible. 1936 P. C. 253 (2), 1933 L. 716=14 L. 290; 1936 L. 247=16 L. 912; 21 P. R. 1881, 11 P. R. 1918, 1934 A. 81=56 A. 302 and 1922 M. 40 overruled, 1936 R. 350.
 22. When the accused knows Magistrate there is no illegality if he does not inform accused that he is a Magistrate while recording confession. 1932 L. 103.
 23. If oath is administered to accused by coroner, etc., confession will be inadmissible. 50 B. 56=1926 B. 144.
- 12. Language of.—See Record—6.**
1. Ordinarily the statement of the accused must be recorded in the language in which it was made, the object being to represent the very words and expressions used as to ensure accuracy and prevent misrepresentation and misconstruction of what was said. 21 C. 642, 4 N. W. P. H. C. R. 16.
 2. If the answers were not taken in the language in which they were given, the irregularity is curable under S. 533. 15 C. 595, 17 C. 862, 10 O. C. 122.
 3. If the confession is made in a foreign language, unknown to the Court, the

Confession or statement—(Recording of)—(contd.)

record should be in the language in which it is conveyed to the Court by the interpreter. 5 C. 826.

4. A statement was made by the accused in Mani Puri and communicated to the Magistrate by an interpreter in Bengali, and the Magistrate recorded it in English, and there was also a record in Mani Puri, but the two records differed. Held, that the record in Mani Puri should be regarded as the proper record and the only evidence in the case. 21 C. 642.
5. The confession of the accused made in Bengali was recorded by the Magistrate in English, because he could not write Bengali well, and there was no Muharrir at the time with him, it was held that there was no illegality. 22 C. 817, 1891 A. W. N. 55.
6. A confession made in Hindustani was recorded by a Mahomedan Magistrate in Bengali, the language of the Court. Held, that in the absence of evidence it should be presumed that the Magistrate found it impracticable to record the statement in Urdu. 18 C. 549.
7. Magistrate could record a statement in the language in which it was made but recorded it in English. Held, that if it was translated to accused in his own language and no prejudice was caused to him, the irregularity is curable under S. 533, Cr. P. C. 45 A. 166, 7 P. R. 1899 Cr., 1892 A. W. N. 60, 16 C. P. L. R. 122, 1931 L. 763, 32 P. L. R. 792, 1932 L. 73, 23 B. 221.
8. Where a Magistrate is unable to record a confession in the language in which it is made he should not employ a Police Officer to write it down. 9 C. L. J. 55.
9. Omission to record confession in the language used by the accused may be overlooked if he is not injured in his defence 1927 L. 285=100 I. C. 821, 7 P. R. 1899 Cr.

13. Memorandum of enquiry. See—3.

14. Mode of recording confession—warning—voluntary nature. S. 364, Cr. P. C.

1. Every question and every answer must be recorded verbatim, no matter whether relevant or irrelevant. 15 W. R. 3, 2 B. H. C. R. 395—397—398.
2. If the confession was recorded in simple narrative form instead of questions and answers, the irregularity is curable under S. 533 if accused is not prejudiced. 45 A. 166, 8 C. 616, 14 C. 539, 1892 A. W. N. 60.
3. The record need not be in the handwriting of the Magistrate. It is enough if he appends a certificate that examination was conducted in his presence and contains accurately all that was said by the accused. 2 P. R. 1902 Cr.
4. If the confession is not recorded in the language of the accused nor was signed by the accused, nor certified by the Magistrate, it was inadmissible. 9 M. 224.
5. The Magistrate should merely record the confession or statement as the accused might desire to make. It is no part of his duty to ask questions in details on matters within Magistrate's knowledge. 1930 A. 746=32 Cr. L. J. 152.
6. Where there is nothing to show that the accused was told that he need not make a confession and that if he did so it might be used as evidence against him, his confession is illegal. 6 L. 183=1925 L. 432, 7 L. L. J. 170.
7. It is sufficient compliance with the law, if the accused was asked if he was making the confession voluntarily and any statement he might make would be used as evidence against him. 5 P. 171=1926 P. 279=27 Cr. L. J. 957.
8. The Magistrate did not inform the accused that he was a Magistrate and did not put the accused questions in order to find out whether the confession which he was about to make was a voluntary or not. Held, that defects in the manner of recording confession made it inadmissible. 1926 C. 742=27 Cr. L. J. 621.
9. Accused, while in Police custody made a confession to Court Inspector, who immediately produced him before a Magistrate, who proceeded to record the confession in the presence of the Court Inspector, and after recording it remanded the accused to Police custody. Held, that it is most unsafe to hold that it was voluntary and therefore, it was inadmissible. 1924 L. 624, 1922 L. 237.
10. Where the Magistrate although stated that he was satisfied that the confession was voluntary failed to question the confessants whether they were making voluntary

Confession or statement—(Recording of)—(contd.)

- statement. Held, that the provisions of S. 164 are not complied with and the confessions are inadmissible. 1924 L. 481=81 I. C. 627, 2 L. 325, 73 I. C. 260.
11. Magistrate should always ask some questions to enable him to determine whether the confession is voluntary. 24 Cr. L. J. 639, 124 I. C. 215, 1931 A. 609.
 12. Telling an accused whether he should make a statement voluntarily and questioning him as to whether he is making it voluntarily are two different things. The omission to question the accused whether he is making the confession voluntarily is a material omission and the defect is not curable under S. 533, and the confession must be excluded. 2 L. 325, 33 P. L. R. 415.
 13. The only question put by the Magistrate was "(After due warning) do you want to say anything." What the due warning was, was not recorded. Held, that the confession was inadmissible. 22 Cr. L. J. 119=59 I. C. 551.
 14. Where confession was recorded on Sunday, at the house of Magistrate and the Magistrate stated on oath that he satisfied himself that he was making a statement voluntarily. He did not record the questions and answers put and it was recorded in English though made in Urdu. Held, that irregularities in recording the confession did not make it inadmissible. 1931 L. 763.
 15. The fact that the Magistrate instead of asking the accused about the voluntary nature of the confession at the commencement of the confession, asked him at the end, was merely a defect of form that did not alter the character of confession. 40 C. 873.
 16. Where the confession was not taken down in the language in which it was made and not thumb-marked by accused, but the Magistrate stated that it was voluntary and correctly recorded. Held, that other irregularities in recording the confession were not material. 133 I. C. 545=32 P. L. R. 792=1932 L. 73.
 17. Before recording confession the Magistrate should enquire how long the accused had been in custody. The failure to do so is not fatal and does not cast any doubt about the voluntary nature of confession. 1931 L. 763=25 B. 543.
 18. S. 364 lays down that every question and answer must be recorded but does not compel a Magistrate proceeding under S. 164 to put a series of questions. The accused should be left to narrate his story as a whole without unnecessary interference. 1932 L. 180=137 I. C. 95=33 P. L. R. 16.
 19. Where there is nothing in the statement to show that besides the usual and stereotyped questions any serious attempt has been made by the Magistrate to find whether the statement was voluntary or otherwise, the Court should hesitate to accept the certificate. 1932 A. 228=33 Cr. L. J. 201.
 20. A confession, if voluntary is not inadmissible merely because the accused is not warned by Magistrate that he is not bound to make confession. 1932 M. 431=62 M. L. J. 559=33 Cr. L. J. 526.
 21. The Magistrate should warn the accused that any confession which he makes would be used against him. He should only record the confession if upon inquiry he has reason to believe that it will be made voluntarily. 6 L. 415.
 22. The Magistrate must sign the record and the memorandum. 3 C. W. N. 387.
 23. A statement of the accused containing an allegation that it was not voluntary cannot be taken to be voluntary because the accused has signed the statement. 37 C. 735.
 24. When the confession is recorded in accordance with law, presumption under S. 80, Evidence Act is that it is voluntary. The burden is on accused to disprove its voluntariness. 1935 R. 491.
 25. Magistrate should leave the accused or witness alone for half an hour to compose himself before his statement is recorded. 1935 L. 230=35 Cr. L. J. 1180.
 26. Where accused is confined in Police investigation or when the inter-
sion thus obtained should
Cr. L. J. 1180=150 I. C. 105
tions why
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s is evaded, the confes-
sion. 1935 L. 230=35
 27. A confession which bears neither
e of
Magistrate is not

Confession or statement—(Recording of)—(contd.)

- in strict accordance with S. 364. Fact of its being 'duly made' can be proved by further evidence under S. 533. 1934 A. 81=56 A. 302.
28. Voluntary confession in serious offences is rare. 55 A. 91, 6 A. 509.
 29. Accused was detained in Police custody for more than 24 hours unnecessarily. He confessed and was again taken into Police custody. It was retracted at earliest opportunity. Held, it was not voluntary and should be rejected. 1933 O. 192=34 Cr. L. J. 653, 1932 O. 317.
 30. It is not necessary that the warning should appear in writing at the commencement of record of confession. Memo need not be in the handwriting of the Magistrate. It is sufficient if it is signed by him. 1933 B. 145=57 B. 336, 56 B. 542=1932 B. 553 overruled. 1925 L. 605=6 L. 415 Rel. on.
 31. Memorandum can be affixed to English version of confession. 57 B. 36.
 32. Statement written and signed by accused while in control of Police is inadmissible. 1933 A. 356=55 A. 426.
 33. Failure to question accused as to whether he is making confession voluntarily is fatal defect. 1933 O. 315. 1930 O. 449 Ref. 1933 O. 313 Dist.
 34. Accused professed to speak of his own free will. Magistrate need not question him whether he was ill-treated by Police. 1933 C. 747.
 35. A confession recorded under Ss. 164—364 is presumed to be voluntary under S. 80 Evidence Act. 61 C. 399=1934 C. 636, 1932 S. 201, 52 C. 67.
 36. There is nothing in S. 164, Cr. P. C., to prevent a Magistrate from recording the statement of an accused person, even if it is not a confession. 24 Cr. L. J. 723=73 I. C. 963, 4 P. 327=1925 P. 536, 49 C. 167, 1925 C. 926=26 Cr. L. J. 1279, 1928 P. 162=106 I. C. 698, 1927 B. 501.
 37. The Magistrate's certificate that the confession, to his belief, was voluntary is not conclusive and the confession may still be shown to be involuntary. 13 C. W. N. 861=10 Cr. L. J. 125, 1932 A. 228, 1930 O. 449, 1922 O. 302.
- 15. Oral confession or statement.**
1. A confession or incriminating statement made by accused in the presence of a Magistrate, while in Police custody, who is not produced before the Magistrate with a view to record his confession, can be proved by oral testimony of the Magistrate when it has not been reduced into writing. 1930 L. 534=1933 L. 716, 21 P. R. 1881, 52 P. R. 1887, 11 P. R. 1918.
 2. A Magistrate can hold a test identification and can prove a statement made to him under S. 157, Evidence Act. 1928 C. 500=109 I. C. 225.
 3. Oral evidence of the Magistrate who watches investigation conducted by Police under instructions given to him under S. 159, Cr. P. C., and who did not himself make any independent inquiry or record any statement from the available witnesses, are admissible to prove that the accused confessed the crime to him though the statement was not recorded under S. 164. 45 M. 230.
 4. Accused made no confession and there was no record under S. 164. Held, that the evidence of the Magistrate regarding unrecorded statement is inadmissible. 49 C. 167.
 5. A confession to be admissible in evidence need not be recorded. It may be oral. It is a relevant fact and may be proved by the Magistrate to whom the oral confession was made. 11 P. R. 1918 Cr.
 6. In oral confessions a Magistrate is not required to make inquiry about the voluntary nature of confessions. 11 P. R. 1918 Cr., 2 L. 325.
 7. It is not obligatory on the Magistrate to record oral confession. 1934 A. 351=152 I. C. 174. 35 A. 260 and 1929 A. 855 Dist.
 8. Unrecorded confession can be proved by oral testimony of Magistrate. 1934 A. 351=152 I. C. 174, 1922 M. 40=45 M. 230, 1930 L. 534 Foll. 49 C. 167 not appr. 35 A. 260, 1929 A. 855 and 21 Cr. L. J. 65=1920 B. 322 Ref.
 9. If confession is not recorded according to Ss. 164—364, Cr. P. C., oral evidence of Magistrate is inadmissible. 1936 P. C. 253 (2), 1933 L. 716; 1936 L. 247=14 L. 290=16 L. 912; 21 P. R. 1881 Cr.; 11 P. R. 1918 Cr.; 1934 A. 81=56 A.

Confession or statement—(Regarding off—could)

302 and 1922 M. 40 implicitly overruled.

16. Place of recording.—

1. A Magistrate having jurisdiction in a District in British India cannot record a confession in a place in a Native State in connection with an offence committed in his district. 19 A. L. J. 355=62 L. C. 343.
2. A Magistrate can record a confession at a place other than the Court. 1930 L. 171=31 Cr. L. J. 752, 1931 L. 673 (2), 1933 R. 491.
3. It is not necessary that confession should be in open Court. 5 P. 171.
4. Where investigation was made by British Police and accused was arrested by Calcutta Police and was produced by Magistrate there. Held, it was in the investigation of the case and the confession was legal. 93 L. C. 335.
5. A confession to a Magistrate in a Native State is admissible as extra judicial confession only. 1931 Sind 103=151 L. C. 311, 1923 B. 320, 1934 L. 873.
6. A confession recorded by Magistrate at the Thana at night is most improper. 1932 L. 394=135 L. C. 19.
7. A confession recorded at Thana in a separate room where there was no Police officer is admissible although Magistrate did not make the certificate that he warned him that he need not make confession. 1933 L. 311 (2)=34 Cr. L. J. 712.

17. Presumption as to genuineness—S. 80, Ev. Act.

1. Presumption as to genuineness of confession under S. 80 arises if it has been taken according to law. It then proves itself by mere production. 1934 A. 81, 6 L. 415, 1925 L. 315, 52 C. 67.
2. If formalities under Ss. 164—364 are not complied with S. 80 does not apply. Cr. A. 1341 of 1934 (Lah.), 6 L. 415, 52 C. 67, 4 C. W. N. 220.
3. Presumption under S. 80 is applicable to record of confession made in Native State in accordance with Cr. P. C. 69. 1 C. 257=23 Cr. L. J. 673, 12 A. 595. See also, 22 P. 235, 8 P. R. 1907, 2 P. R. 1909 Cr.

18. Reading over or showing of—

1. The statement of accused must be read over or shown to the accused, otherwise it is not admissible. 7 W. R. 49, 6 P. L. J. 147, 4 P. L. T. 186.
5. Where the Magistrate showed or read over the record in English, when the accused did not understand English, the provisions of S. 346 are not complied with. 6 N. W. P. H. C. R. 16.

19. Retraction.

1. An accused made a confession, which was recorded by the Magistrate under S. 164 and thumb-marked by the accused. When the Magistrate was appending the necessary certificate, accused stated that he made it at the instance of Police. On his persisting he recorded a further statement in which he stated that the statement was made at the instance of Police. Held, that the accused must be regarded as having made no confession at all. 11 L. 306=1930 L. 257=30 P. L. R. 646=119 I. C. 325=30 Cr. L. J. 1046.
2. A retracted confession is of no weight unless materially corroborated. 3 P. 872, 1929 M. 837.
3. Where the confession was not recorded in the manner provided by S. 164 and it was retracted at the first opportunity. Held, that no evidential value could be placed on the confession. 1923 O. 39=9 O. L. J. 500.
4. The credibility of each retracted confession depends on the circumstances of each case. 60 I. C. 789.

20. Signature of accused.

1. A record which does not bear the signature of the accused is inadmissible. 1883 A. W. N. 243. 10 B. H. C. R. 166.
2. If the signature or mark of the accused was not taken, the defect can be cured by calling the Magistrate as a witness to prove that the statement was duly recorded.

Confession or statement—(Recording of)—(contd.)

1896 A. W. N. 161, 23 B. 221, 9 C. L. J. 55.

3. If the accused is unable to write, his mark or thumb impression is sufficient compliance with the law. 45 A. 166.
4. If accused can write, his thumb-impression is not sufficient. 32 C. 550.
5. Refusal to sign by the accused is an offence under S. 180. 39 A. 399, 4 B. 15.

21. Time of—

1. There is no provision of law which forbids a Magistrate from recording a confession on Sunday. 1930 L. 171=125 I. C. 49=31 Cr. L. J. 759=11 L. L. J. 461.
2. A Magistrate can record a confession before the accused is placed on trial. 73 I. C. 963.
3. A confession made during remand proceedings, if not recorded in accordance with S. 164, should be excluded. 137 I. C. 57=33 P. L. R. 25.
4. Confession under S. 164 can be recorded during Police investigation only and before a Magistrate takes cognizance of the case. 37 C. 467.
5. A confession made during inquiry by a Magistrate under S. 202, Cr. P. C., is not recorded under S. 164. 32 C. 1085.
6. The Police produced accused under S. 302, I. P. C. and the Magistrate adjourned the case to enable the accused to engage a counsel. On the next hearing the Police took back the challan as being incomplete and on the same day a confession under S. 164 was recorded by another Magistrate. But at the close of the case, the accused stated that he made it under promise of pardon. Held, that the confession could not be used against the prisoner. The course taken by Police in taking back the challan was illegal. 1930 L. 454, 135 I. C. 209.

22. To Magistrate of Native State.

1. Confession recorded by Magistrate of Native State in conformity with the provisions of S. 164 is admissible. 1934 L. 873, 2 P. R. 1909 Cr.
2. A confession to a Magistrate of Native State which does not conform to the provisions of S. 164 can be proved as extra judicial confession. 1934 Sind 103=151 I. C. 311, 1925 B. 529, 49 B. 642, 22 B. 235, 69 I. C. 257.

23. Voluntary nature of— See—12.**24. When there is no Police Investigation.**

1. A Magistrate can only record a confession under S. 164, Cr. P. C., or D. M. can order such confession to be recorded, when there had been a Police inquiry under Ch. 14. If there had been no Police inquiry or complaint the confession would be inadmissible in evidence. Such a confession cannot be used as extra judicial confession even. 1935 O. 416=36 Cr. L. J. 927=156 I. C. 231, 32 C. 1085 Rel. on. 1931 O. 415=33 Cr. L. J. 45 and 1928 O. 393 Ref.
2. S. 364 has no application where no evidence had been produced against the accused in the Police inquiry. 1930 L. 454=31 Cr. L. J. 533=123 I. C. 540, 1935 O. 416.

25. Who can record.

1. A confession or statement under S. 164 may be recorded by a Magistrate who afterwards conducts inquiry or trial. 37 C. 467, 3 C. W. N. 387.
2. A Magistrate who directs the Police investigation is not incompetent to record a statement or confession under S. 164. 5 S. L. R. 31.
3. Magistrates who are also Police Officers, e. g., Patels in Bombay—are not competent to record statements or confessions. 17 B. 485, 1 C. 207.
4. A third class Magistrate has no power to record a statement under S. 164. 14 Bom. L. R. 753, 29 C. 483.
5. It is not necessary that the recording Magistrate must be some one other than a Magistrate who has begun an enquiry into the guilt of persons alleged to have been confederates of the confessing prisoner. 1932 L. 103=135 I. C. 209, 37 C. 467, 1928 L. 724 and 47 I. C. 273 Ref.
6. If a confession is made outside British India, it is not vitiated if there is nothing against substantive law or natural law to vitiate it. 1932 L. 367=137 I. C. 196=

Confession or statement—(Recording of)—(concl'd.)

33 Cr. L. J. 466, 1934 L. 873, 2 P. R. 1909 Cr.

CONFESSION BY CO-ACCUSED. Section 30, Evidence Act.**1. Admissibility of—**

1. A confession of co-accused implicating himself and others, jointly tried is admissible against all the accused under S. 10 and can be considered under S. 30. 106 I. C. 721, 65 I. C. 849, 39 A. 484, 75 I. C. 701=25 Cr. L. J. 13, 1935 R. 491.
2. In a warrant case confession of co-accused is admissible against all. 1928 L. 880=111 I. C. 387=29 Cr. L. J. 835.
3. A statement by one co-accused that another was implicated in the offence is inadmissible in evidence against others. 7 L. L. J. 51=86 I. C. 347.
4. If the co-accused was induced to make a confession, it cannot be relied upon. 92 I. C. 451.
5. In a case under S. 110, Cr. P. C., confession made by co-accused where he was co-accused in another case cannot be used. 22 C. W. N. 408, 61 I. C. 793.
6. Accused were charged with murder, confession by one of them implicating himself to the extent of an offence under S. 328, is admissible against other accused. 72 I. C. 497.
7. A confession should justify the conviction of the confessor and only then it is admissible against co-accused. 6 L. 176, 22 Cr. L. J. 260.
8. Confession to be admissible must incriminate the maker with the co-accused to the same extent. 81 I. C. 891, 2 A. 444, 7 A. 646, 77 I. C. 439.
9. If the confession exculpates the maker, it is inadmissible. 81 I. C. 249, 89 I. C. 516.
10. Confession of co-accused need not completely implicate himself. Only a substantial implication is sufficient. 25 Cr. L. J. 17=5 I. C. 705=1924 P. 347.
11. The statement must inculcate the maker himself more or at least equally with his co-accused. 1926 N. 117=26 Cr. L. J. 1537, 1934 P. 586, 1925 N. 78.
12. The test is whether the maker of confession can be convicted on it. 6 L. 176=1925 L. 435, 1925 L. 644, 60 I. C. 660, 2 A. 444.
13. Confession made by co-accused to Police is admissible against co-accused. 1933 L. 167.
14. Confession which indirectly affects co-accused is admissible. 50 B. 683.
15. Confession made before or during trial is admissible under S. 30. 54 B. 531, 1928 L. 880, 1927 C. 265, 6 L. 176, 38 M. 302, 1931 N. 169. See 1935 L. 35.

2. By approver. See Accomplice.

1. The confession of an approver cannot be used under S. 30 because he is not jointly tried along with the accused. 1921 P. 499.
2. Approver's statement cannot be accepted without any test as to his complicity with crime. 74 I. C. 543, 73 I. C. 262.
3. It is unsafe to base conviction on the uncorroborated testimony of an approver. 99 I. C. 929=28 P. L. R. 39, 73 I. C. 262.

3. By inducement. See Confession by inducement.

If the co-accused was induced to make a confession, it cannot be relied upon. 92 I. C. 461.

4. Confession—what is.

1. 'Confession' must be construed as meaning the same in S. 30 as in Ss. 24, 25 and 26. 7 A. 646.
2. Before a statement can be taken into consideration against a fellow prisoner, it must amount to confession on the part of maker with respect to the offence with which all are charged. (1873) 19 W. R. 16 Cr., 10 B. H. C. R. 497, 2 A. 444, 2 A. 646, 6 B. 288, 1928 C. 416=109 I. C. 351.
3. If the inherent quality of the statement of the prisoner is not confession, S. 30 does not apply. 10 B. H. C. R. 497.
4. The confessing prisoner must tar himself and the persons he implicates with one and

Confession by co-accused—(contd.)

the same brush. 2 A. 444.

5. It is not necessary that confession should amount to distinct confession of the offence charged. 6 B. 288, 31 M. 127.
6. Accused were charged with murder. A confession by one of them implicating himself and others to the extent of an offence under S. 328, I. P. C., is admissible against all. 72 I. C. 497.
7. Confession by a person under enquiry under S. 476, is a confession. 1924 B. 446.
8. A statement by an accused that he and his co-accused struck the deceased in the right of private defence cannot be taken into consideration against others. 1925 L. 532.
9. In a Dhatura poison case, one of the co-accused stated that his co-accused brought milk and mixed some powder in it, but he did not know what that powder was and that his co-accused gave the milk to the deceased to drink. Held, that the statement is not a confession. 27 P. L. R. 441=28 Cr. L. J. 209=99 I. C. 1009.
10. The confession of a person who says he abetted murder, but withdrew before the actual preparation of murder by his associates cannot be used against them, though they all jointly tried. 10 B. H. C. R. (Cr. C.) 497.

5. Corroboration of.

1. Confession of co-accused must be corroborated in material particulars. 72 I. C. 497, (1873) 19 W. R. 57 Cr., 4 C. 483, 10 B. 231, 8 A. 306, 1 A. 664, 10 B. 231, 5 P. R. 1911, 1931 C. 697, 1930 P. 385, 1929 B. 327, 1929 A. 928, 1928 L. 329, 1929 M. 285, 1929 L. 338=115 I. C. 1, 1928 L. 329=107 I. C. 614, 27 Cr. L. J. 858=1926 A. 603, 25 Cr. L. J. 1041=1924 M. 805, 1921 M. 490, 22 Cr. L. J. 161, 21 Cr. L. J. 79, 20 Cr. L. J. 497, 42 C. 789, 43 B. 739, 38 B. 156.
2. The confession of one accused cannot be said to be corroboration of the confession of another accused as against an accused person who has not confessed at all. 60 I. C. 786=22 Cr. L. J. 290, 38 B. 156, 1933 C. 6, 1932 L. 298, 1932 L. 180, 3 L. 144, 10 B. 319, 1 B. 475, 8 A. 306, 10 C. 970. See 6 L. 415, 11 R. 4, 9 R. 404.
3. Confession of the co-accused may furnish the corroboration of the confession of another accused, as against the latter and *vice versa*. 38 B. 156, 60 I. C. 768. See 43 B. 739, 120 I. C. 350. See 1930 A. 29, 1929 B. 327, 1928 C. 745=30 Cr. L. J. 586.
4. Verification proceedings do not add any value to approver's evidence or to a confession and cannot be regarded as corroboration. 38 C. 559.
5. Testimony of accomplice is no corroboration as it is not independent. Tainted evidence is not made better by being double in quantity. 19 W. R. 57, 4 C. W. N. 129.
6. A second approver does not improve the position of the first. 8 A. 309.
7. Not only there must be corroboration as to the *corpus delicti* but also as to the identity of all persons concerned. 38 C. 559.

Confession by co-accused—(contd.)

16. Conviction cannot be based on confession of co-accused unless corroborated, although there is no reason to believe that it is untrue. 1935 L. 230=35 Cr. L. J. 1180.
17. If accused had no reasons for falsely naming other men and his story fitted in with facts known and is corroborated sufficiently by material evidence against co-accused, it is a strong piece of evidence against him even if it is retracted. 1932 O. 321, 1927 O. 17=27 Cr. L. J. 1258, 1927 O. 369=106 I. C. 721 and 1929 O. 167=30 Cr. L. J. 360 Rel. on.
18. If the accused in his confession does not implicate himself as fully and substantially as his co-accused, it is not admissible against co-accused. 1932 A. 228=54 A. 350, 2 A. 444, 2 A. 646 and 1881 A. W. N. 20 Foll.
19. A confession recorded by a Magistrate of Native State is admissible under S. 30. 1921 N. 39=23 Cr. L. J. 673.

7. Joint trial.

1. It is not sufficient that co-accused should be tried jointly in fact. They must be legally tried jointly. 22 C. 50 (72).
2. A person who pleads guilty and is thereupon convicted and sentenced, cannot be said to be jointly tried with the other prisoners who pleaded not guilty. 7 M. 102, 23 M. 151, 17 A. 524, 11 B. H. C. R. (U. C.) 146—148.
3. If the plea of guilty is not accepted by Court, the prisoner is still being jointly tried with the rest. 27 M. 151.
4. But if the plea of guilty is accepted, there is no joint trial of the confessing accused with the rest. 23 M. 151, 23 A. 53, 30 A. 340.
5. Persons jointly tried under S. 107, Cr. P. C., in one and the same inquiry cannot be said to be jointly tried within S. 30, Evidence Act. 41 A. 231, 20 Cr. L. J. 201 Cont. 1934 A. 927=152 I. C. 881.
6. A conviction under S. 456, I. P. C., based on the confession of co-accused who was being tried with the accused under S. 411, I. P. C., is unsound. 20 I. C. 136=14 Cr. L. J. 376, 1 C. W. N. 35, 5 C. L. R. 574.
7. A confession by an accused implicating himself and two others in a charge of dacoity is inadmissible against others in a proceeding under S. 110. 49 I. C. 649.
8. Where accused pleaded guilty and declined to call witnesses, the trial was joint trial and his confession could be considered against others. 14 Cr. L. J. 566.
9. An approver cannot be deemed to be jointly tried with the accused. 1921 P. 499.
10. A confession made by accused in an inquiry under S. 476, Cr. P. C., is admissible against others at the trial. 1924 B. 445=26 Cr. L. J. 993.
11. A person selling and another buying a girl for the purpose of prostitution cannot be tried together. 22 C. 164.
12. A confession in a major offence will be admissible in minor offence as well, *e.g.*, murder and hurt. 1921 M. 490=24 Cr. L. J. 385, 54 M. 75=1931 M. 177.
13. Accused were charged with murder or robbery. They implicated each other in murder. The confessions are inadmissible on charge of robbery. 1923 L. 293=26 Cr. L. J. 612.

8. Offence.

1. The word offence includes the abetment or attempt to commit the offence. 1934 A. 927.
2. S. 30 applies to proceedings under S. 110, Cr. P. C. 1934 A. 927.
3. "Same offence" means the identical offence and not the offence of the same kind. 1929 C. 14=115 I. C. 359.

9. Plea of guilty. See Plea of guilty—7.

1. The plea of guilty of one co-accused who is removed from the dock, while the other alone is tried cannot be taken into consideration against the other. 38 C. 446, 58 C. 1214, 30 A. 540, 12 A. L. J. 1239, 13 C. W. N. 552, 22 M. 491, 4 C. 483, 1931 C. 341, 17 A. 524, 7 M. 102, 11 Bom. H. C. 146. See 6 L. 176, 38 M. 302.

Confession by co-accused—(contd.)

2. A confession made by an accused pleading guilty is not admissible against the other accused. 15 P. R. 1911 Cr., 17 A. 524, 15 B. 66, 7 A. 160, 22 A. 445, 23 M. 151. See 14 Cr. L. J. 566 and 23 M. 151.
3. No sooner an accused pleads guilty, he ceases to be accused who is to be tried. There is no issue between him and the crown. The practice of not accepting a plea of guilty in order to avail the confession under S. 30, Evidence Act, against co-accused is illegal and is an abuse of the process of Court. 58 C. 1214, 30 A. 540, 25 M. 69.
4. A confession of an accused is not admissible against co-accused under S. 30, if the former is convicted on his plea of guilty. 222 P. L. R. 1915, 5 C. 954, 5 A. 253.
5. A plea of guilty can be allowed to be withdrawn if the accused was at the time of making it, enfeebled by illness and was undefended. 44 P. W. R. 1914 Cr.=222 P. L. R. 1915.
6. If the Sessions Judge refuses to accept plea of guilty, the confession will be admissible against others. 1926 A. 318=27 Cr. L. J. 449, 41 C. 57, 23 A. 53, 23 M. 151 *Cont.* 58 C. 1214=1931 C. 341.
7. A plea of guilty at the commencement of Sessions trial is not one contemplated by this section. 1934 P. 330.

10. Retracted confession. See Confession—15.

1. A retracted confession should carry practically no weight as against a person other than the maker, because it is not made on oath. 28 C. 689, 38 C. 559, 37 C. 375, 1934 P. 586, 35 Cr. L. J. 1290=1934 O. 418, 1932 L. 298=33 Cr. L. J. 251, 8 P. 862=1929 P. 212, 1929 C. 14, 1927 L. 765=28 Cr. L. J. 854, 1927 P. 257=28 Cr. L. J. 497, 1933 R. 320. See 1934 C. 853.
2. On retracted confession, conviction of the maker is sound even without corroboration. If it is to be used against others it must be corroborated. 29 A. 434, 20 A. 133, 1925 A. 627, 1930 O. 412, 1932 L. 298=33 Cr. L. J. 251, 1925 L. 605=6 L. 415, 5 P. R. 1911 Cr., 30 P. R. 1914 Cr., 1927 P. 257, 28 C. 659, 1925 C. 406 2^o Cr. L. J. 360, 26 P. R. 1916 Cr. See 38 B. 156, 15 B. 66.
3. As against co-accused a confession which has been retracted at the first opportunity should not be relied upon, unless corroborated by independent testimony. 24 P. R. 1916 Cr., 163 P. L. R. 1915, 5 P. L. R. 1915, 38 B. 156, 1935 O. 354.
4. A retracted confession of a co-accused under S. 30 is not sufficient for conviction.

Confession by co-accused—(concl'd.)

corroboration. But it is a rule of prudence and not of law, 1927 P. 257.

14. A retracted extra judicial confession can in law be a sufficient basis to support a conviction. 125 I. C. 44=31 Cr. L. J. 753=1929 Sind 253.
15. Confession made 14 days after arrest and retracted cannot be used against co-accused. 1934 L. 718.

11. "Proved" at the Trial—

1. S. 30 does not refer to statements at the trial but to the statements made before and proved at the trial. 1935 L. 35, 45 A. 323=1923 A. 322=76 I. C. 1025=25 Cr. L. J. 305, 1929 M. 285=118 I. C. 512=30 Cr. L. J. 932, 54 M. 788=1931 M. 820=32 Cr. L. J. 1099 Rel. on. 1933 O. 86=34 Cr. L. J. 124.
2. There is no provision in S. 342, Cr. P. C., which would seem to allow the statement made by one accused person to be taken into consideration against the other accused in the same trial. 1935 L. 35, 1930 B. 354=54 B. 531=31 Cr. L. J. 1137=127 I. C. 105 Rel. on. 6 L. 176=1925 L. 435=95 I. C. 63 and 1928 L. 880=111 I. C. 387=29 Cr. L. J. 835 Ref.
3. If the accused is not asked to explain the statement made against him by co-accused, it is inadmissible. 1935 L. 35, 54 B. 531.

12. Self Exculpatory—

1. Self exculpatory statement of the accused should not be considered against the co-accused. 1930 A. 746, 120 I. C. 210, 120 I. C. 81, 16 Cr. L. J. 25, 1926 N. 117.
2. A self exculpatory statement is admissible against the maker of it. 91 I. C. 1002=1926 N. 229.
3. A confession which does not implicate the maker to the same extent as the other accused, is of very little use against the other accused. 8 P. 289=1929 P. 275=30 Cr. L. J. 675, 11 Cr. L. J. 701, 1926 N. 117.
4. The self exculpatory statement of the wife that white substance was administered on the assurance of the paramour, that it would bring about good feeling, did not amount to confession and could not be used against the paramour, as criminal conspiracy was not proved. 14 Cr. L. J. 586=21 I. C. 378, 99 I. C. 1009.
5. A statement by an accused, which suggests an inference of guilt may amount to confession, though he may directly repudiate his participation in crime. It is admissible if sufficient corroboration is forthcoming. 53 I. C. 691.
6. A statement by accused that under threats of death, he was forced to sit outside the door of house where murder was committed and to warn the approach of any body and not to divulge the secret, is not a confession and is not admissible under S. 30. 24 P. R. 1910 Cr.
7. A statement by accused that he and his co-accused struck the accused in the exercise of the right of private defence is inadmissible against others. 1925 L. 532=85 I. C. 371=26 Cr. L. J. 531.

CONFESSION BY INDUCEMENT, ETC.—S. 24, Evidence Act.**1. Admissibility with regard to other offence.**

An inducement to confess to one crime will not invalidate a confession as to a different crime, unless both are parts of the same transaction. 11 A. 79, 46 A. 236=1924 A. 220=25 Cr. L. J. 956.

2. Advantage to be gained or evil avoided.

1. A mere collateral benefit or boon, like, promise to give prisoner some spirit, or to strike off his handcuffs, or to let him see his wife, is not sufficient inducement to reject confession. *Taylor's Evidence*. Ss. 880-881.

2. Threat to put accused's womanfolk to trouble is sufficient to exclude confession. 60 I. C. 417=22 Cr. L. J. 225.

3. Threat of excommunication is not sufficient. 4 A. 46.

3. "Appears" to Court, as caused by inducement, etc.—Burden of Proof.

1. The word 'appear' shows that S. 24 does not require positive proof of improper induce-

Confession by inducement, etc.—(contd.)

- ment to justify the rejection of confession. 25 B. 168, 61 C. 399, 32 B. 111.
2. A confession may be rejected on well-grounded conjecture, there must be something before the Court on which such conjecture can rest. 2 Bom. L. R. 761.
 3. The mere fact that accused was in Police custody does not warrant the presumption that the confession was due to inducement. 95 I. C. 59=27 Cr. L. J. 731=1926 N. 368.
 4. A statement in writing by accused person containing allegations which, whether they are true or not appear to indicate that the statement was not made voluntarily, is inadmissible. 37 C. 735.
 5. The mere fact that a confession is retracted, it does not cast upon the prosecution the duty of proving that it was voluntary. 2 Bom. L. R. 161.
 6. A mere subsequent retraction of a confession, which is duly recorded and certified by a Magistrate, is not enough in all cases to make it appear to have been unlawfully induced. 25 Bom. 168.
 7. Court has discretion to reject or receive confession. 32 B. 126.
 8. A strict proof of inducement is not necessary. When there is a doubt, prosecution must dispel it. 1933 Sind 409, 1929 Sind 245, 68 I. C. 413.
 9. If the doubt about the voluntary nature of confession is not removed by the prosecution, the confession will be rejected. 1930 L. 88=30 Cr. L. J. 1080, 52 C. 67=1925 C. 587, 1924 L. 624.
 10. If Court is in a position to say that the confession appears to have been illegally obtained, it will be rejected. 1934 C. 636, 52 C. 67, 25 B. 168.
 11. Probability that confession was induced by threat or promise is enough for its exclusion. 1933 A. 31=55 A. 91, 6 A. 509, 52 C. 67, 1925 A. 627=26 Cr. L. J. 1431.
 12. Voluntary confession in serious offences is rare. 55 A. 91, 6 A 509.
 13. Any thing ranging from the barest suspicion to positive evidence, is sufficient to exclude the confession. 52 C. 67=1925 C. 587, 1925 A. 627=26 Cr. L. J. 1431.
 14. It is idle to expect accused to prove inducement, threat or promise. 52 C. 67, 1925 A. 627=96 Cr. L. J. 1431.
 15. Well-grounded conjecture, reasonably based on circumstances is sufficient to exclude confession under S. 24. 61 C. 399=1934 C. 636; 52 C. 67.
 16. Mere surmise or conjecture is not sufficient to reject confession under S. 24. 6 L. 415=1925 L. 605, 1927 O. 17, 1934 L. 417.
 17. Court can consider other grounds, even if allegations of accused regarding ill-treatment is false. 1933 C. 747=146 I. C. 186.
 18. Reported decisions help little on this question of onus. 52 C. 67.
 19. Court has to determine the sufficiency of inducement. 1932 Sind 64, 52 C. 67.
 20. Where the lower Court has rightly or wrongly excluded a confession, it cannot be taken into consideration. 126 I. C. 53=1930 Sind 168.
 21. A confession by each of the co-accused throwing entire burden on the other is inadmissible as against the latter. 1935 L. 35; 1923 L. 293=85 I. C. 836=26 Cr. L. J. 612, 1925 L. 371=86 I. C. 347=26 Cr. L. J. 763, 1925 L. 332=85 I. C. 371=26 Cr. L. J. 531 and 1926 N. 117=90 I. C. 385=26 Cr. L. J. 1537 Rel. on.
4. By Approver.
1. The hope of being made an approver does not show that confession is not voluntary. 5 P. 171=1926 P. 279=96 I. C. 509=27 Cr. L. J. 957.
 2. An approver's disclosure is in its very nature always the result of inducement or promise of pardon. If it appears that it was extorted as the result of undue duress S. 24 would apply and the confession will be excluded. 9 L. 608=1928 L. 320, 1933 L. 910.
 3. Accused made a confession in which he implicated three persons in an offence of murder. He was made approver and the three men were subsequently acquitted. He was tried for murder. Held, that the confession made by accused in the first

Confession by inducement, etc.—(contd.)

murder trial was inadmissible under S. 24, Evidence Act. 59 I. C. 324.

4. Previous statement of approver to Police is inadmissible against the accused. 35 M. 397, 35 M. 247.

5. Confession in Police custody.—Threat.

1. The mere fact that a person is in Police custody, is not a good basis for the presumption that any confession he makes is caused by inducement, threat or promise. 1926 N. 368=95 I. C. 59=27 Cr. L. J. 731.
2. Statements of accused in Excise case, in custody and after their removal to Excise barracks, were held inadmissible. 53 C. 706=1926 C. 1163=27 Cr. L. J. 1329.
3. Confession obtained after illegal detention by Police must be regarded with gravest suspicion. 7 W. R. 3 Cr. (1867), 21 C. 642.
4. Confessions in this country are often obtained by undue influence, especially by the Police. 5 W. R. Cr. 6, 24 W. R. 80 Cr., 9 A. 528, 15 B. 452.
5. The reports show that many confessions are induced by improper means and that innocent people often accuse themselves falsely is known to the reader of any book on evidence. 15 Bom. 452, 52 C. 67.
6. Where confession is made after Police custody after several days and protracted consultation between the accused and the investigating officer and subsequently retracted; it is inadmissible. 23 C. W. N. 886.
7. Statements made to Police while in custody are not admissible in evidence, though those statements are incriminating. 18 Cr. L. J. 106, 24 I. C. 845.
8. Where the confession was made after Police custody for several days and protracted consultation between the accused and the investigating officers and was subsequently retracted, the confession is inadmissible. 23 C. W. N. 886=53 I. C. 929.
9. A confession made by an accused person, after he has been for a considerable time in Police custody and was subsequently retracted the confession ought not to be acted upon without corroboration. 54 I. C. 881.
10. A confession while in Police custody is of little value. 10 P. R. 1914 Cr.
11. The character and duration of Police custody must be considered. 1933 C. 747=146 I. C. 186, 1932 Sind 64, 1927 P. 429, 52 C. 67, 25 B. 543, 53 I. C. 929.
12. When the period of Police custody was absolutely short, the confession could not be said to be caused by inducement, etc. 1933 C. 747, 52 C. 67, 1926 N. 368=27 Cr. L. J. 731.
13. Whether accused expects to be transferred to Police custody after making confession. 1925 A. 627=26 Cr. L. J. 1431.

6. Effect of Inducement—Its Removal.—S. 28, Evidence Act.

1. Where once there was inducement, however slight, no confession ought to be admitted until it was proved that the effect of such inducement had been entirely removed. *III Russel on Crimes* P. 378. *Sherington's Case* 2 Lew 123, *Reg v. Hewett*, C. and M. Cr. C. 534. Ref. in 9 Bom. H. C. (Cr. C.) 358.
2. S. 28 does not apply if the warning conveyed by Magistrate did not remove the impression caused by inducement. 1933 A. 31=55 A. 91.
3. There is a presumption of continuance of inducement. 50 C. 127=1923 C. 458.
4. It is a continuing offer, the thread of which continues unbroken, unless it is accepted by confession, which completes the bargain, unless there is some circumstance which breaks it. 1925 A. 606=26 Cr. L. J. 937.
5. A Railway Auditor finding certain defalcations told the accused he had better pay than go to jail, whereupon he confessed before Traffic Manager. Held, that impression had not been removed in such a short time. 9 B. H. C. 358, but after the lapse of long time it is admissible. 1936 R. 455.

7. Inducement.

1. A statement is inadmissible under S. 24 if the Court considers to have been made in consequence of "any inducement, threat or promise." 11 B. H. C. R.

Confession by inducement, etc.—(contd.)

137, 1929 Sind 245.

2. The relevancy of the confession is to be determined by the Judge and not the jury. 9 B. H. C. R. 354.
3. Accused made a confession to a witness, Judge thinking that he made it under belief that it would be to his advantage. Held, that it should not be rejected. 1929 M. 92.
4. Whether any threat or inducement was offered or not in a particular case is a question of fact and has to be decided with reference to circumstances of that case. 8 P. 289=1929 P. 275=30 Cr. L. J. 675=114 L. C. 770.
5. Where Manager of a company said to the accused who had committed the offence of embezzlement and falsification of account, to make a clean breast of it for it would be to his interest, and insisted on getting his confession in writing on the same day. Held, that the Manager did hold out a sort of inducement and threat to accused. 1932 Sind 64=33 Cr. L. J. 650.
6. Where a village *Panch* told the accused that truth has come out and the villagers were being worried about the affair and he had better say what he knew and the accused thereupon made a confession. Held, that there were valid threats and inducement. 8 P. 239=1929 P. 275=30 Cr. L. J. 675, 1923 C. 453.
7. It is immaterial to whom a confession, obtained by undue influence, is made. A confession so tainted is inadmissible even if made to the Sessions Judge or Magistrate. 5 N. W. P. 86, 3 B. 12, 2 A. 260, 10 C. 775.
8. A tainted confession made to any person is irrelevant. It is immaterial whether it be made to the person other than one who held out inducement, threat or promise or to the person who had used undue influence. 10 B. L. R. (App.) 1, 3 B. 12, 5 N. W. P. 86, 2 A. 260, 10 C. 775.
9. A Magistrate acts without discretion, when as prosecutor, he holds out promise to prisoners as an inducement to confess. 1 W. R. 24 Cr. (1804).
10. Court has to consider whether inducement, threat or promise was sufficient to lead accused to believe that he would benefit by making confession. 1932 Sind 64=138 L. C. 618=33 Cr. L. J. 650.
11. Inducement must have reference to the charge against the accused, that is charge of an offence in the Criminal Court. 4 A. 46.
12. The inducement must be for the purpose of extorting confession of the offence charged. 10 B. L. R. App. 1.
13. It is difficult to lay down any hard and fast rules as to what constitutes inducement, a term which of course includes torture. 11 Bom. H. C. R. 137.
14. The fact that a statement was made by an accused under circumstances of hope, fear or otherwise, goes only to minimize its weight. 15 Cr. L. J. 326.
15. The Court has first to determine the sufficiency of inducement, threat or promise, and secondly to clothe itself with the mentality of the accused to see whether the grounds would appear to the accused reasonable for a composition that is mentioned in S. 24 and lastly to see whether the confession appears to have been caused in consequence of the inducement. 6 L. 415, 52 C. 67.
16. Where an accused retracting a confession alleges ill-treatment and inducement by Police, the onus is on him to prove it. 47 L. C. 811.
17. Accused confessed to a Police constable, on being assured by him that nothing would happen to her, that she had killed her unborn child and buried in the enclosure of her house. The statement led to the discovery. Held, that the confession was inadmissible although made to the committing Magistrate as well. 5 N. W. P. H. C. R. 86.
18. Inducement, threat or promise by a person who has no power to inquire into does not make confession inadmissible. 1933 P. 149=34 Cr. L. J. 349=12 P. 241.
19. Confession under mere hope of pardon cannot be rejected. 1933 L. 388=34 Cr. L. J. 598, 1927 P. C. 215=8 L. 230 Ref.
20. When the period of Police custody was exceedingly short, the confession could not

Confession by inducement, etc.—(contd.)

be said to have been caused by inducement, etc. 1933 C. 747, 52 C. 67=1925 C. 587 Rel. on.

21. Court should clothe itself with the mentality of the accused to see whether the grounds appear to accused reasonable for supposition that he would gain any advantage or avoid any evil. 52 C. 67.
22. The mere fact that the confession was retracted does not show that it was not voluntary but was made in consequence of inducement, etc. 6 L. 415, 1932 Sind 201=34 Cr. L. J. 147, 96 I. C. 647=27 Cr. L. J. 983, 1923 P. 13=24 Cr. L. J. 497, 25 B. 168, 52 I. C. 50=20 Cr. L. J. 562, 1934 O. 405, 8 O. W. N. 247.

8. Inducement or threats—what are—

1. An admission obtained from a prisoner by persuasion or promise of immunity by the Police ought not to be received in evidence. 9 W. R. Cr. 16.
2. "I will get you released if you speak the truth" is an inducement. 8 P. R. 1882, 9 W. R. 16, 8 W. R. 13, 45 B. 1086, 50 C. 127, 14 P. R. 1911.
3. "If you speak the truth, we would speak to the constable and arrange" is an inducement. 20 M. 38.
4. "Tell me what you know about it, if you will not, I can do nothing for you and I will send for the constable" is inducement. (1897—1901) U. B. R. 147.
5. "You had better tell the truth" amounts to inducement. 10 C. 775, 1934 L. 417.
6. "You had better pay the money than go to jail and it would be better for you to tell the truth", is inducement. 9 B. H. C. R. 358.
7. "Tell me what happened and I would take steps to get you off" is inducement. 3 B. 12.
8. "If you confess to the Magistrate, you will get off" is inducement. 1 W. R. 24.
9. "It would be to your interest if you make a clean breast of it" and insisting to get the confession in writing, is inducement. 1932 Sind 64=33 Cr. L. J. 650.
10. Confession under inducement of being made an approver is inadmissible. 45 A. 300=1923 A. 352, 45 A. 633=1924 A. 72.
11. Confession on a promise of release is inadmissible. 45 B. 1086.
12. Pressure by accused, which is sufficient to induce the accused to suppose that he would get a benefit of temporal nature is sufficient threat or inducement. 1926 A. 246=91 I. C. 894=27 Cr. L. J. 158.
13. A confession made by an accused person under fear encouraged by Police in a subtle way during the hours the accused was in their custody and before he was produced before the Magistrate is inadmissible. 60 I. C. 417.
14. An incriminating statement by accused in Police custody at the suggestion of the Headman at the latter's suggestion to speak the truth, lest the witnesses for the other side may let it out, is inadmissible. 18 Cr. L. J. 106=37 I. C. 314.
15. Statement made by an approver under a conditional pardon is admissible against the accused. But if accused are acquitted and approver put on trial, the statement is inadmissible, as it was made by inducement 22 Bom. L. R. 1247.
16. A confession caused by illegal inducement or illegal detention of accused's relatives is irrelevant. 4 I. C. 759.
17. K. as a witness made a statement implicating himself in the trial of one V. He was then made a co-accused. It was found that statement was made by inducements or threat. Held, that it was irrelevant. 9 P. R. 1911 Cr.
18. "If you confess, you will be pardoned" is an inducement. 2 A. 260.
19. That the accused would be dealt with leniently is an inducement. 9 L. 671.
20. A village *Panch* told the accused that the truth had come out, and the villagers were being worried about the affair and he had better say what he knew. Held, that there was veiled inducement and threat. 1929 P. 275=8 P. 289=30 Cr. L. J. 675.
21. "I will try to save you" is inducement. 60 C. 719=1933 C. 644.

Confession by inducement, etc.—(contd.)

22. Words "speak the truth" were intended to convey threat to accused. 1933 Sind 409. See 1929 M. W. N. 791.
23. Inducement may not be expressed but may be implied. A perfectly innocent expression coupled with acts or conduct of the person in authority may amount to inducement to confess. 52 C. 67.
24. "The truth has come out : you had better say what you know" is inducement. 8 P. 289=1929 P. 275=116 I. C. 770.
25. Promise of immunity from prosecution in another case is inducement. 5 Cr. L. J. 437.
26. 'If you confess we will compromise the matter' is—. 17 Cr. L. J. 188.
27. 'Do not expect advantage or disadvantage therefrom' is—. 3 Cr. L. J. 324.
28. 'Offer by complainant to drop proceedings is—. 1921 C. 458.
29. 'Unless you admit guilt you would be dealt with severely and sent to jail' is—. 19 A. 291.
30. A threat to put the womanfolk to trouble, 1920 C. 663 or to detain the wife of the person illegally, 11 Cr. L. J. 41, or to implicate crime 1921 L. 267, or beating to extort confession. 6 Cr. L. J. 266, 17 Cr. L. J. 351 falls under S. 24.
31. My own brother had committed murder but had got off by making clean breast of it. 26 P. R. 1916=17 Cr. L. J. 226.

9. Inducements, Threats—what are not.

1. Moral exhortation to speak the truth is not inducement. 9 P. R. 1894, 11 C. W. N. 904, 1925 P. 772=4 P. 646, 6 Cr. L. J. 154.
2. Holding out hopes of divine forgiveness is not inducement. 5 M. L. J. 29.
3. "Take care we know more than you think we know" amounts only to a caution and not a threat. 3 Bom. L. R. 404.
4. "I know the whole thing" is not inducement or threat. 3 Bom. L. R. 404.
5. Threat of ex-communication for life is not a threat. 5 M. L. J. 29, 4 A. 46.
6. Accused in making confession said to the Magistrate "I want to make a clean breast of it for the Government may take pity on me if I serve the Government." Held, it was not inducement under S. 24. 109 I. C. 225=1928 C. 500.
7. If a person confesses to a Mukhia of a village voluntarily, without any sort of assurance from him that he would help him, is not covered by S. 24, as he is not a person in authority. 49 A. 57=1926 A. 737=27 Cr. L. J. 1068.
8. The fact that a Police Officer got by means of threat or deceit an information from a prisoner as to circumstances incriminating the latter does not render that information inadmissible in evidence. 38 I. C. 321, 4 Cr. L. J. 49.
9. There is no rule of law which compels a Magistrate to raise an inference or improper inducement from the mere fact that a confession is retracted. 6 L. 415.
10. "It is no use trying to get out of it, you were seen with a pair of shoes" is not—. (1897—1901) 1 Upp. Bur. Vol. 147 (148).
11. "Do not cry but speak the truth" is not—. 1929 M. W. N. 791.

10. Persons in authority.

A. General.

1. The test as to whether a person is a person in authority, is whether that individual had authority to interfere with the matter and had any concern or interest in it sufficient to give him that authority. 42 B. 220, 1934 Sind 172, 1932 Sind 64=33 Cr. L. J. 650, 57 C. 488, 50 C. 127, 40 B. 220.
2. A too restrictive meaning should not be placed upon the words 'person in authority.' 9 C. W. N. 474.
3. S. 24 refers to a person in actual authority, a test being the possession of some power or control over the accused with reference to his case. 18 Cr. L. J. 58 as Deputy Registrar in the case of a clerk. 1925 P. 772.
4. The expression 'person in authority' has a wider meaning than actual prosecutor and

Confession by inducement, etc.—(contd.)

- the test is, has the person any authority to interfere in the matter and any concern or interest in it, sufficient to give him authority. 43 I. C. 605=19 Cr. L. J. 189, 9 Bom. H. C. 358, 8 Bom. L. R. 507, 26 I. C. 161, 9 C. W. N. 474.
5. A person is deemed to be in authority, only if he stands in certain relations which are considered to imply some power of control or interference in regard to prosecution. 9 B. H. C. R. 358.
 6. A person in authority means a person who has control over the prosecution. 2 Den. Ca. 522, 23 L. J. Mag. Ca. 19, 8 Car. and P. 733. (Ref. in 9 Bom. H. C. (Cr. C. 358).)
 7. Belief of accused that the person to whom he is making confession is person in authority, is not sufficient. 1934 Sind 172=152 I. C. 1032, 18 Cr. L. J. 58.
 8. Person in authority is one who is engaged in apprehension, detention or prosecution or examination of accused. Hence a Tahsildar who had no interest in prosecution was not a person in authority. 1933 P. 149=34 Cr. L. J. 349=12 P. 241.
 9. A person who has no power to interfere in the matter is not a person in authority. 12 P. 241.
 10. If the inducement had been offered by a third person and the person in authority kept silence, the confession is inadmissible. 9 L. 671=1928 L. 476.

B. Who are—and are not.

1. A **co-villager** who does not exercise any influence or authority in the village, is not a person in authority although accused might have thought him to be such a person. 57 C. 488=1930 C. 633, 10 S. L. R. 140.
2. A confession to **Excise Superintendent** with regard to illicit possession of opium is admissible, provided no threat or promise was held out. 22 C. W. N. 451.
3. **Inam Khor** is not person in authority. 1929 L. 558=114 I. C. 719.
4. **Lambardar** is not a person in authority, 4 L. L. J. 235=81 I. C. 555. *Cont.* 1934 L. 307=417.
5. **Magistrate or Magistrate's Clerk** is person in authority. 2 A. 260, 10 C. 775, 26 M. 38, 1 W. R. 24 Cr., 101 I. C. 881. *See* 1934 L. 417=152 I. C. 998.
6. **Master of a vessel or Master** is person in authority. 10 B. L. R. App. 1, 57 C. 488.
7. **Manager of a firm** illegally induced a servant of the firm who had embezzled money, to confess, and insisted on getting confession in writing. Held, he was person in authority and confession was inadmissible. 1932 Sind 64=30 Cr. L. J. 650.
8. Whether a **Monigar** is a person in authority depends upon the circumstances of each case. 1929 M. W. N. 791, 26 M. 38.
9. A **village panch** is a person in authority. 8 P. 289, 1923 C. 458=23 C. W. N. 572.
10. A member of **panchayat** is a person in authority. 4 Bom. L. R. 785.
11. Collecting **Panchayat** and assisting Panchayat are both persons in authority. 50 C. 127=1923 C. 458, 8 P. 289=1929 P. 275, 33 I. C. 828. *See* 1924 M. 230=25 Cr. L. J. 269, 4 Bom. L. R. 785.
12. A **member of Panchayat** who was assuming authority and leading the accused to believe that he had that authority, he was held person in authority. 9 C. W. N. 474, 11 C. W. N. 904, 1929 P. 275, 17 Cr. L. J. 188.
13. The **members of a Panchayat** who sat together to consider whether two persons should be excommunicated for having committed murder were held not to be person in authority. 4 A. 46, 1893 A. W. N. 129, 4 Bom. L. R. 785, 1924 M. 230.
14. **Prosecutor or wife of one of the prosecutors** and concerned in the management of their business is person in authority. 9 B. H. C. R. 358, 23 Cr. L. J. 573, 19 Cr. L. J. 189, 1921 C. 458.
15. **Police Constable** is person in authority. 5 N. W. P. 86.
16. **Police Patel** in a village is person in authority. 40 B. 220, 3 B. 12.
17. **President of Panchayat** is person in authority. 33 I. C. 623=20 C. W. N. 512.
18. **Thugyi** is person in authority. 26 I. C. 192=8 Bur. L. T. 39.

Confession to Police Officer—(contd.)

7. Confession to Police is admissible to prove ownership of property under S. 522, Cr. P. C. 9 B. 131.
 8. Judge may refer to confession contained in Police diary and enable the accused to contradict the witnesses. 1923 A. 25=29 Cr. L. J. 26.
 9. Confession to Police cannot be used to explain away discrepancy in a subsequent confession to a Magistrate. 1926 A. 246=27 Cr. L. J. 158.
 10. Confession to Police may be used not to prove guilt, but to prove a corroborative circumstance. 4 A. 198.
- 3. Admission or confession to a Police Officer. See First information report—2**
1. A statement made by an accused to the Police, not amounting to confession is admissible in evidence. 10 Bom. L. R. 2, 6 C. 530, 5 Bom. L. R. 312.
 2. A statement, although intended to be made in self-exculpation and not as a confession, may nevertheless be admission of a criminating circumstance and if so, it is excluded by Ss 25-26. 6 B. 34, 8 L. 326, 46 B. 86.
 3. Accused was found carrying a box at night, and when asked by a Police man as to its ownership, stated that box belonged to him. Held, this statement was admissible against him, on a trial of theft of the box. 5 Bom. L. R. 312.
 4. A statement to Police from which no inference of guilt can be drawn is admissible. 15 C. 589.
 5. Any incriminating statement by accused to Police, on which the prosecution relies, is inadmissible. 10 C. 1022, 6 B. 34, 14 B. 260, 19 B. 363.
 6. A useful test as to admissibility of statements made to the Police is to ascertain the purpose to which they are put by the prosecution. 41 C. 545.
 7. If the statements are relied upon, not because of their truth, but because of their falsity, they are admissible. They are in such cases brought forward to show what the defence of the accused is, and that as the defence is untrue, this is a circumstance to prove the guilt of the accused. 41 C. 545, 5 Bom. L. R. 312, 86 I. C. 961, 65 I. C. 849, 1925 S. 257, 1926 S. 151, 19 B. 363, 1922 A. 24.
 8. Exculpatory statement may amount to admission. Statement by accused to Police pointing out the place of murder, or where he concealed himself after it, are admissible as admission, whether they lead to discovery under S. 27 or as statement made as part of defence. 41 C. 545.
 9. Question whether a particular statement, positive or negative, verbal or expressed by conduct is a confession or not must be decided on merits in each case. 1925 Sind 237=86 I. C. 410=26 Cr. L. J. 778.
 10. Accused stated to the Police that he got the ammunition bundle from the co-accused. Held, the mere fact that he in making this statement may have intended it to be self-exculpatory, is insufficient. It is an admission that he associated with the other accused and is therefore inadmissible. 46 B. 961.
 11. A Sub-Inspector of Police deposed that accused came with cattle and made a statement that they were present in the fight. Held, that it was not an admission but a complaint and was therefore admissible. 1923 L. 232=81 I. C. 347=25 Cr. L. J. 811. See 22 C. 392.
 12. Accused gave first information report that he committed murder. Held, it was admissible although the preliminary portions of it giving a history and narrative of occurrence was admissible. 25 C. W. N. 788=22 I. C. 601, 37 C. 467, 15 C. 589.
 13. Incriminating admissions of an accused, under admitted circumstances, that he took the investigating Police Officer round the scene of offence and admitted before them his own guilt, are inadmissible under S. 26. 120 I. C. 210=31 Cr. L. J. 15=1929 N. 350.
 14. Confession of accused while in custody of Police is not admissible against his co-accused. 12 Bom. L. R. 889.
 15. Statement of accused while in custody of the Police Officer and of his having pointed out the place where he committed the offence, are not admissible as being of an incriminating nature. 1926 C. 320=92 I. C. 439=27 Cr. L. J. 263.

Confession to Police Officer—(contd.)

16. A confession made to Police Officer by an accused is admissible in evidence, on behalf of another co-accused. 12 Cr. L. J. 79.
 17. Accused was convicted on the evidence of two Sub-Inspectors who stated that he offered them Rs. 10 per ball of opium to let him land from a steamer. Held, it was an admission of an offence that he had contraband opium and therefore inadmissible in evidence against him. 13 Cr. L. J. 405.
 18. Confession to Police Officer is admissible to prove the ownership of property regarding which he is charged. 56 I. C. 62.
 19. A statement made to Police Officer by way of explanation in order to exculpate himself is admissible. 14 Cr. L. J. 252.
- 4. Confession to foreign administrator while in custody.**
 Confession by an accused while in custody to a foreign administrator is inadmissible. 1924 B. 480=87 I. C. 520. But is admissible if made to a Magistrate of foreign country. 1929 M. 487=52 M. 529.
- 5. Confession to Magistrate while in Police custody.** S. 26, Evidence Act.
1. A confession made to the Magistrate is admissible, although accused is in the custody of the Police. 15 C. 595, 1925 L. 557=91 I. C. 806, 6 A. 509.
 2. The word 'Magistrate' and 'Police Officer' in S. 26 include the Magistrate and Police Officer of Native State. 49 B. 642, 22 B. 235, 69 I. C. 257, 1929 M. 487=52 M. 529, 1934 Sind 103, 12 A. 595, 2 P. R. 1909.
 3. S. 26 does not make the admissibility of the confession dependent upon the knowledge of the accused as to the identity of the Magistrate. 1930 L. 534.
 4. "Magistrate" means any Magistrate and not merely the Magistrate having jurisdiction. 7 B. H. C. R. 56 Cr., 144 I. C. 157, 52 M. 529.
 5. Oral confession or incriminating statement by an accused in Police custody to a Magistrate is admissible. 1930 L. 534=129 I. C. 289=32 Cr. L. J. 290, 1933 L. 513 (2).
 6. A statement made at the dock before the Magistrate, if it amounts to confession is admissible, when the accused was in custody. 1930 M. W. N. 1249, 1931 M. W. N. 723.
 7. A statement made in the presence of Sub-Magistrate and a Constable who had the accused under arrest at the time and not recorded by Magistrate under S. 164, Cr. P. C., is inadmissible in evidence. 1929 A. 855=30 Cr. L. J. 867.
 8. A confession to be admissible in evidence may be oral. It may be proved by the Magistrate to whom the oral confession was made. 11 P. R. 1918 Cr., 1933 L. 998, 14 L. 290, 1933 O. 432, 1933 L. 716, 19 Cr. L. J. 651.
 9. Police Officer took a Magistrate with him while conducting investigation. Evidence of Magistrate as to what happened and pointing out places by accused is inadmissible. 1933 A. 394.
 10. Accused was brought before a Magistrate for remand. He confessed his guilt. Magistrate did not record it according to law but on the back of application. He was examined as witness. Held, it was admissible and the defect was cured. 1934 R. 78=35 Cr. L. J. 823, 55 M. 711=33 Cr. L. J. 626 and 1933 A. 440 Rel. on.
 11. Oral confession before Honorary Magistrate is admissible under S. 26. 1934 L. 417, 1933 L. 956, 1929 L. 794 and 1930 L. 534 Foll.
 12. Oral confession to Magistrate soon after arrest is admissible. 1933 L. 998=147 I. C. 692, 1930 L. 534, 1932 L. 488, 21 P. R. 1881, 52 P. R. 1887 and 11 P. R. 1918 Ref.
 13. If the Magistrate did not act under Ss. 164—364, oral evidence of Magistrate should not be allowed. 1936 P. C. 253 (2), 14 L. 290, 16 L. 912, 21 P. R. 1881, 11 P. R. 1908, 1934 A. 81 and 1922 M. 40 overruled.
 14. Accused pointed out to a Magistrate at an identification parade, a person as being one of the dacoits, who took part in a dacoity with him. Held, it amounted to confession which can be used against co-accused and can be proved by the Magistrate. 1936 R. 350, 1934 R. 78, 55 M. 711=1932 M. 431, 45 M. 230, 14 L. 290.

Confession to Police Officer—(contd.)

37 C. 467 and 55 A. 463 Ref.

15. A confession made to a third person and overheard by Police Officer is admissible. 1934 O. 222=149 I. C. 69, 1934 A. 132, 1934 A. 475, 1934 L. 75, 7 W. R. Cr. 56.
 16. Confessional statement is inadmissible even if made before arrest, e.g., as first information report. 27 C. 295, 4 C. W. N. 129, 1933 L. 899, 1935 B. 26.
 17. An incriminating statement made by conduct is inadmissible. 1935 O. 1, 14 B. 260.
 18. A confession made to Police Officer is inadmissible even if it is made in the immediate presence of the Magistrate. 1 C. 207 (215).
 19. A confession to Magistrate is admissible even if the Police Officer is present in the same or next room. 1934 P. 586, 1931 L. 403=32 Cr. L. J. 818.
 20. Confession is admissible even if the accused is led into the belief that Magistrate is a Police Officer. 1932 Sind 201=34 Cr. L. J. 147.
- 6. Confession made before arrest.**
1. A confession made by a person when he is not accused of any offence is in admissible in evidence against him when he is accused of an offence. 13 Cr. L. J. 405=15 I. C. 305, 10 Cr. L. J. 193, 36 P. R. 1918 Cr.
 2. A statement made before arrest and not in Police custody is inadmissible though it may lead to the discovery of dead body. 1932 C. 297=36 C. W. N. 373.
- 7. Chawkidar.**
1. In Punjab, village Chawkidar is not a Police Officer, and a confession made to him is admissible. 42 P. R. 1917 Cr.
 2. A village watchman or Kotwal is not a Police Officer in Central Provinces. 57 I. C. 88.
 3. Village Chawkidars are Police Officers under S. 25 in Oudh. 1 O. L. J. 687=26 I. C. 654, 1934 O. 19=35 Cr. L. J. 664.
 4. A Chawkidar is a Police Officer in Bengal. 26 C. 569, 9 C. W. N. 474.
 5. Confession to a private person in the presence of Chawkidar, who is not taking part in the investigation is admissible. 1934 O. 222=35 Cr. L. J. 894, 1933 O. 192.
 6. A Chawkidar appointed under N.W. Province Village and Road Police Act 16 of 1873 is a Police Officer. 1936 A. 753, 1934 A. 132 overruled.
- 8. Confession to Postal Officer.**
- A confession made by accused to a Superintendent of Post Office at his house, when he was taken temporarily by Police and was again removed back to Police lock-up, is inadmissible. 1928 L. 282=103 I. C. 398=10 L. L. J. 174.
- 9. Confession to witnesses or persons taking part in investigation.**
1. An incriminating statement made to a witness in the absence of Police and then repeated to him and the Police Officer, is admissible, but its value is a matter of consideration. 25 Cr. L. J. 259.
 2. Confession made to a person asked by the Police Officer to take confession, and taken in the near proximity of the Police Officer is inadmissible, as it is made in substance to a Police Officer. 49 A. 57=1926 A. 737=27 Cr. L. J. 1068.
 3. Sub-Inspector handed over the accused to the custody of certain *Mashirs* with instruction that they should not be allowed to escape and also with instructions to ascertain from him the facts of the case. Held, that confession made to them is inadmissible. 26 S. L. R. 1.
 4. Confession to a witness in Jail in the presence of Police Officer is admissible. 8 P. R. 1914 Cr., 20 B. 795.
 5. A confession made to Police Officer in the presence of a private person is inadmissible. 4 A. 198, 320 P. L. R. 1913.
 6. A confession was made to persons taking part in the investigation, but they were unable to give the exact words and their evidence was discrepant. Held, that it would not be safe to base conviction on such confession. 1934 L. 8=35 Cr.

Confession to Police Officer—(could)

L. J. 623=148 I. C. 205.

7. A confession to a crowd is admissible. Because a Police man was one of the crowd does not make it inadmissible. 1934 A. 132=147 I. C. 630.

0. Confession to Zaildar.

Confession to Zaildar in the immediate vicinity of Police, while the accused was in detention as suspect though not actually handcuffed was practically made to Police and is inadmissible. 26 P. R. 1916 Cr.

1. Custody.

1. As soon as an accused or suspect comes into the hands of Police Officer he is, in the absence of clear and unmistakable evidence to the contrary, no longer at liberty and is therefore in custody within the meaning of Ss. 26-27, Evidence Act. 1, R. 609=25 Cr. L. J. 381=77 I. C. 429=1924 R. 173, 15 L. 310, 10 B. 595.
2. Some sort of custody is sufficient. If the prisoners were among certain persons who had been "collected" by Police Officer on suspicion and the officer himself accused them of the offence, the prisoners were deemed to be in custody of Police. 10 B. 595.
3. A person under arrest on a charge of murder was taken in a Tonga. A friend drove with her with a mounted Policeman in front. The Policeman went to a neighbouring village to get another Tonga and left them there. In his absence accused confessed her guilt to her friend. Held, that the confession was inadmissible, as she was under custody, though the Policeman was temporarily absent. 20 B. 165, 1928 L. 282, 42 B. 1, 18 Cr. L. J. 609=39 I. C. 977.
4. Custody of keeper of Jail in a Native State, who is not a Police Officer, does not become that of a Police Officer, merely because his subordinates, the warders of Jail, are members of the Police force. 20 B. 795.
5. The Sub-Inspector of Police handed over the accused to the custody of certain *mashirs* with instructions that they should not be allowed to escape and to ascertain from the accused the facts of the case. They were under close supervision under Police instructions. Held, that the confession made to *mashirs* at that stage is inadmissible having been made while under Police custody. 26 S. L. R. 1=1932 S. 149=141 I. C. 215.
6. A confession made by a woman, not in the custody of Police, to a village Magistrate is admissible. 7 M. 287.
7. A person is not in Police custody merely because he has been invited to explain certain circumstances, unless he has been arrested or is under Police supervision. 85 I. C. 833=26 Cr. L. J. 609.
8. Accused who was in the lock-up of a Magistrate, was sent up for treatment to a Hospital with two Policemen in charge. The latter waited in the verandah. The accused within the hearing of the Doctor made a confession to a private person. Held, it was excluded under S. 26 as the accused was in Police custody. 42 B. 1, 20 B. 795 Dist.
9. A confession by accused to his fellow prisoners in judicial lock-up is admissible although there is a Policeman guarding the lock-up. The accused was in Magisterial custody as opposed to Police custody. 1934 L. 75=151 I. C. 894, 8 P. R. 1914 Cr. and 20 B. 795 Rel. on. 42 B. 1 Dist.
10. When a person states to Police Officer that he has committed an offence, he submits to the custody of Police Officer under S. 46 (1), Cr. P. C. 1933 P. 149=12 P. 241, 1928 P. 491=7 P. 411 overruled.
11. The test of "custody of Police Officer" is whether accused is at liberty to move from particular place. Where accused was handed over to his master by the Police with instructions not to allow him to escape. Held, he was in custody. 1932 S. 149, 20 B. 165, 42 B. 1 and 3 M. H. C. R. 318 Rel. on, 1921 S. 145 and 1924 R. 173 Ref.
12. It is not necessary that accused should have been formally arrested. 3 M. H. C. 318.
13. Accused will be deemed to be in custody if he is suspected by Police. 10 B. 595, 1 R. 609=1924 R. 173.

Confession to Police Officer—(contd.)

14. If accused is under supervision he is in 'custody.' 26 Cr. L. J. 609.
15. If accused is not permitted to leave at his own will, he is in 'custody.' 1932 Sind 201 = 34 Cr. L. J. 147.
16. Some sort of restraint on the movement of accused will constitute custody. 1932 Sind 201, 1932 Sind 149 = 34 Cr. L. J. 129.
17. Submission to custody by word or action under S. 46, Cr. P. C., is sufficient. 1931 L. 278 = 32 Cr. L. J. 650.

12. Excise Officer.

1. An Excise Officer is not a Police Officer within the meaning of S. 25, Evidence Act. 1932 C. 122 = 36 C. W. N. 163, 7 R. 771, 54 C. 601, 1927 Sind 112 = 99 I. C. 594, 1925 B. 517 = 97 I. C. 655, 46 C. 411, 1925 Sind 70, 3 P. R. 1918 Cr.
2. An Excise Officer is a Police Officer within the meaning of S. 25. 51 B. 78, 9 Mys. L. J. 74, 58 C. 1260, 1934 C. 550 = 61 C. 607. *Case Law discussed.*
3. Admission to Excise Sub-Inspector is inadmissible. 1934 N. 136 = 35 Cr. L. J. 1233, 1927 N. 222 and 1931 C. 350 Rel. on.

13. Excise Peon.

An Excise peon having the power to detain, search and arrest any person whom he believes to be guilty under Opium Act or Bombay Abkari Act has powers similar to those of a Police Officer. Any confession made to him is, therefore, inadmissible, under S. 25. 1935 N. 13 = 36 Cr. L. J. 511, 1927 N. 222 = 28 Cr. L. J. 471, 1927 B. 4 = 51 B. 78, 1929 L. 29 = 10 L. 524, 1931 C. 350 = 58 C. 1260 and 1934 C. 580 = 61 C. 607 Rel. on. 1930 R. 49 = 7 R. 771, 46 C. 411, 54 C. 601 and 1932 C. 122 = 34 Cr. L. J. 21 Dist.

14. In First Information Report. See First information report—2.**15. Magistrate—of Native State.**

1. Magistrate means any Magistrate and not merely the Magistrate exercising jurisdiction under Cr. P. C. 7 B. H. C. R. 57 Cr., 52 M. 529.
2. Magistrate includes Magistrate of Native State. 49 C. 642, 22 B. 235, 69 I. C. 257, 1934 Sind 103, 1925 B. 529, 1934 L. 873, 2 P. R. 1909 Cr.
3. 'Magistrate' includes village Magistrate. 7 M. 287, 1934 L. 417, 1927 M. 974.
4. A coroner is a Magistrate. 1923 B. 52, 50 B. 111 = 1926 B. 151.
5. A confession not recorded or not duly recorded can be proved by the evidence of Magistrate, as extra judicial confession. 1934 Sind 103, 1933 A. 286 = 34 Cr. L. J. 704, 49 B. 642, 2 P. R. 1909 Cr.

16. Oral.

1. S. 26 makes no difference between oral and written confession. 1930 L. 534.
2. Oral confession made to a Magistrate by accused in Police custody is admissible, if he was not produced for the recording of his statement. 1930 L. 534, *Cont.* 120 I. C. 210 = 31 Cr. L. J. 15.
3. Oral confession to Magistrate can be proved under S. 26. 1932 L. 488, 1930 L. 534, *Cont.* 1936 P. C. 253 (2).

17. Police Officer. See Excise Officer, Chawkidar.

1. The Police Officer within S. 25 is an officer who exercises the powers of the Police conferred upon him by law, whether he is called Police Officer or by any other name and exercises other functions as well. 51 B. 78 = 1927 Bom. 4 = 28 Cr. L. J. 122.
2. Besides those mentioned in S. 25 of the Cr. P. C., the Police Officer includes all those persons who are intended to be included in the definition. 101 I. C. 599 = 1927 N. 222.
3. A confession to Deputy Commissioner of Police is inadmissible. 1 C. 207.
4. The term Police Officer should be taken in its more comprehensive sense, but according to its more comprehensive sense. 17 B. 485, 26 C. 569, 570, 22 B. 235.
5. Police Patel and Daroga are

Confession to Police Officer—(contd.)

6. Police Constable is a Police Officer. 10 Bom. L. R. 2 (App.), 2 B. 61, 6 A. 509.
7. Police Officer includes Police Officer of Native State. 22 B. 235, 49 B. 642.
8. It is not necessary that the Police Officer should be the investigating of C. L. R. 21.
9. A Police Patel in Berar is not a Police Officer. 1927 N. 222=101 I. C. 599, 291, 1925 N. 340 Diss. from.
10. Member of the Frontier Constabulary is a Police Officer. 71 I. C. 360.
11. S. 25 applies to Police Officer alone and not an Excise Inspector invested power of Police Officer to make search. 1932 P. 293=33 Cr. L. J. 872.
12. A village headman is not a Police Officer. 2 R. 31.
13. A. while accused was
Cr. L. J. 984, 22

18. Pointing places and things by accused if—.

1. Statement of accused while in Police custody and of his having pointed out the place where he committed the offence are not admissible as being of an inculpatory nature. 1926 C. 320=27 Cr. L. J. 263, 1935 O. 1, 152 I. C. 473, 1929 N. I. C. 601, 85 I. C. 830. See 1933 A. 394.
2. Accused made admission of guilt and pointed out certain stolen articles. His statements were inadmissible under S. 25. S. 27 was not applicable as the articles were not discovered in consequence of information but was pointed out by accused. 7 Cr. L. R. 175.
3. Accused pointed out certain places and things but there was no mention of confession, which was subsequently retracted. Held, that pointing out the places amount to corroboration of matter in confession. 1936 A. 373.
4. Accused pointed out window by which they entered and committed. Held, that the statements be proved as admission under S. 21, Evidence Act. 1932 L. 488, 45 C. L. J. 1929 L. 794 Foll.
5. Accused pointed out route taken by him to the place of dacoity and the place where the booty was divided. Held, it is inadmissible. 26 Cr. L. J. 606.

19. Police Officer acting as Magistrate.

1. A confession made to a District Superintendent of Police who is also exercising judicial powers, is inadmissible. 8 R. 52=1930 R. 227=31 Cr. L. J. 823.
2. A confession was made to an Assistant Superintendent of Pok Koku Hill Tract who exercised the powers of Additional District Magistrate and who was also Commandant of Military Police. Held, that the confession was inadmissible having been made to a Police Officer. 8 R. 52=1930 R. 227=31 Cr. L. J. 823.

20. Police Officer overhearing a confession.

1. A confession made by accused to another person and overheard by the Police from the adjoining room is admissible as it was made in ignorance of Police and uninfluenced by it. 7 W. R. 56 Cr. (1867), 1934 O. 222, 1934 A. 132, 475, 1934 L. 75.
2. A confession to fellow prisoner by accused while in judicial lock-up is admissible in spite of the presence of Police man who was guarding the lock-up. 1935 O. 151 I. C. 894, 8 P. R. 1914 Cr. and 20 B. 795 Rel. on. 42 B. 1 Dist.

21. Repetition to Magistrate of—.

Confession was made to Police Officer. Accused merely repeated before Magistrate the fact and contents of the previous confession. Statement to Magistrate is inadmissible. 49 B. 642=1925 B. 529=26 Cr. L. J. 1478.

22. Statement in recovery list by accused.

1. Signature of accused on recovery list is inadmissible against him as it would

Confession to Police Officer—(concl'd.)

2. Court should exclude from the record Panchnamas which contain statements by an accused person which are inadmissible. 13 Bom. L. R. 499, 1933 Sind 220.
3. Some incriminating things were found from a house, the admission of accused in the recovery list that house belongs to him is inadmissible. 8 L. 326.

23. To village headman.

Accused making statement to village headman as to crime while being arrested by him, at the instance of Police, the statement is very near to statement while in Police custody. 1936 R. 455

24. Statement of approver—.

Statement of approver to a Police Officer being really confessions are inadmissible against the accused under S. 25. 35 M. 247.

25. Use of—by co-accused.

1. S. 25 provides that confession will not be used against the accused. Such confession is admissible in evidence against on behalf of another co-accused. 12 Cr. L. J. 79.
2. A confession made to Police might be admissible in favour of co-accused, but not against him. 13 Cr. L. J. 465, 2 B. 61, 1923 L. 315=25 Cr. L. J. 5.
3. A statement made by accused against another accused, when questioned by the Police before the Headman, is excluded, when it is made at the suggestion to speak the truth, lest the witness for the other side may let it out when called. 18 Cr. L. J. 106.

26. What is.—

1. Making counterfeit coin before Police is not confession. 1931 A. 9.
2. Writing taken from accused for comparison of hand-writing is not confession. 34 Bom. L. R. 598=1932 B. 406=138 I. C. 708=33 Cr. L. J. 666.
3. A mere admission of being present at the time and place where offence was committed is not confession. 11 Cr. L. J. 96.
4. A statement by accused, charged with murder, that he was in the fight and deceased attempted to interfere in the seizure of cattle is not confession and is admissible. 1923 L. 232=25 Cr. L. J. 811.

CONFIRMATION OF SENTENCE. See Sentence—12.

CONFISCATION OF PROPERTY. See Disposal of Property, S. 517.

CONNIVANCE. See Adultery—7. Enticing away married woman—8.

CONSENT. Ss. 87—90, I. P. C.

1. By fraud, fear, misrepresentation, etc.—S. 90, I. P. C.

1. A consent given under misrepresentation of a fact is given under misconception of fact within the meaning of S. 90. In such a case the effect is as if there had never been any consent at all. 36 M. 453 (456-57), 17 P. R. 1916 Cr.
2. Removal of wood with the consent of Forest Inspector is theft, if it was unauthorized or fraudulent. 1 B. 610.
3. Where a snake charmer persuaded the deceased to allow them to be bitten by snake inducing them that he had power to protect them from harm, the consent is given under misconception of fact and the accused is not protected. 12 W. R. 7.
4. If two bodies of men deliberately fight with deadly weapons, they are not protected by the doctrine of consent when the man slain is an adult and no unfair advantage was taken by one side over the other. 18 C. 484, 5 C. 31, 6 C. 154.
5. As consent justifies an act otherwise Criminal, it should be pleaded and proved by the accused. 6 W. R. 57 (58).
6. Consent to be valid must be free consent. 18 C. 484.
7. If an ignorant person represents himself as having skill to perform a difficult operation, such consent will avail him nothing. 14 C. 566.
8. Consent given by guardian on misrepresentation of fact is no consent. 17 P. R. 1916.

Consent—(contd.)

2. Beneficial act without consent. S. 92.

1. Accused a wealthy zamindar and a Honorary Magistrate in the town of Kanauj wrongfully confined his brother for 10 days, as he had fits of insanity and became violent. Held, that the accused is guilty, as he had lucid intervals also and the accused in not getting medical attendance, did not act with due care and caution in chaining up his brother for over 3 months. 45 A. 495.
2. Where a number of eunuchs caused the death of a person in trying to emasculate a person by cutting off his private parts without ligatures, with his consent they are guilty. 5 W. R. 7.

3. Death by—. See Murder—47.

4. Implied—. S. 89, I. P. C.

A schoolmaster was charged for caning one school boy who, the master believed, had assaulted another. Held, that when a child is sent to school, there is an implied consent given by parents or guardians to the infliction of such reasonable punishment, as may be necessary for school discipline. 3 R. 659=1926 R. 107=94 I. C. 412=27 Cr. L. J. 636.

5. Of abducted woman. See Abduction.

6. Of Guardian. See Kidnapping—7.

7. Of Minor. See Kidnapping—8.

8. Of owner concerning theft of his property. See Theft—12.

9. To be bound down under S. 107 or S. 110, Cr. P. C. See Breach of Peace—8. and S. 110, Cr. P. C.

10. To illegalities or irregularities by accused. See Waiver, Irregularities.

1. Statements which are inadmissible, cannot be rendered admissible by consent of parties. 1923 L. 630=80 I. C. 235.
2. Evidence before one Magistrate is no evidence before another. Mere consent of parties will not do. 1923 M. 327=72 I. C. 525, 24 Cr. L. J. 413, 1923 C. 196=71 I. C. 662, 46 M. 117=24 Cr. L. J. 198.
3. District Magistrate cannot without the consent of accused impose a condition while transferring a case that there would be no *de novo* trial. 1930 L. 168=121 I. C. 374=31 Cr. L. J. 759.
4. A Magistrate as president of the Octori Sub-Committee, directing the prosecution of accused for erasing payment of octroi is debarred from trying the case even though accused had consented to be tried. 32 A. 635.
5. Criminal proceedings are bad unless they are conducted in the manner prescribed by law. The defect is not cured by any consent or waiver of the prisoner. 2 C. 23, 6 C. 83.
6. A Sessions Judge cannot convict on evidence partly recorded by himself and partly by others. The consent of the prisoner is immaterial. 26 B. 50.
7. A person may relinquish his right to be dealt with as European British subject but his right must be distinctly known to him. 37 C. 467, 6 C. 83.
8. No waiver can cure a defect of misjoinder of charges. 8 Cr. L. J. 152.
9. The prisoner can consent to nothing. 13 B. 389 (391), 2 C. 23 1934 N. 209.
10. In a criminal trial, the Court is bound to draw no inference of waiver against an accused person, specially in the case of omission by the Court to perform a duty imposed on it, in express terms, by the legislature in his interest. 5 Cr. L. J. 332.
11. Except where the law expressly permits waiver, the right of an accused person should not be held to be lost by his consent to a proceeding or the admission of evidence which the law does not authorise. 12 C. W. N. 150=8 Cr. L. J. 434.
12. Failure to object to the reception of evidence which is irrelevant cannot make it relevant. 1929 L. 583=119 I. C. 734.
13. Neither request nor consent to an illegal act can make it legal. 1923 R. 284=117 I. C. 241=30 Cr. L. J. 736.

Consent—(concl'd.)**11. To intercourse. See Rape—7.**

The mere presence of semen on loin cloth of the woman is not sufficient to prove that she was a consenting party, especially in the absence of any spermatozo in the vagina. 1925 L. 94=6 L. L. J. 474.

12. To jurisdiction. See Jurisdiction—1—28.**13. To Medical Examination.**

1. The examination of an arrested person in hospital by a doctor not for the benefit of the prisoner but by way of second search, without his consent amounts to assault. 1931 C. 601—134 I. C. 1053=35 C. W. N. 1212=54 C. L. J. 499=33 Cr. L. J. 11.
2. Consent to medical examination need not be taken down in writing. 1932 C. 723.
3. In a defamation case based on allegation that a woman has had illicit pregnancy, she cannot be compelled to submit to medical examination against her consent and her refusal to do so is not evidence against herself. 1930 L. 159=31 Cr. L. J. 584.

14. To be use of Police statement. See Statement to Police—5.**15. To waive privilege. See Privilege—14.****16. Unauthorized.**

Where a Forest Inspector gave consent to the removal of wood dishonestly, the offence of theft was committed if the consent was unauthorized or fraudulent. 1 B. 610, 1930 R. 114=7 R. 821=122 I. C. 273=31 Cr. L. J. 387.

CONSPIRACY. Ss. 120-A—120-B., I. P. C., and S. 10, Evidence Act.**1. Abetment.**

1. An illegal act or omission in pursuance of conspiracy to commit a specific offence amounts to abetment of conspiracy. 18 P. R. 1879 Cr., 9 P. R. 1880 Cr.
2. An act done to carry out the purpose of conspiracy amounts to abetment. 42 C. 1153, 42 C. 957.
3. Conspiracy is a substantive offence and has nothing to do with abetment. 92 I. C. 462.
4. For abetment of conspiracy no sanction under S. 196-A, Cr. P. C., is necessary. 49 C. 573=1922 C. 107=69 I. C. 145=23 Cr. L. J. 657.
5. If the conspirator is present at the commission of offence, he is guilty of the offence read with S. 114, I. P. C. 52 C. 253=1925 C. 341=85 I. C. 231.
6. Signature in a note book of *Jama Kharch* is admissible to prove abetment of conspiracy. 35 I. C. 999.

2. Admissibility of evidence of—, S. 10, Evidence Act.

1. S. 10 renders admissible in cases of conspiracy such evidence which is not otherwise ordinarily admissible under the Indian law. 106 I. C. 721=1927 O. 369.
2. Before anything said, done or written by any one of the alleged members of conspiracy can be used as evidence against another or against all, the Court must be first satisfied that conspiracy between them existed, that is there was an agreement among them to commit an unlawful act. 31 Bom. L. R. 515, 1930 M. W. N. 1264.
3. If a conspirator proposes to another to start a propaganda and a pamphlet for the purpose, the statement would be admissible. 55 B. 839=1932 B. 56.
4. If *prima facie* evidence of the existence of conspiracy is given and accepted, the evidence of statements made by any of the conspirators in furtherance of common object is admissible against all. 25 Cr. L. J. 1041=1924 M. 805, 17 P. R. 1915 Cr.
5. Admission of an approver that he accepted a sum after the dacoity is not a circumstance incriminating him that he committed dacoity. 88 I. C. 458=1926 C. 374.
6. Connection has to be established with the conspiracy and not with the separate acts of different conspirators. 90 I. C. 706=1926 O. 161=26 Cr. L. J. 1602.
7. A Jail warder was tried under S. 222, I. P. C., for aiding to escape from Jail. He procured saw blades and loosened the rivets of the gates. Previously he was seen conversing with them. A constable was called as witness who deposed that a convict asked his fellow convict to give Rs. 100 to the accused. Held, that his

Conspiracy—(contd.)

- evidence was admissible under S. 10. 1929 L. 631=30 Cr. L. J. 1109.
8. Evidence showing that accused ran cocaine and gambling dens, before existence of conspiracy charged was held admissible. 46 C. 710.
 9. Possession of seditious literature by one accused is evidence against others. 46 C. 215.
 10. Accused can insist that first evidence should be let in that accused conspired together before acts or words by one can be admitted against others. 42 C. 957.
 1. Confession of co-accused can be taken against others under S. 10. 38 C. 169, 106 I. C. 721=1926 M. 135.

Association with accused. *See* Accused—2.

1. Evidence of association to be of any value should suggest something suspicious. Casual meeting or conversation in public place or park is not sufficient. 1935 A. 162=1935 Cr. C. 214.
2. Mere association of a person with a conspirator is not sufficient to show that the former was in conspiracy with the latter. 83 I. C. 513=26 Cr. L. J. 33.
3. Former associations of an accused person must be construed in the light of subsequent actions. 1934 C. 221=147 I. C. 32.

Burden of Proof—

- Where incriminating articles are found in a house and the circumstances suggest implication of all the inmates, the burden is on the inmates to prove their innocence. 1928 C. 27=106 I. C. 545=46 C. L. J. 368=29 Cr. L. J. 49.

Charge.

1. Charge of criminal conspiracy within limits of a determined area (*e. g.*, a village) is not too vague. 18 P. R. 1879, 9 P. R. 1880.
2. In a conspiracy case the accused can be charged with persons unknown but if they are charged with known persons, they must be named in the charge, otherwise the charge would fail. 15 C. W. N. 98=8 I. C. 1059.
3. Indictment for conspiracy must contain a statement of facts as constituting the offence in ordinary and concise language. 42 C. 957, 16 I. C. 257, 13 Cr. L. J. 609.
4. When offence is committed in pursuance of conspiracy, the conviction should be for abetment of conspiracy and not for criminal conspiracy. 42 C. 1153, 42 C. 957.
5. Omission to specify in the charge the persons who were parties to the conspiracy is an irregularity curable by S. 537, Cr. P.C. 101 I.C. 458=1927 S. 161=28 Cr. L. J. 426.
6. A charge is not bad if it specifies no date or names of persons against whom accused agreed to commit offence. 17 P. R. 1915 Cr.
7. Recital of specific offences committed in pursuance of conspiracy are at most a surplusage and may be ignored. 1930 Sind 164=1930 Cr. C. 649=31 Cr. L. J. 949.
8. In a case of conspiracy to get firearms, it is not necessary to specify in the charge, that accused conspired to possess any particular firearms. 1927 C. 265, 42 C. 957.
9. It is sufficient to include in the charge, the agreement arrived at between the conspirators. 90 I. C. 706=1926 O. 161=26 Cr. L. J. 1602.
10. Where accused is charged with conspiracy and acts of cheating in pursuance of conspiracy, the charge is not bad. 26 C. W. N. 680, 27 C. W. N. 821.
11. Where the prisoner is charged with having conspired with the specified persons and the latter are acquitted, the prisoner must also be acquitted. 101 I. C. 451=25 Cr. L. J. 449, 1926 C. 345=27 Cr. L. J. 147.
12. Where the charge is that the prisoner entered into conspiracy with certain unknown persons, the prisoner may be convicted alone. 41 C. 754.
13. Only an approximate date of conspiracy may be entered in the charge. 1934 Sind 57.
14. Acts committed by conspirators whether amounting to offences or not may be enumerated in the charge. 1934 Sind 57=151 I. C. 494.

Cipher Code.

1. In a trial of sedition a cipher code was put in evidence, which by grouping in a par-

Conspiracy—(contd.)

ticular form, had a revolutionary significance and names of conspirators could be deciphered. Held, it was admissible in evidence under S. 10. Evidence Act. 1929 P. 145=116 I. C. 756=30 Cr. L. J. 646.

2. A cipher code of a revolutionary significance is good evidence that persons named therein have conspired to commit an offence. Such a cipher code is substantive evidence of conspiracy. 1925 O. 161=25 Cr. L. J. 1602

7. Complaint and sanction. S. 195-A., Cr. P. C.

1. S. 195-A., Cr. P. C., applies only to a prosecution for conspiracy punishable under S. 120-B., I. P. C., and not for abetment of conspiracy punishable under S. 109, I. P. C. 3 R. 95=89 I. C. 305=1925 R. 295, 49 C. 373=25 Cr. L. J. 1329.
2. The proviso to S. 195-A., lays down that a sanction for criminal conspiracy to commit non-cognizable offences is not necessary where Court makes a complaint, e.g., for forged documents, etc. 1924 C. 53=30 C. 461=24 Cr. L. J. 949.

Conspiracy—(contd.)

- tors later are equally guilty. 92 I. C. 419=27 Cr. L. J. 243=1926 Sind 171.
6. The offence of conspiracy is complete when two or more persons agreed to do something. It is not necessary that something should be done. 31 Bom. L. R. 515.
 7. When out of two persons charged with conspiracy one is acquitted, the other should be acquitted. 1927 C. 949=23 Cr. L. J. 449, 101 I. C. 481, 1926 C. 345=91 I. C. 883, 1924 C. 809=81 I. C. 821, 14 A. L. J. 680, 17 P. R. 1905 Cr.
 8. It is optional for the crown to proceed for abetment of the offence committed in pursuance of conspiracy or of the offence of conspiracy. 92 I. C. 419=1926 S. 171.
 9. The offence of conspiracy is complete, although means are not settled or resolved at the time of conspiracy. 101 I. C. 458=1927 Sind 161=28 Cr. L. J. 426.
 10. Actual agreement need not be proved. An overt act raises a presumption of an agreement and knowledge of conspiracy. 1926 O. 161=26 Cr. L. J. 1602.
 11. Where incriminating articles are found in a house and the circumstances suggest implication of all the inmates, it is for the inmates to prove their innocence. 1928 C. 27=106 I. C. 545=46 Cr. L. J. 368.
 12. Picketing may be an offence, where agreement to stop sale of intoxicants in a bazaar, constituting criminal conspiracy, is arrived at. 1924 A. 233=92 I. C. 145.
 13. Conspiracy may be proved by circumstantial evidence. 28 Cr. L. J. 421=101 I. C. 453=1923 S. 73, 42 C. 957, 1926 S. 171, 42 C. 1153, 37 C. 467, 1927 S. 161=101 I. C. 458, 17 P. R. 1915 Cr., 1930 C. 14=115 I. C. 359.
 14. Merely that a person is an associate of a conspirator is not sufficient to convict him, nor that he is trying to extricate himself from being accused is sufficient. 129 I. C. 619=1930 C. 647=1930 Cr. C. 1069.
 15. In a case of conspiracy there is a large mass of evidence, which taken separately may not be relevant against every accused but taken in conjunction with other evidence may establish conspiracy. 53 Bom. 479=1929 Bom. 296.
 16. One S. kept a bomb, pistol and cotton wool for some three months and gave it to G. for safe custody, which were discovered at G's place. Held the moment these things were made over by S. to G. there was an agreement to keep them to endanger life and for the intent mentioned in S. 4 (b) Explosive Act and hence charge under S. 120-B, Penal Code, was proved. 1929 C. 14=30 Cr. L. J. 475.
 17. Conspiracy consists simply in the agreement or confederacy to do some act, no matter whether it is done or not. 42 C. 957, 14 A. L. J. 688, 1927 C. 265, 37 C. 467.
 18. The overt act in a case of conspiracy consists in the agreement of the parties to do an unlawful act or to do a lawful act by unlawful means. 31 C. W. N. 239=1927 C. 265, 16 C. W. N. 1105, 1933 A. 690=34 Cr. L. J. 967.
 19. Before evidence is let in under S. 10, Evidence Act, the defence is entitled to insist upon proof of reasonable ground for belief that the persons named in the charge have conspired together. 42 C. 957.
 20. A cipher code of revolutionary significance is good evidence that persons named therein have conspired to commit an offence. Such a cipher code is substantive evidence of conspiracy. 1926 O. 161=27 Cr. L. J. 243, 30 Cr. L. J. 646.
 21. Two persons took a house in which a considerable number of pieces of firearms were found with tools and implements and work had been done to some parts of the firearms. Court ought to infer a conspiracy to manufacture arms. 42 C. 1153.
 22. The testimony of persons who have been members of a criminal conspiracy or else have joined it for betraying its secrets must be very carefully scrutinized and much weight cannot be attached to it unless corroborated by other circumstances. 16 C. W. N. 1105=15 C. L. J. 517=13 Cr. L. J. 609.
 23. In a conspiracy corroboration of approver by independent evidence is necessary. 1935 A. 162.
 24. Prosecution must prove agreement between two or more persons to do or cause to do illegal act. If the agreement is other than one to commit an offence, prosecution must prove some overt act in pursuance of agreement. But if agreement is to do offence, no overt act need be proved. 1935 A. 162=1935 Cr. C. 214.

Conspiracy—(contd.)

25. Mere evidence of association is not sufficient for an inference of conspiracy. 1935 C. 580=39 C. W. N. 188.
 26. That immediately after occurrence accused was anxious to escape observation and was doing his best to conceal his presence is not enough to infer complicity. 1930 C. 647=129 I. C. 619.
 27. Generally the law does not take notice of mere intention to commit an offence. In a prosecution for conspiracy to commit an offence, the overt act is the agreement itself. 1933 A. 690=34 Cr. L. J. 967=145 I. C. 481, 1927 C. 265, 42 C. 957.
 28. A conspiracy may be proved by antecedent or subsequent conduct of accused. 1926 Sind 171=27 Cr. L. J. 243, 9 Bom. L. R. 347, 5 Cr. L. J. 323.
 29. Proof of one offence of robbery or dacoity does not prove conspiracy to commit robbery. 1934 O. 106, 1928 O. 507 Expl.
 30. One conspirator need not be aware of all acts of his fellow conspirators. 1934 Sind 57=151 I. C. 494.
 31. Letters of conspirators were intercepted. Copies of such letters are admissible though addresses are not called to produce originals. 1933 A. 498.
 32. A document was found with a conspirator. Its writer was unknown. It is not admissible against other conspirators. 1933 A. 690.
9. For waging war. See Waging war—4.
10. Jurisdiction.
1. If a conspiracy is entered into in a District A and acts are committed in pursuance of that conspiracy in District B, the Magistrate of District A can try the conspiracy but cannot try the accused in the same trial for acts committed outside his district. The mere fact that the offences could have been jointly tried under S. 239 if committed within his jurisdiction, will not give him jurisdiction. 1924 C. 1034=83 I. C. 911=28 C. W. N. 975=26 Cr. L. J. 207.
 2. The offence of attempt to murder a person in District R in pursuance of conspiracy entered in District M can be inquired into and tried in either of the two Districts. 24 P. R. 1917 Cr.
 3. Conspiracy to cheat out of British India is not triable in British India. 1933 S. 333.
 4. If the inquiry into one conspiracy discloses another conspiracy and accused in subsequent conspiracy are not being accused in the former, the former court need not try the case of those accused itself. 1935 P. 91=154 I. C. 387=36 Cr. L. J. 500, 1933 P. 244 Dist.
 5. There was correspondence to and from Cawnpore which was the centre of conspiracy. Cawnpore courts had jurisdiction. 1933 A. 498.

Conspiracy—(contd.)

1934 Sind 57, 49 C. 573=1922 C. 107.

12. Pamphlets issued by conspirators.

If a conspirator proposes to another to start propaganda and issue pamphlet for the purpose, the pamphlet will be admissible as having reference to the conspiracy, though it may contain a narrative of the past. 55 Bom. 839 Bom. 56.

13. Revision.

A finding by the lower Court that there did exist a general conspiracy is a finding which cannot be challenged before the High Court in revision. 1935 C. 316.

14. Sanction. S. 196-A, Cr. P. C.

1. S. 196-A applies to prosecution for conspiracies under S. 120-B, I. P. C. 49 C. 903.
2. A sanction for prosecution for a substantive offence comes one for all offences. 30 C. 903.
3. The offence under S. 420, I. P. C., is punishable with more than two years imprisonment; a sanction under this section is necessary for a charge under Ss. 420-120-B. cannot compel the prosecution to get charges framed which require sanction. P. 91=154 I. C. 387=36 Cr. L. J. 500, 49 C. 573=1922 C. 107.
4. Where the object of the conspiracy is to commit offences punishable with imprisonment for more than two years, no sanction is necessary. 1935 P. 357=36 Cr. 856, 1934 A. 61.
5. S. 196-A prohibits entertaining of complaint of conspiracy but not complaint of principal offence committed by a co-conspirator. 1934 Sind 4=35 Cr. L. J. 81

15. Sentence.

1. If the offence in pursuance of conspiracy is not committed, the punishment governed by S. 116, I. P. C. 42 C. 1153, 17 P. R. 1915 Cr.
2. The offence of conspiracy is a separate offence from the offence of participation in particular dacoity or dishonest receiving of stolen property. Separate sentence should be awarded to run consecutively for participation in separate dacoities and to can be added a consecutive sentence of participation in conspiracy. 1928 O. 50
3. For a conspiracy to manufacture arms, the sentence should be under S. 120-B with S. 19 (a), Arms Act and S. 116, I. P. C., and the maximum term of imprisonment which can be awarded under these sections is nine months' rigorous imprisonment. 42 C. 1153=19 C. W. N. 706, 17 P. R. 1915 Cr.

16. Similar acts of—

Evidence of similar acts may be received to prove party's knowledge or intention. other acts must be of specific kind as to one in question and not of different kind and approximate in point of time to that in question. 42 C. 957.

17. Things said or done by conspirator—confession, etc. S. 10, Evidence Act.

1. In order that acts, statements or writings of a conspirator may be given in evidence against the prisoner, it is necessary to show that there are reasonable grounds to believe that the prisoner and the persons whose acts, statements or writings intended to be proved, were members of conspiracy. 1933 A. 690=145 I. C. 434 Cr. L. J. 967, 1929 P. 145=116 I. C. 756, 17 P. R. 1915 Cr., 1932 C. 557 Cr. L. J. 456, 30 C. 983, 14 Cr. L. J. 586=21 I. C. 378, 31 Bom. L. R. 515.
2. Strict proof of conspiracy is not necessary. 17 P. R. 1915 Cr.
3. If *prima facie* evidence of conspiracy is given, the statement of a conspirator reference to common object becomes admissible against all. 1924 M. 805=81 Cr. L. J. 1041, 7 P. R. 1915 Cr.=16 Cr. L. J. 354.
4. If a letter is given in evidence, the writer of the letter must first be proved to be member of conspiracy. 25 Bom. L. R. 248.
5. If a conspiracy is proved, the confession of one accused will be admissible against other conspiring accused. 1927 O. 369=29 Cr. L. J. 129.
6. A confessional statement made by a deceased conspirator, after he had rendered

Conspiracy—(concl'd.)

himself liable to criminal prosecution, is admissible in evidence. 38 C. W. N. 1015.

7. "Anything written" in S. 10 would include manuscripts whether signed or unsigned written by a person and matter transcribed on a *typewriter*. 1933 A. 690=34 Cr. L. J. 967=145 I. C. 481.
8. A statement of absconding accused to the approver that they had shot a Police Officer and that pamphlets be issued to start propaganda in furtherance of common object of conspiracy was held inadmissible as to the shooting incident but the future intention of issuing pamphlets was admissible. 55 B. 839=1932 B. 56=33 Cr. L. J. 76=134 I. C. 1238.
9. On the *arrest of conspirator*, conspiracy *qua* him comes to an end, the statements by other conspirators after his arrest are not admissible against him. 46 C. 700, 16 I. C. 257=13 Cr. L. J. 609.
10. Statements during trial are not covered by S. 10. 1933 O. 86.
11. If a conspirator under *arrest* writes a letter to another conspirator, the letter is not admissible against others, but if it refers to some future scheme, it will be admissible under S. 10. 1932 C. 557=33 Cr. L. J. 456. See 38 C. W. N. 1015.
12. Statement by a deceased conspirator contained in a letter that another conspirator mentioned the accused as a co-conspirator is admissible under S. 10. 1934 C. 221.
13. Facts which show how the conspirators were first thrown together and formed the conspiracy are admissible. 46 C. 700.
14. A document, of which the writer is not known, found in the possession of a conspirator is not admissible against others. 1933 A. 690=34 Cr. L. J. 967.
15. Memorandum of payments made by a conspirator to another, after the object of conspiracy had been achieved is not admissible. Taylor S. 594. See 35 I. C. 999.
18. To cheat. See Cheating—17.
19. Trial for offences committed in pursuance of—

Accused were convicted for criminal conspiracy but were not charged with or convicted of the individual acts of cheating which took place in pursuance of conspiracy. The individual acts were mentioned in the charge. Held, that their subsequent trial for cheating was not barred. 1933 B. 447=58 B. 23, 42 C. 957, 26 I. C. 307, 42 C. 1153 and 1929 B. 128=53 B. 344 Ref.

CONSTRUCTION OF STATUTE. See Interpretation of statute—4.**CONSTRUCTIVE LIABILITY.** See S. 34, Penal Code.**CONTEMPT OF COURT.** S. 228, I. P. C., S. 480, Cr. P. C.**1 Apology.** See Apology.

1. The mere fact that an apology has been tendered by the accused is not sufficient reason to secure for him impunity from punishment in a serious and grave contempt case. 6 L. 528=1926 L. 1=89 I. C. 833=26 Cr. L. J. 1409.
2. Too much notice should not be taken if a rustic litigant uses hasty language without serious intention of insulting the Court. If apology is offered, he should be let off with admonition or a petty fine. 23 P. W. R. 1912 Cr.
3. When the Pleader gave the assurance that the objectionable words had no reference to the Court, it was sufficient and fine should be remitted. 11 A. L. J. 955.

2. Contempt. What amounts to—**A. In Court.**

1. An application for transfer of a case from a particular Court on the ground of probable miscarriage of justice is not a contempt of that Court. 34 P. R. 1869, 46 Bom. 973 (1976), 38 A. 284.
2. Even if accused uses unhappy remarks concerning the Magistrate in the transfer application, it is not contempt of Court. 38 A. 284.
3. Walking with creaking shoes near the Court Room does not *ipso facto* lead to the conclusion that the accused intended to insult or interrupt the Court in its work. 5 M. L. T. 286.

Contempt of Court—(contd.)

4. Pervarication by a witness may, though it does not necessarily amount to contempt of Court. 10 B. H. C. R. 69, *Cont.* 4 B. H. C. (Cr. C.) 7.
5. Where a witness refuses to answer the question put to him in his examination unless an application made by him for stay of proceedings be granted, it is a contempt of Court. 14 P. R. 1918 Cr.
6. An accused making an impertinent threat to a witness in the witness box is guilty of contempt. 1923 A. 193 (2)=74 I. C. 260=45 A. 272.
7. If a Pleader persists in putting vexatious or irrelevant questions to a witness after warning, it may amount to contempt. 44 P. R. 1867.
8. But every little insistence on the part of Pleader in the conduct of his case, should not be turned into an occasion for a criminal trial, unless the Pleader's conduct is so vexatious as to lead to an inference that his intention is to interrupt or insult the Court. 6 Bom. L. R. 541, 10 C. W. N. 1062.
9. A trivial incident such as laugh or hesitation in speaking is not a contempt. 4 M. H. C. R. 146.
10. Courts should not be unduly sensitive about their dignity and a mere audible remark by the accused which interrupted the proceedings of a Court is not a contempt. 29 M. L. J. 274.
11. An accused who in the course of his statement under S. 342 calls the Judge a "prejudiced Judge" and being called upon to withdraw the remark, refuses to do so, is guilty of contempt. 46 Bom. 973=1922 Bom. 261=23 Cr. L. J. 325.
12. A comment on a pending case if it has or may have the effect of prejudicing the fair trial of an accused, amounts to contempt of Court. 6 R. 39=109 I. C. 675=1928 R. 115, 14 Bom. L. R. 231.
13. A statement by counsel before Full Bench that his client does not wish matter to be argued before the Bench as constituted is deliberate insult to Court. 1932 L. 485=1932 Cr. C. 623=33 P. L. R. 872.
14. An article in a newspaper reflecting on the party to a suit, more especially when he is under cross-examination, is a contempt of Court. 15 C. W. N. 771, 14 Cr. L. J. 267.
15. The marriage of a ward of a Court without Court's consent is a contempt of Court. 108 I. C. 668=1928 Sind 129.
16. Where a witness persistently asked by Court, gives an indirect answer. Held, that this amounted to refusal to answer and is an offence under S. 179 and not under S. 228. 1925 A. 239=22 A. L. J. 1100=84 I. C. 706=26 Cr. L. J. 354.
17. Matter published in a newspaper relating to the past life of the accused or to his antecedents or character, suggesting an offence similar to that with which he is charged, is a contempt of Court. 1930 A. 483=128 I. C. 14=32 Cr. L. J. 78.
18. The publication of an article in a newspaper referring to a decided case may amount to contempt. 6 L. 528=1926 L. 1=26 Cr. L. J. 1409.
19. To accuse a Judge of High Court having decided a case not according to dictates of justice but in order to please and carry favour with others and to say that door of justice is closed against any community is a contempt of Court. 6 L. 528.
20. A witness refusing to answer questions put by counsel or Court is guilty of contempt of Court under S. 228. 14 P. R. 1918 Cr.=24 P. W. R. 1918 Cr.
21. A coarse expression used by a litigant though not addressed to, but heard by Court, cannot be treated as an intentional insult or an interruption under S. 228. 23 P. W. R. 1912 Cr., 30 I. C. 434.
22. A person chewing betel when examined as witness is guilty of contempt. (1883) 1 Weir 217.
23. In the case of Pleaders, the Court should not put down every interruption as constituting contempt. Some latitude should be allowed to a member of the Bar, insisting upon his question being taken down or objection noted. When the Court thinks the question inadmissible or the objection untenable, there should be a spirit of give and take between the Bench and the Bar. 6 Bom. L. R. 541 (543).
24. Collection of debts attached by the Civil Court is contempt of Court. 27 A. 378.

Contempt of Court—(contd.)

25. A person insulting a Judge in the grossest manner is guilty. 15 M. 131, 46 B. 973.
26. A counsel saying to a Full Bench that his client does not wish the matter to be argued before the Bench as constituted is guilty of contempt. 1932 Cr. C. 623.
27. A formal charge is necessary. 1926 R. 188=4 R. 257.

B. Out of Court—

1. High Court has power to punish contempts committed out of Court, e.g., comments in newspaper on proceedings pending in High Court. 10 C. 109, 14 Bom. L. R. 231, 15 C. W. N. 771.
2. S. 228 does not apply when contempt is committed out of Court or when the Court is not sitting. 10 C. 109 (P. C.)
3. An article that "judgments in High Court are given arbitrarily and neither law nor facts were discussed is a contempt of Court. 1935 L. 212=37 P. L. R. 73.
4. Any act or writing tending to undermine the authority of Court of Justice or to influence the result of pending litigation is most serious offence. 1935 L. 212=37 P. L. R. 73, 2 A. T. K. 469 (1742) Ref.
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3. Definition—

Any act done or writing published, calculated to bring a Court or a Judge into contempt or to lower his authority or obstruct or interfere with the due course of justice or the lawful process of the court, is a contempt of court. 33 B. 240.

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1. The chief ingredient of the offence under S. 228 is the intention of the offender. The question is not whether a Judicial Officer felt insulted but whether an insult was actually offered and intended. 1925 L. 210=93 I. C. 698=27 Cr. L. J. 474, 81 I. C. 76=1923 L. 88, 2 L. 308=64 I. C. 377=1921 L. 102, 1922 L. 187.
2. When the Magistrate was examining the first accused, he found that the other accused was exchanging remarks with him. Held, it was not an intentional interruption but this conduct was for their own interest. 1925 Nag. 403=91 I. C. 242=27 Cr. L. J. 66, 10 C. W. N. 1062.
3. A Judicial Officer is entitled to maintain dignity of Court, but should not be too sensitive and too ready to take offence where none is intended. 1925 L. 210 (216).
4. Petitioner told a witness not to go as he had to cross-examine him, it could not be said that he detained or pushed him with the intention of insulting or interrupting the Court. 1923 L. 88=81 I. C. 76=25 Cr. L. J. 588.
5. When the offence is technical or of a slight or trivial nature, the Court may condone it. 1930 A. 483=32 Cr. L. J. 78=128 I. C. 14.
6. No power to punish for contempt of an inferior Court exists independently of the Indian Penal Code. No disciplinary power over legal practitioner or power to punish for contempt outside the provision of the Indian Penal Code is vested in Subordinate Courts. 1930 A. 225=1930 A. L. J. 402=125 I. C. 477=52 A. 619.
7. When nature and stage of proceedings and also interruption is not indicated, the conviction is not justified. 113 I. C. 278=1928 R. 280, 134 I. C. 684=1931 N. 193.
8. In a case under S. 228 the Court is both prosecutor and Judge and so the power should be used in exceptional cases. 29 M. L. J. 274.
9. A process server was abused and assaulted while effecting service of a notice. Held, it was contempt of Court. 1925 C. 945=88 I. C. 725=26 Cr. L. J. 1205.
10. The question is not whether the officer felt insulted, but whether any insult was offered and intended by accused. 2 L. 308.
11. The exact words used by accused must be recorded, the omission constitutes a grave defect in procedure. 2 L. 308.

5 High Court's Power.

1. High Courts in India have jurisdiction to punish for contempt of Court where the

Contempt of Court—(contd.).

contempt is made by scandalous attack on its integrity and impartiality, even though final judgment is delivered in a case. 47 B. 76=1922 B. 426=69 I. C. 84.

2. The power of High Court for punishing contempt is the same as under the Common Law and not by virtue of Indian Penal Code or Criminal Procedure Code. 10 C. 109 (P. C.), 45 C. 169, 41 C. 173, 33 B. 240, 20 I. C. 81.
3. High Court has no power to punish contempt of Criminal Courts subordinate to it, 41 C. 173, 45 B. 592=1922 B. 52=65 I. C. 753=23 Cr. L. J. 177. (*Case law discussed*).
4. The right to punish by a summary procedure contempt of Court by scandalizing the Court still exists 1935 C. 419=156 I. C. 1055=39 C. W. N. 770.
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 1. The offence of contempt of Court so far as High Court is concerned, may be committed independently of S. 228, when the insult or interruption is not given or made in *facie curiae*. In all other cases it must be in the presence of Court and in any stage of Judicial Proceedings. 10 C. 109, 22 W. R. 10.
 2. Proceedings of a Sub-Registrar of assurances are Judicial Proceedings. 22 W. R. 10.
 3. Judicial Proceedings are not concluded when sentence is passed but continue until the prisoner is discharged or removed in custody. 1 Weir 214.
 4. The interval between the conclusion of one case and the opening of another is a stage in a Judicial Proceedings. 16 P. R. 1897.
 5. In the absence of a direction by Local Government as regards Sub-Registrar being a Civil Court, contempt committed before it cannot be dealt with under Ss. 480, 482, Cr. P. C. 57 C. 1007=125 I. C. 853=1930 C. 366. *Cont.* 55 C. 423.
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 7. A Naib Tahsildar who was waiting for a deed of composition before taking up the case for final disposal and who was engaged in conversation with two persons, was not sitting in any stage at any stage of judicial proceedings at that time. 2 L. 308.
 8. Omission to record the stage at which Court was interrupted or insulted and the nature of insult as required by S. 482 is fatal. 1931 N. 193=32 Cr. L. J. 1221.
7. **Jurisdiction of Magistrate.** S. 487, Cr. P. C.
 1. No Court shall try any person for an offence committed in contempt of its own authority. The rule is not limited to offences falling under Chapter X of the Penal Code only but to all contempts. 24 M. 262.
 2. A Magistrate is not debarred by law from trying an accused person under S. 174, I. P. C., for disobedience of summons issued by him in his capacity of Mamlatdar, 18. B. 380. The principle underlying this decision has not been accepted as sound in 22 P. R. 1879 where same officer was both a Small Cause Court Judge and a Cantonment Magistrate, and in 2 A. 405 in which the Settlement Officer who issued the summons tried the disobedience to it as a Magistrate. 2 A. 405.
 3. A Magistrate convicted certain persons under S. 174 of disobedience to summonses issued by him as Tahsildar. Held, the conviction is legal. 6 M. H. C. (App.) 44.
 4. A Magistrate cannot try offences mentioned in S. 195 (a) committed before himself, 98 I. C. 416=27 Cr. L. J. 1344.
 5. Court that heard appeal in sanction proceedings cannot hear appeal from conviction, 81 I. C. 201=1924 N. 51, 16 C. 121 Foll.
8. **No contempt.**
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Contempt of Court—(contd.)

25. A person insulting a Judge in the grossest manner is guilty. 15 M. 131, 46 B. 973.
26. A counsel saying to a Full Bench that his client does not wish the matter to be argued before the Bench as constituted is guilty of contempt. 1932 Cr. C. 623.
27. A formal charge is necessary. 1926 R. 188=4 R. 257.

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Contempt of Court—(contd.)

P. W. R. 1912 Cr., 30 I. C. 434.

5. A trivial incident such as laugh or hesitation in speaking is not a contempt. 4 M. H. C. R. 146.
6. Walking with creaking shoes near Court-room is no contempt. 5 M. L. T. 236.
7. A person reluctantly speaking the truth or giving inconsistent answers is not guilty. (1871) 15 W. R. 5 Cr.
8. A person walking out of the Court without answering the question whether he had any witness is not guilty of contempt. (1889) 1 Weir 218.
9. Allegations of intimacy with the Magistrate in a transfer application is no contempt. 38 A. 284.
10. Allegations of scandalous or defamatory nature in an application for transfer do not constitute contempt. 1898 A. W. N. 145.
11. The use of objectionable or defamatory expressions in a petition to a Court is no contempt of Court. 137 P. L. R. 1903.

9. Of Subordinate Courts.

High Court has jurisdiction to punish contempts of Subordinate Courts. 1935 A. 117 = 1935 A. L. J. 29.

10. Procedure. S. 481 (2), Cr. P. C.

1. The record must show the nature and stage of judicial proceedings in which the Court was sitting and the nature of interruption or insult. 29 P. L. R. 653, 1931 N. 193 = 134, I. C. 684 36 P. R. 1886.
2. The Court inflicting a fine for contempt of Court should record its reasons, the facts constituting the contempt with any statement the offender may make as well as the finding and sentence. 4 M. H. C. R. 229, 27 B. H. C. R. 102.
3. Where a Division Bench has held that contempt has been committed, the order is final. The question cannot be reconsidered and leave to appeal to Privy Council cannot be granted. 1935 A. 811 = 155 I. C. 188.

11. Refusal to answer question.

1. Persistent refusal to answer question is a contempt of Court. 14 P. R. 1918 Cr.
2. Prevarication by a witness may amount to contempt of Court. 10 B. H. C. R. 69.
3. A witness summoned by Court to give certain information but gave evasive answers amounted to refusal to answer and was punishable under 706 = 1925 A. 239 = 26 Cr. L. J. 354.

12. Summary power under S. 480, Cr. P. C.

1. The provisions of S. 480 must be applied then and there and at any rate before the rising of the Court. Where a Magistrate after taking cognizance of the matter, fined person several days after, the procedure is irregular. 11 A. 361, 6 C. L. J. 713.
2. But rising for luncheon does not amount to rising of the Court for the day. 46 B. 973.
3. The plaintiff was directed to appear with account books, who absented himself. He was fined under S. 480 for contempt in his absence. Held, that the order was illegal. 23 C. W. N. 389.

13. Threatening letter to defendant.

1. Sending threatening letters to defendants in a pending suit to withdraw plea taken by him in written statement is contempt of the subordinate Court. Pleader who sends it himself or on behalf of his client is also guilty of contempt. 1935 A. 117 = 1935 A. L. J. 29.
2. A letter written to the defendant stated that suit is pending in Chancery and should it go up for judgment, he would be at once indicted for swindling, perjury and forgery and thus bring disgrace on his family. (1857) 26 L. J. Ch. 305. *Smith v. Lakeman*.

14. Transfer of original case on. See Transfer (Grounds)—27.

Contempt of Courts Act, XII of 1926—(concl'd.)

CONTEMPT OF COURTS ACT, XII OF 1926.

1. The new Contempt of Court Act has been enacted in order to remove doubts which have arisen as to power of a High Court. It does not imply that the Legislature has recognized that no such power did in fact exist. 48 A. 711=1925 A. 623.
2. It is for the High Court to construe words and phrases which have no technical significance and to decide their meaning and the effect. 8 P. 323=1929 P. 72.
3. A printer and publisher of an article in a newspaper which is calculated to influence the mind of not only the prosecution witnesses but also of the general public and written with the object of prejudicing the public against the merits of the prosecution, is guilty of contempt of Court of grossly reprehensible character. 1929 A. 81=113 I. C. 754=30 Cr. L. J. 217.
4. Accused stated that the Reader had friendly relations and influence over the Court which acted dishonestly and imposed a fine. Held, that statement was defamatory for which the Judge should make a complaint for defamation and not under contempt of Court Act. 1935 A. 896=36 Cr. L. J. 967.

CONTINUING OFFENCE. See Kidnapping—9, Abduction—7.

CONTRADICTION. See Statement to Police—8, Discrepancy. First Information Report—4.

CONTRADICTORY STATEMENT. See False evidence—9.

CONTRIBUTORY NEGLIGENCE. See Death by negligence—10.

CONTUSED WOUND. See Wound—3.

CONVENIENCE OF PARTIES. See Transfer (Grounds)—17.

CONVICTION.

1. **Double.** See Local and Special Laws.

1. Ordinarily the prosecution should withdraw the minor charge, in order that proceedings under the serious section may be taken, but it cannot be said that conviction under the minor section is illegal, when no question of double conviction has arisen. 8 R. 499=1931 R. 12.
2. If two offences arise out of the same transaction, double sentence should not be imposed 33 Cr. L. J. 413=1932 L. 365=137 I. C. 141.

2. **Grounds of—**

1. Conviction should not be based on the evidence of the accused's enemies. 1927 L. 874
2. If the only reliable witness contradicts himself the conviction is bad. 1927 L. 797 (2)
3. Conviction cannot be based on suspicion. 1927 L. 862 (1)=100 I. C. 3.
4. If the prosecution case is disbelieved in essential particulars accused cannot be convicted on remaining evidence. 22 Cr. L. J. 458=62 I. C. 181, 61 I. C. 1007.
5. Conviction on weak and biased evidence is bad. 35 I. C. 173.
6. A conviction based on theory which is opposed to direct evidence is bad. 53 I. C. 155=20 Cr. L. J. 747, 98 I. C. 466.
7. A conviction must stand or fall on the strength of prosecution and not on the weakness of defence. 51 C. 418=1924 C. 323=38 C. L. J. 397=25 Cr. L. J. 776, L. 232=87 I. C. 101=26 Cr. L. J. 949.
8. When some of the accused are acquitted, the others cannot be convicted on evidence which is common to all. 1921 P. 406=2 P. L. T. 757.
9. Unless there is satisfactory evidence in the eye of law no conviction can stand. 1921 P. 406.
10. Conviction solely on the evidence of expert is unsound. 1925 O. 413=86 I. C. 993=26 Cr. L. J. 929.
11. When the First Information Report is conflicting with the evidence in Court, conviction on the report is improper. 1924 A. 164=74 I. C. 716=24 Cr. L. J. 812.
12. Conviction cannot be based on recovery of stolen property from accused's house unless the identity of stolen property is completely established. 1921 P. 499.
13. Conviction on mere pointing out places where stolen property is recovered is bad.

Conviction—(concl'd.)

1930 L. 91=125 I. C. 181=31 Cr. L. J. 774.

14. Mere association of a person with accused is insufficient to base conviction. 27 P. L. R. 441=28 Cr. L. J. 209=99 I. C. 1009.
15. Conviction on statement of accused only is not valid. 1933 O. 226=34 Cr. L. J. 935, 22 A. 445 and 1929 A. 1 Foll.
16. When there are number of facts which lead one to suspect that real truth has not been placed before the Court and the story of accused is not inconsistent with truth he should not be convicted. 1935 C. 304.

3. For offence not mentioned in the complaint.

Where the attention of the accused is not directed by the complaint to an offence he cannot be convicted of that offence. 1935 Sind 91=1935 Cr. C. 377.

4. Of some accused set aside—effect on others.

In a trial the Magistrate took action against one of the accused under S. 562, Cr. P. C. and sentenced others to imprisonment. The conviction was set aside as being illegal and there was no mention of the accused convicted under S. 562. Held, that the conviction of accused under S. 562 is not automatically set aside. 1931 L. 199=131 I. C. 373=39 Cr. L. J. 731.

5. Under General or Special Act. See Local and Special Law.

It would not be fair to alter a conviction under Arms Act to one under Explosive Act. 1931 A. 17=53 A. 226.

CO-OPERATIVE CREDIT SOCIETY.**1. Breach of Trust by President. See Breach of Trust—23.****2. Whether President is Public Servant. See Public Servant—12 (B).****COPY.****1. Certified—of Public Documents. See Public Documents.****2. Forged. See Forged document—7.****3. Of Proceedings. S. 548, Cr. P. C. See Statement to Police—9.**

1. An accused is entitled to copies of all documents for which he applies and the Magistrate will be acting contrary to law in determining whether such copies are necessary or not. 14 W. R. 77.

2. It is for the litigant and not for the Magistrate to decide what copies he should have in order to move the superior Court and the Magistrate has no jurisdiction to thrust upon the party copies which he does not want and to make him pay for it. 6 L. 396=1925 L. 361=86 I. C. 709=26 Cr. L. J. 853.

3. When a party applies for a copy of a particular order the Magistrate cannot force him to pay for and take copies of other orders also. 6 L. 396.

4. Accused is not entitled to a copy of the information which leads to action under S. 107, Cr. P. C., which is often of the most varied kind and of a confidential nature. It does not form part of the record. 1930 M. 975=1930 M. W. N. 1100.

5. Refusing to grant a copy by a Magistrate under S. 165 (5), Cr. P. C., to a person whose house had been searched is illegal and can be revised by High Court. 1923 A. 102=118 I. C. 215=20 Cr. L. J. 563.

Copy—(concl.)

9 P. R. 1909 Cr.

10. Third party is not affected by the order of Court and therefore is not entitled to a copy under S. 548, Cr. P. C. 1932 B. 636, 53 A. 724 Diss. from.
11. Secretary of Bar Association is not entitled to get copy of judgment under S. 548 where a third person was convicted, in order to move the High Court in revision. 1932 B. 636, 53 A. 724 Diss. from.
12. Where adjournment for obtaining copies of depositions of prosecution witnesses was refused, conviction was set aside. 16 Cr. L. J. 334=1916 M. 933.
4. **Of report of subordinate court in transfer proceedings.** See Transfer—23.
5. **Of statements to Police.** See Statement to Police—9.
6. **Of statement of new witness in Sessions Court.**

If the prosecution wants to examine a new witness in the Sessions Court, the copy of his statement should be supplied to the prisoner free of cost. 1934 B. 487.

COPY-RIGHT ACT, III OF 1914.**1. General.**

1. A Court should be reluctant to sit as an expert to decide the question of infringement of Copy-Right without the aid of expert evidence. 1924 C. 595=81 I. C. 754.
2. The word "original" is not confined to new ideas but to their expressions. 1924 P. C. 75=83 I. C. 101=48 B. 308.
3. Merely selecting passages and knitting them together does not constitute abridgements. Original works are open for consultation for all. The use of another's labour and skill only is prohibited. 48 B. 308=83 I. C. 101=1924 P. C. 75.

2. Jurisdiction.

The offence of infringement of Copy-Right is complete as soon as the book infringing the copy right is printed. The offence is triable at the place where the infringing book is printed. 28 P. R. 1916 Cr.

S. 7.

1. 'A Copy-Right' has been defined as that which comes so near the original as to suggest the original to the mind of the spectator. 1928 C. 359=112 I. C. 784.
2. In deciding whether there is an infringement of Copy-Right in pictures, the question is whether the appending pictures are copies of substantial portions of the Copy-Right pictures. Small alterations in figures, clothes and colours are immaterial. 1928 C. 359=112 I. C. 784=33 C. W. N. 179.
3. Mere similarity is not enough to prove infringement of Copy-Right. 1931 C. 233.
4. The law reporter has no Copy-Right in the reports of judgments but he has protection of law in selecting and reporting cases which he obtains by expenditure of time, labour and money. 26 I. C. 30=18 C. W. N. 1078.
5. A person who made a translation of a book is entitled to Copy-Right in it as if it were an original. 30 I. C. 480.

CORONER'S ACT (IV OF 1871).**S. 19.**

1. A statement of a person on oath in the course of an inquest by the Coroner cannot be used against him during his trial. 50 B. 56=1926 B. 144=93 I. C. 225.
2. The statement made by an accused—a suspect—on oath before a Coroner in inquest proceedings after warning given to him by the Coroner, that he is not bound to make a statement, is admissible, against him at the trial. 107 I. C. 272=29 Cr. L. 7. 22, 50 B. 111=1926 B. 151=27 Cr. L. J. 466=93 I. C. 690.

S. 20.

There is no provision of law which renders a statement made voluntarily by accused "a suspect" before a Coroner inadmissible against the accused on his trial for an offence. 1923 B. 52=110 I. C. 107=30 B. L. R. 84=29 Cr. L. J. 651.

Coroner's Act (IV of 1871)—(concl'd.)

S. 29.

There is no provision in the Act enabling the Coroner to make a reference to the High Court but any party interested, may apply to the High Court for amending or qualifying the verdict of the Jury. 51 B. 300=1927 B. 163=100 I. C. 1041.

CORPORATION. See Defamation—9.

CORROBORATION. See Accomplice, Confession, Evidence—5.

CORPUS DELICTI. See Murder—15, Disappearance of evidence—4.5.

1. It is not safe to rely upon the article of clothing, when the body cannot be identified on account of advanced decomposition. 15 P. W. R. 1915 Cr.=30 I. C. 436=16 Cr. L. J. 621.

2. For definition of corpus delicti. See 7 M. H. C. R. App. 19.

CO-SHARER. See Joint owner.

COSTS. See Adjournment—2. Expenses of Witnesses.

Costs of summoning prosecution witnesses should be borne by Crown, 1924 P. 695.

COUNCIL OF ELDERS. See Frontier Crimes Regulations.

COUNSEL. See Legal Practitioners' Act, Court and Counsel.

1. Altercation between Judge and—. See Transfer (grounds)—6.

2. Arguments by— See Arguments, 2.3-4.

3. As witnesses. See Witness—22.

4. Breach of trust by— See Breach of trust—20.

5. Conducting Prosecution by— See Prosecution—4.

6. Defamatory statement by— See Defamation—46 (b).

7. Duty of—in case of transfer application. See Transfer—12.

8. Exclusion from Court room. See Witness—45.

9. Interview with accused. See Interview—2.

10. Misconduct by— See Legal Practitioners' Act, S. 13.

11. Objections by— See Objections by counsel.

12. Representing accused. S. 340, Cr. P. C. See Preliminary enquiry—12, Remand—1.

1. A suspect is entitled to a reasonable opportunity of defending himself through Pleader. 96 I. C. 391=1926 Sind 288=27 Cr. L. J. 935.

2. The fact that the accused who have been refused an opportunity to engage a counsel, were asked if they wished to cross-examine and they answered that they did not wish to do so is not sufficient to refuse counsel an opportunity of cross-examination. 47 A. 147=1925 A. 285=26 Cr. L. J. 575.

3. A person against whom no process is issued, has no right to be defended by Pleader. 38 C. 880, 8 Cr. L. J. 20.

4. Accused has right to be defended by Pleader. If it is denied retrial will be ordered. 27 C. 656, 47 A. 147, 9 P. R. 1877.

5. It is necessary that notice of date of hearing should be given to accused, for otherwise right to be defended by Pleader cannot be exercised. 25 A. 375.

6. Full opportunity should be given to accused to get proper legal advice and assistance before he is called upon to cross-examine prosecution witnesses. 16 Cr. L. J. 786.

7. If the accused had no sufficient opportunity to engage a Pleader, Court should take down Examination-in-chief and adjourn the case for cross-examination. 47 A. 147, 17 Cr. L. J. 278. But it is submitted that services of counsel are necessary at the time of examination-in-chief to check leading questions or irrelevant matter. 1925 M. 1153=27 Cr. L. J. 33.

8. Magistrates holding trial at a place where accused are incapable of making defence, commits irregularity. 19 Cr. L. J. 249.

9. Accused is prejudiced if Court is held on Sunday. Conviction was set aside.

Counsel—(concl'd.)

16 Cr. L. J. 752, 1930 N. 255=31 Cr. L. J. 705.

10. Only if the senior counsel is absent, accused is not prejudiced. 14 P. R. 1898.
 11. Court should not sit beyond the prescribed hours, except with the consent of the Pleaders on both sides. 1925 P. 772=4 P. 646=26 Cr. L. J. 1441.
 12. Accused can have access to legal advisers at the time of remand. 1935 L. 220=35 Cr. L. J. 1180, 12 L. 16, 12 L. 211, 50 B. 741.
 13. Where accused were arrested and placed in custody and then suddenly called upon to conduct their case, without an opportunity to engage Pleader, the procedure is irregular. 42 A. 646=1920 A. 268=22 Cr. L. J. 223.
 14. If accused was hampered by his superior Police Officer in arranging his defence and engaging a counsel. Held, all facilities must be given to him. 20 Cr. L. J. 230, 20 Cr. L. J. 675, 58 C. 1132.
 15. Prisoners are entitled to have choice of Pleader or execute *Vakalatnama* to whomsoever they please. 1 Bom. H. C. R. 16.
 16. Court is not justified in refusing the Pleader an interview with the accused or a seat in Court. 1 Bom. L. R. 856, 21 C. 642.
13. Right to appear in investigation. See Investigation—8.
14. Threat to ask scandalous question by— See Extortion—7.

COUNTER OR CROSS CASES—See Adjournment (Pending Civil suits.)

1. The simultaneous trial of two cases before two different Courts over one and the same occurrence is undesirable. They should be tried by one Magistrate one after the other. 1923 C. 644=75 I. C. 364=24 Cr. L. J. 940.
2. The simultaneous but separate trials of two cross cases of rioting is not bad unless if the accused are prejudiced. 1925 P. 152=81 I. C. 794, 1925 P. 619=88 I. C. 603.
3. Proceedings in one of the two counter cases of rioting arising out of the same occurrence cannot be stayed merely because the prosecution witnesses in one case are accused in the other. 1924 C. 529 (1)=71 I. C. 697=24 Cr. L. J. 233.
4. Cases and counter cases should be tried in quick succession by the same Judge, who should not pronounce judgment till both cases are finished. 1930 M. 190=123 I. C. 10=31 Cr. L. J. 461, 112 I. C. 563=29 Cr. L. J. 1059, 1936 L. 356.
5. In a trial of cross cases of rioting, after some witnesses were examined against the petitioner, he prayed that the case in which he was complainant should be adjourned till the disposal of the case against him. Held, that the case against this petitioner should be disposed of first, since it is not fair to force a person in the position of the accused to throw himself open to cross examination by the other side. 1925 C. 1260=90 I. C. 719=26 Cr. L. J. 1615=42 C. L. J. 83.
6. Evidence in one case should not be considered in the counter case. 1924 C. 813=81 I. C. 557, 1928 L. 380=107 I. C. 766=29 Cr. L. J. 282=10 L. L. J. 389.
7. Postponement of a cross complaint owing to a Police challan is not justified under S. 344, Cr. P. C. Simultaneous trial is the proper course and judgment should be delivered when both the cases are finished. 1924 C. 634=26 Cr. L. J. 65.
8. Where two counter petitions were filed before a Magistrate who sent them under S. 202 for enquiry and on receipt of report, issued summons in one case and directed the other to be put up after the disposal of the other. The High Court declined to interfere with the discretion of the Magistrate. 1922 P. 618=71 I. C. 248=24 Cr. L. J. 120, 1929 C. 281=31 Cr. L. J. 262.
9. No absolute rule of law can be laid down, as to which of the two counter complaints should proceed first or whether both should proceed simultaneously. It all depends on the circumstances in a particular case. 1929 C. 281=121 I. C. 414=31 Cr. L. J. 262, 1925 C. 1260=26 Cr. L. J. 1615.
10. Trying two cross cases before the same jurors is illegal. 32 Cr. L. J. 1233 (1)=1931 C. 709, 134 I. C. 896=54 C. L. J. 146.
11. A Court cannot take one case on file and dismiss the other in whole or in part but must keep his hands free and not commit himself to a decision one way or the other. 1931 M. W. N. 1316.

Counter or cross cases—(concl'd.)

12. The Magistrate used prosecution evidence in one case as defence evidence in the cross complaint. Held, that the trial was illegal. 17 Bom. L. R. 490=29 I. C. 666.
13. In party faction cases, members of one faction can give evidence against other. But they cannot be compelled, on the ground of implicating himself. 1 N. W. P. 293.
14. Where in joint trial of two cross cases the prosecution evidence in one was taken as the defence evidence in the other with the consent of parties there is an irregularity which is curable if no prejudice is caused to the accused. 1935 A. 647=155 I. C. 541=36 Cr. L. J. 763, 50 A. 457=1928 A. 593=30 Cr. L. J. 337, 8 L. 193=1927 P. C. 26=100 I. C. 126=28 Cr. L. J. 254 and 20 C. 537 Rel. on. 4 L. 376=1924 L. 104=25 Cr. L. J. 68 Diss. from.
15. There is no better criterion of truth, no safe rule for investigating cases of conflicting evidence, where perjury and fraud must exist on one side or the other, than to consider *what facts are beyond dispute* and to examine *which of the two cases best accords with those facts* according to the ordinary course of human affairs and the usual habits of life. 1 Moo. I. A. 19=5 W. R. P. C. 26-29. See *Field's Law of Evidence in Br. India, 8th Ed.*, P. xlvii.
16. Two cross cases were heard by one argument and one judgment was delivered. It was held that the trial though irregular, did not cause prejudice. 1935 C. 548=157 I. C. 1042, 20 C. 537 Rel. on.
17. A prosecuted B for adultery; B prosecuted A for defamation calling B an adulterer, Held, adultery case should be stayed till decision in former case being interdependent cases. 1933 Sind 254=34 Cr. L. J. 891.
18. In cross cases a Court has no right to consider at all the evidence given in one case for the purpose of reaching his conclusion in the other. The two cases should be tried separately and determined on evidence recorded in each. 50 A. 457=1928 A. 593, 1924 C. 813, 26 P. R. 1900, 1928 L. 380, 4 L. 376, 56 M. 159=1933 M. 367.
19. Examining as witnesses in one case accused in the other case is irregular procedure. 14 C. 358, 17 Cr. L. J. 503.

COUNTERFEITING COIN. Ss. 231 to 240, I. P. C.

1. Coin—Definition of. S. 230.

1. *Coins of the time of Akbar or of Shah Jahan are not coins as they are not used for the time being as money.* 11 B. H. C. 172, 29 A. 141.
2. Murshidabad rupees stand on the same footing as Farukhabad rupees. 28 A. 62, 1903 A. W. N. 115, 1 P. R. 1903 Cr.
3. The mere fact that a coin is being used as ornament by soldering a ring to it does not transform it into a new article. 48 A. 603=1926 A. 321=27 Cr. L. J. 426.

2. Counterfeiting coin. Ss. 231-232.

A. Essentials.

1. To constitute the offence, a counterfeit coin need not be made with primary intention of its being passed as genuine. It is sufficient if the resemblance is so close as to be passed as genuine. 30 A. 93, 4 P. L. J. 525. See 26 P. R. 1868, 9 P. R. 1884 Cr.
2. Counterfeiting a coin of Akbar's time is no offence. 11 B. H. C. 172.
3. Deception practised as show only is not an offence. 26 P. R. 1868.
4. Intention to practise deception by means of the imitation is sufficient to constitute offence. 4 P. R. 1899.
5. Removal of the ring from a coin used as ornament and working up the face of the coin where ring had been, is no offence. 23 A. 420.
6. The making of counterfeit coins is not a statement and therefore the evidence of persons who say that accused made counterfeit coins in their presence is not barred under Ss. 24-25-26, Evidence Act. 133 I. C. 154=32 Cr. L. J. 1006=1931 A. 0.
7. Where coins are counterfeited only for the purpose of passing them secretly into the hands of the enemy, in order to put him into trouble, the accused is punishable under S. 195 and not under S. 232. 43 P. L. R. 1912, 17 P. W. R. 1911 Cr.
8. Accused agreed to make imitation coins and hooks to be attached to it, but he gave

Counterfeiting coin. Ss. 231 to 240 I.P.C.—(contd.)

them plain without any hooks. Held, he was guilty. 30 A. 93.

B. Definition of. S. 23, I. P. C.

It cannot be said that counterfeiting is an offence which is made up of parts of possessing moulds and the act of counterfeiting. 1931 C. 445=32 Cr. L. J. 1171.

C. Sentence.

Possession of instruments for counterfeiting coins being part and parcel of the transaction of counterfeiting coins, no punishment is to be inflicted. 14 P. R. 1904.

3. Possession of— S. 243, I. P. C.

1. Eleven pieces of silver of the size of rupee and some counterfeit rupees of the same year were found concealed in room in accused's possession, presumption of guilt of accused under S. 114, Evidence Act, arises. 1933 O. 85=34 Cr. L. J. 545.
2. Possession of number of other pieces of counterfeit coins is evidence of his knowledge that the coin in his possession was counterfeit, but it is no evidence of his having actually delivered the counterfeit coin. S. 14 ill. (b), Evidence Act. 22 Cr. L. J. 407=61 I. C. 647.
3. Other coins uttered must be proved to be counterfeit. 8 B. 223.
4. Incriminating articles must be found in a place in possession of the accused and he must know that things were there. 1936 A. 650=37 Cr. L. J. 551.
5. Accused purchased counterfeit coins at an auction openly and did not attempt to pass them off as genuine. He is not guilty. 1936 P. 533, 1933 O. 85 Disting.

4. Possession of Instrument or Material for counterfeiting coins. S. 235, I. P. C.

A. Essentials—

1. Mere possession of instruments and materials capable of counterfeiting coins is no offence. 5 L. 392=26 Cr. L. J. 247=1925 L. 22=84 I. C. 247.
2. To sustain a conviction under this section, not only the possession of instruments is necessary but also possession with the knowledge of the accused of their character. 28 I. C. 152.
3. Where dies were incapable of striking a complete coin, it cannot be inferred against the accused that his intention was to manufacture coins. 5 L. 392=1925 L. 22.
4. When instruments can be used for making coins as well as for other purposes they should be considered for the purpose of making coins. 43 P. L. R. 1912.
5. No conviction can lie on the mere ground that accused was in possession of coining instruments, unless it is established that he had knowledge of their character. 28 I. C. 152, 8 B. L. T. 131.

B. Possession (joint and exclusive).

1. Mere physical relation arising from the position of the object is insufficient. Where the articles found are large properties and placed in a conspicuous place to which the managing member may have access and have control, the presumption that the managing member was in possession may fairly be made. 6 Bom. L. R. 887, 6 B. 731, 15 A. 129, 4 P. L. R. 525.
2. Where counterfeit coins and moulds were buried in a verandah, which was open, with village streets on two sides. Held: that probably they were kept by enemies. 51 I. C. 263=20 Cr. L. J. 439.
3. Accused was found in possession of a box containing instruments for counterfeiting coins. His two brothers had access to the box and the accused's property was not found there. Held, as there is no evidence of exclusive possession upon which accused could be convicted. 14 P. L. R. 1903.
4. When several persons are found in a room, where false coins are being made, they are all presumed to be in possession of the instruments or materials lying there. 17 P. W. R. 1912, 11 I. C. 242. Cont. 7 P. L. R. 1904.
5. Where accused being pursued, throws off the instruments for counterfeiting coins, he is guilty under S. 235. 10 P. R. 1892 Cr.
6. Instruments and materials which can be used for counterfeiting coins and other pur-

Counterfeiting coin. Ss. 231 to 240, I.P.C.—(concl.)

poses are to be considered as used for counterfeiting coins. 17 P. W. R. 1912 Cr.

7. Accused's house was searched and a tin box containing articles for counterfeiting coins was recovered. Another person with wife and children was living in that *kotha* (room). No articles which would connect the accused with the crime were recovered from the box. Held, he was not guilty. 1935 L. 39=1935 Cr. C. 39, 78 P. R. 1904 Rel. on.
8. When instruments are found in the house wife is not liable. 1933 P. 272, 15 A. 129 Rel. on.

C. Sentence.

1. Exemplary sentence should be given for the offence of counterfeiting coins. 1930 L. 51=123 I. C. 525, 1927 L. 230=100 I. C. 520=28 Cr. L. J. 305.
2. Separate sentences for possession of instruments and counterfeiting under Ss. 232, 235 are illegal. 1924 L. 78=71 I. C. 700=24 Cr. L. J. 236.
3. Separate convictions for possession of various parts of instruments and material for counterfeiting coins are illegal. 1930 L. 51=31 Cr. L. J. 527.

5. Uttering false coin. Ss. 239, 240, 241, 251, I. P. C.

1. It must be counterfeit of a current coin, otherwise the offence will be that of cheating and not of uttering false coin. 29 A. 141.
2. The accused must have knowledge of the spuriousness of the coin at the time of receiving possession of it. (1874) 23 W. R. 4, 1 Weir 222.
3. Evidence of possession and attempted disposal of coins of unusual kind is relevant on a charge of uttering such coins. 8 B. 223.
4. It is necessary to prove that at the time the accused became possessed of the coin himself or through his wife, clerk or servant. 44 C. 477=28 C. L. J. 400.
5. Where there was no evidence that accused knew the coin to be counterfeit when he became possessed of it, he is not guilty under Ss. 240, 243 but under S. 241, I. P. C. 124 I. 688=31 P. L. R. 235=31 Cr. L. J. 736.
6. If the coin is not intended by the utterer to pass as a genuine coin, he commits no offence. 4 N. W. P. 62.
7. Where coin is tendered for change and is refused on the ground that it is false, tender of the same to another constitutes an offence under S. 241. 12 Cr. L. J. 79.
8. If a person clips and cuts away a coin and makes up the deficient weight by solder with the intention of delivering it to a Bank, he is guilty of defacing coin, although on previous occasion it was used as ornament. 48 A. 603=1926 A. 321=27 Cr. L. J. 426=93 I. C. 154=24 A. L. J. 842.
9. S. 240 is not applicable to actual coiner. 10 P. R. 1892 Cr.
10. Double pice was quicksilvered to resemble a rupee. No offence under Ss. 241, 232 is made out unless intention to deceive at the time of whitening is present. 9 P. R. 1884 Cr.
11. Two persons were in possession of coins, and offered them to the cashier of Imperial Bank on a commission of 3 per cent. The report of the Mint Expert showed that they were old coins, which had been used as ornaments at some time and from which solder had only been partially removed in order to keep up their weight, but had been subjected to a process of clipping or filing. Held, they were guilty under S. 251. 48 A. 603=1926 A. 321=27 Cr. L. J. 426.
12. S. 239 is directed against a person other than the coiner, who procures, or obtains or receives counterfeit coin. 3 N. W. P. H. C. R. 150.
13. Mere fact that accused delivered certain coins to a person knowing that they were counterfeit is not enough under S. 240. The knowledge that they were counterfeit at the time when he became possessed of them has also to be established. 1936 N. 242.

COUNTERFEITING CURRENCY NOTES. S. 489-A, I. P. C.

1. Counterfeiting.

1. Section contemplates such process as may result in counterfeiting. It excludes a

Counterfeiting Currency Notes—(concl'd.)

mere act of deception. 18 Cr. L. J. 362.

2. In the case of the counterfeiting of Currency Notes, both ability and material of a particular kind are required. If those materials and ability are not present, it is not an attempt at counterfeiting. 51 A. 470=1928 A. 754=30 Cr. L. J. 690.
2. **Possessing instruments of counterfeiting Currency Notes.** S. 489-D, I. P. C.
 1. Making or selling of instruments, which may be used for forgery or counterfeiting is no offence. The section penalizes one who makes or sells them, knowing or having reason to believe that they are intended to be so used. 12 Cr. L. J. 377.
 2. The burden is on the prosecution to prove that accused knew that the instruments were intended to be used for counterfeiting Notes. 12 Cr. L. J. 377.
 3. For an offence under S. 489-D, it is not necessary to prove that the accused had ability to produce counterfeit Currency Notes with materials in his possession. 51 A. 470=1928 A. 754=116 I. C. 797=30 Cr. L. J. 690.
 4. Where in the opinion of expert the materials in the possession of the accused were sufficient for counterfeiting Currency Notes. Held, that the absence of explanation by the accused points to his dishonest intention. 1928 A. 759=30 Cr. L. J. 47.
 5. It is not necessary that the resemblance is perfect, but it must be sufficient to deceive people of ordinary intelligence, familiar with Currency Notes. 12 Cr. L. J. 377=11 I. C. 241=21 M. L. J. 766.

3. Similar Acts of—

1. Counterfeit coins and instruments were found in the house of the accused in two districts. In a trial in one District, the evidence of such possession in another District is admissible. 61 I. C. 647=22 Cr. L. J. 407.
2. In a case of uttering forged note the more detached in point of time previous uttering is, the less relation it will bear to the uttering stated in the charge. The distance between the two will affect the weight and not the admissibility of the uttering. 16 B. 414.

4. Using as genuine counterfeit Currency Notes. S. 489-B, I. P. C.

1. A person who sells a forged note to another is guilty under S. 489-B, whether the purchaser knows it to be forged or not. 7 L. 80=1926 L. 72.
2. A counterfeit note was in possession of the accused and a genuine note bearing the same number and a paper containing a honey-comb pattern in green ink resembling the pattern of the forged note were found in his house. Held, that though there was no evidence that the accused made this pattern, the accused must be deemed to know it to be forged when he was disposing of the copy of genuine note to a shop-keeper. 53 B. 344=1929 B. 128=116 I. C. 243=30 Cr. L. J. 588.
3. The words 'as genuine' govern only the verb 'uses' and not any other verb. 7 L. 80=1926 L. 72=27 Cr. L. J. 638=94 I. C. 414.
4. The object of legislature in enacting S. 489-B is to stop circulation of forged notes by persons, who knowing or having reason to believe them to be forged do any act which would lead to their circulation. 7 L. 80=94 I. C. 414=1926 L. 72.
5. The burden is on the prosecution to prove that when accused passed a note, he knew it to be forged. Mere possession by him does not place the burden on him to account for its possession and to prove innocent possession. 25 Cr. L. J. 935.
6. A conviction for being found in possession of counterfeit Currency Note cannot lie unless guilty knowledge or intention is proved. 1933 L. 596 (1).

COURT AND COUNSEL. See Legal Practitioners' Act.

1. It is highly improper for Court to intimidate accused or his counsel. 3 Bom. L. R. 562, 20 Cr. L. J. 556, 8 Bom. H. C. R. C. 125.
2. A Magistrate has no right to ask a counsel to sit down in the middle of cross-examination because he was asking irrelevant questions, or to ask him to apologize for his previous contumacious behaviour. 1896 Rat. 861.
3. It is improper to suspend a Pleader during a case. 10 C. 256.

Court and Counsel—(concl'd.)

4. Some latitude should be allowed to a member of Bar, insisting in the conduct of his case upon his question being taken down or his objection noted when the Court thinks the question inadmissible or untenable. There ought to be a spirit of give and take between the Bench and the Bar in such matters. 6 Bom. L. R. 541 (543)=1 Cr. L. J. 612.
5. Court cannot refuse to note down the objection of a counsel. 36 I. C. 468=17 Cr. L. J. 500, 55 I. C. 593=21 Cr. L. J. 321.
6. Court should leave witnesses to Pleaders to be dealt with. 25 Cr. L. J. 1226.
7. A Pleader has a general authority to act in the interest of client. If he writes a petition without asking the client or advises him to present the same, it is not misconduct. 14 Cr. L. J. 435=20 I. C. 598.
8. Pleader's admission is binding on the party. 52 B. 636, but in capital cases Counsel's admission should not be taken. 1920 A. 99=21 Cr. L. J. 777.
9. A counsel should not appear for accused having conflicting interests. 13 P. R. 1890.
10. Court can interfere in case of dispute between Counsels, as to who should conduct the case. 1929 C. 1=30 Cr. L. J. 494.

COURT HOURS. See Rules and Orders of your High Court.

Court has right to take up a case after a prescribed Court time without the consent of the parties. Where a party was asked to cross-examine a witness at 6-30 P. M. when he requested for adjournment on the ground that his Pleader was not then available. Held, that he was within his right to have the case adjourned. 1928 P. 277=29 Cr. L. J. 299, 4 P. 646=1925 P. 772=26 Cr. L. J. 1441.

COURT INSPECTOR. See Dais, Withdrawal of case by Public Prosecutor—9.**COURT OF SESSION.** S. 9, Cr. P. C. See Additional Sessions Judge—1.

1. There is only one Court of Session in each Session division, though sitting at different places and manned by the different Judges. 1931 C. 190=32 Cr. L. J. 842.
2. The Resident of Aden is not a Court of Session, but is a *persona designata* invested with the power of Court of Session except as provided for in Aden Court Act (II of 1864). 29 B. 575.
3. A Sessions Judge can make over an appeal to an Additional Sessions Judge or Assistant Sessions Judge and can afterwards withdraw it and take it on his file and decide it. 44 A. 157=1922 A. 387=23 Cr. L. J. 107=65 I. C. 491.

COURT'S DUTY.**1. Administration of Law.**

1. Where the Court practically held that accused were not guilty but that the situation at the place was likely to cause an embarrassing situation for the executive authorities, it was necessary to offer them up as victims to avert such calamity. Held, that it was a travesty of justice. 1925 L. 625=89 I. C. 315=26 Cr. L. J. 1339.
2. Court must administer the law not as they wish it might be but as they find it. It must administer the law and not grant mercy. 1930 P. 247=9 P. 474=31 Cr. L. J. 721, 1933 P. 100=34 Cr. L. J. 427.

2. Admitting evidence behind the back of accused.

1. A Magistrate cannot, when he is writing a judgment admit in evidence a document without giving the accused an opportunity of raising objections to its admissibility. 29 I. C. 90=16 Cr. L. J. 313.
2. Court going to the parties' village and examining witnesses without notice to the parties, acts illegally. 1927 M. 361=107 I. C. 123=28 Cr. L. J. 251.

3. Appellate—. See Appeal.**4. Arguments—.** See Arguments.

It is the duty of the Court to hear arguments that may be offered in any criminal trial or proceedings. 1925 O. 228=83 I. C. 340=25 Cr. L. J. 1380.

5. Assisting Prosecution—

A Judge cannot whittle away the defects of prosecution by any and every argument.

Court's duty—(contd.)

1931 A. 609=133 I. C. 593=32 Cr. L. J. 1052.

Benefit of doubt— See Benefit of doubt.

Benefit of exceptions. See Right of Private defence.

1. The Court must give the accused the benefit of exception, even if he did not rely on it. 56 C. 1013=1929 C. 346=33 C. W. N. 446.

2. Magistrate should not in their zeal to suppress crimes of violence overlook the important provisions of law regarding private defence. 1927 L. 194=100 I. C. 124=28 Cr. L. J. 252.

3. Courts should not apply the defence sections timidly. 5 P. R. 1901 Cr.

Brushing aside defects in prosecution— See —38.

Civil dispute. See Civil dispute.

0. Convincing proof.

A Judge has not to decide whether prosecution story is more probable but whether or not there has been convincing proof. 1929 N. 113=30 Cr. L. J. 789.

1. Clearing up discrepancies.

When two honest witnesses tell discrepant stories, there is probably some confusion which can be cleared up and a Court ought not to record the discrepancies without some attempt to discover their origin. 1930 M. W. N. 169.

2. Clearing up obscure points.

1. Magistrate should clear obscure points in evidence. He cannot be made to say that prosecution left the point obscure, when he had the opportunity of clearing it. 23 P. R. 1917 Cr., 2 L. L. J. 3.

2. The Court can use Police diary for clearing up obscurities in a case, but not for coming to a Judicial decision upon the case subsequently. 1926 L. 54.

3. Cross-examination for undefended accused. See Cross-examination—8.

4. Delay in disposal of a case. See Delay—8.

5. Examination of accused. See Examination of accused.

When an accused is examined by the Prosecutor instead of Court, the proceedings are irregular. 1930 L. 166=123 I. C. 570=31 Cr. L. J. 560.

16. Hasty trial.

An accused should not be tried in a hasty manner without giving him reasonable opportunity of producing his defence. 113 P. L. R. 1914.

17. In summoning Court witness. See Court witness—1.

18. Jurisdiction.

1. It is not the duty of Court to go out of the way to find that a case exclusively triable by Court of Sessions might arise from facts before him. 1930 A. 280=123 I. C. 756=31 Cr. L. J. 563.

2. On a complaint under S. 430, I. P. C., the Bench tried the accused for a lesser offence under S. 426 and it appeared that they had jurisdiction to try the former and not the latter offence. Held, that the proceeding was not void. 1930 M. W. N. 770, 24 M. 675, 27 M. L. J. 594, 25 M. L. J. 484

3. Merely because an Executive Officer has information about men of importance and position in his sub-division and their character, it is not sufficient to deprive his jurisdiction as a Magistrate. 1930 A. 495=31 Cr. L. J. 764=125 I. C. 32.

19. Minimising a graver offence.

It is not right for a Court to minimise an offence by shutting its eyes to a graver offence, which on the facts found by it, has been committed and to refrain from charging the accused with that offence. 51 A. 540=1929 A. 349.

20. Mistake in recounting facts in judgment.

Mistakes in recounting facts in judgment are serious and sometimes prove disastrous.

Court's duty—(contd.)

1932 L. 243=137 I. C. 59=33 P. L. R. 23=33 Cr. L. J. 411.

21. Not to consult superior officer— See Transfer—18.

22. Not to presume guilt of accused.

1. Sometimes in inferior Courts it so happens that no sooner an accused is brought before a Court he is presumed to be guilty and every attempt on his part to prove his innocence is taken as vexatious by Court. 28 C. 594.
2. An accused, who has several convictions behind him is entitled to have his case, treated as if it was not a foregone conclusion that he is guilty. 1930 A. 17=120 I. C. 202=31 Cr. L. J. 8=1930 A. L. J. 82.
3. Opportunities should be given to accused to explain evidence against him. 1930 A. 17=31 Cr. L. J. 8=120 I. C. 202.

23. Not to take the role of Prosecutor—

A Court ought not to take the role of a Prosecutor. 1925 O. 726=26 Cr. L. J. 1236.

24. Not to use record of one case in another. See Evidence—40, Deposition—5.

25. Opinion of predecessor. See Opinion—20.

26. Personal knowledge of Magistrate.

1. A Magistrate cannot import his personal knowledge about the personal character of accused in the decision of the case. 50 I. C. 171=20 Cr. L. J. 583, 25 Cr. L. J. 808=81 I. C. 344=1925 L. 166.
2. A Judge cannot without giving evidence import his personal knowledge. 14 Bom. 572, 38 C. 153.

27. Prompt disposal—

Whilst prompt disposal in a criminal case is a matter of importance, it is of even greater importance to pay proper attention to the procedure prescribed by law. 10 L. 223.

28. Remarks about conduct of officials.

Remarks about the official concerned should not be lightly made without giving him an opportunity to explain. 1930 L. 1048=129 I. C. 273=32 Cr. L. J. 268.

29. Remarks about guilt of accused after acquittal.

After acquittal, the Magistrate is not justified in observing that "accused escaped the clutches of law." 1930 M. W. N. 1253.

30. Remarks against persons not before the Court.

Where a person is not on trial, there should be no expression of opinion about his guilt. 128 I. C. 211.

31. To bring all relevant evidence on record.

It is the duty of every Court to bring all relevant evidence on the record and to see that justice is done. 43 A. 283.

32. To comply with procedural Law.

1. It should be the duty of Magistrates to comply with law laid down in Cr. P. C. and by the High Court fully and satisfactorily. 1927 C. 936 (1)=101 I. C. 606=31 C. W. N. 387, 10 L. 223=1929 L. 382=29 Cr. L. J. 769.
2. It is imperative in murder cases that law should be strictly adhered to and the accused should not have any manner of grievance at all. 1927 C. 631=103 I. C. 790=31 C. W. N. 881=28 Cr. L. J. 742.
3. In criminal cases the question is not alone whether substantial justice has been done according to law, but legal forms must be conformed to. 1925 O. 1=75 I. C. 753=25 Cr. L. J. 49, 31 I. C. 365.
4. Court should follow Cr. P. C., but where no such procedure is laid down, Court should not follow observations of High Court Judges, if miscarriage of justice will follow. 1932 M. 502=139 I. C. 343=33 Cr. L. J. 765.
5. Slipshod procedure is to be condemned even though it does not necessarily result in vitiating the whole proceedings. 1935 O. 316=36 Cr. L. J. 656.

*Court's duty—(concl'd.)***33. To be fair.**

It is fundamental principle of justice that the Magistrate should not only be fair and impartial but also appear to be so. 10 R. 180=1932 R. 90.

34. To give facilities to accused to get copies. *See* Copies of proceedings.

1. An accused person should be granted copy of first information report at the earliest possible stage, in order that he may get the benefit of the legal advice, 42 I. C. 598.
2. The ends of justice require that accused should be apprised of what certain prosecution witnesses stated in proceedings under S. 164. 1932 A. 327=33 Cr. L. J. 752.

35. To put up defensive pleas when accused is undefended.

The Court should give assistance to accused in putting up obvious defensive pleas if he is not represented by a Pleader. 1930 R. 349=128 I. C. 845.

36. To take down objection.—*See* Objections by Counsel.

If the Judge disallows a question, the Pleader should have the question and the order disallowing it recorded as such a refusal on the part of Judge is illegal. 17 Cr. L. J. 500.

37. To watch interest of mentally deranged accused.

Magistrate should watch the interest of an accused who is mentally deranged with unusual degree of care. 1932 A. 233=139 I. C. 147=33 Cr. L. J. 714.

38. Weighing evidence. *See* Evidence.

1. If a prosecution witness says something inconvenient the Court cannot brush it aside as being insignificant or on the ground that he had been got at by the defence. 1929 M. W. N. 395.
2. It is not the duty of Judge to find any and every reason possible to whittle away significance and defects in prosecution. 1931 A. 609=32 Cr. L. J. 1052.

39. Witnesses in Party feuds.

In criminal cases involving party feud, when the relations and friends who are perfectly innocent are falsely charged Court should exercise the caution that chances of innocent persons being punished may be entirely eliminated. 1931 L. 465=32 Cr. L. J. 1079.

40. Under-trial prisoner—ill-treatment in jail—.

When a prisoner complains to the Court that he is not treated according to Jail rules, the Court has jurisdiction to inquire into such a complaint and pass necessary orders. 1931 L. 562=133 I. C. 59=32 Cr. L. J. 988=32 P. L. R. 586.

COURT ROOM.**1. Atmosphere of—.** *See* Atmosphere.**2. Entry into—.**

Accused entered a Court room and was asked to leave it. He refused to leave the room. Held, that he was not guilty under S. 448, although the Court room was part of the officer's house. 1923 R. 145=81 I. C. 141=25 Cr. L. J. 653.

3. To be open—. S. 352, Cr. P. C.

1. A Police Officer who has investigated the case should not be allowed to be present before a Magistrate who is recording confession of the accused. 1885 A. W. N. 221.
2. Trial in Jail is not illegal, when there is nothing to show that admittance was refused to any one who desired or that the prisoners were unable to communicate with their friends or Counsels. But it is undesirable to hold trials in Jail, because it is difficult to get Counsels to appear in Jail. 21 P. W. R. 1917 Cr.=18 Cr. L. J. 852.
3. Police Officer can be ordered to be absent from Court room if accused objects. Reasonableness of his fear rather than the convenience of prosecution is the guiding factor. 1925 N. 296=88 I. C. 362=26 Cr. L. J. 1130.
4. Proceedings in camera can be upset if the complainant is prejudiced. 1936 R. 471.
5. Holding Court in a private place, in spite of the protest of the accused, where he cannot get his pleader or witnesses is a material irregularity. 19 Cr. L. J. 249. *See* 3 Cr. L. J. 433.

Court Room—(concl'd.)

6. Where accused entered a private room of the Judge where he was holding trial and when asked to leave disobeyed it, he was not guilty under S. 448, 1 P. C. 1923 R. 145=25 Cr. L. J. 653.

COURT WITNESS. S. 540, Cr. P. C. See Witness.**1. Court's duty.**

1. Court has power to recall a witness already examined and cross-examined. S. 540, Cr. P. C.
2. A Court witness means one whom the Judge acting on his own initiative caused to be produced. The testimony of Court witness summoned at the instance of Public Prosecutor should be rejected *in toto*. 1923 C. 463=71 I. C. 657=24 Cr. L. J. 193, 12 A. L. J. 15.
3. Magistrates should always be chary of taking upon themselves the duties of deciding on behalf of the parties, as to which witnesses should be examined. 28 M. L. J. 134=16 Cr. L. J. 156=27 I. C. 220.
4. A Magistrate misuses his power if he uses S. 540 to anticipate the defence to accused's prejudice or to avoid the responsibility of making up his mind as to the value of prosecution evidence. 11 P. R. 1886.
5. A Magistrate who is seized of the case, can only summon a Court witness. 36 A. 13.
6. It is entirely in the discretion of Court to summon witnesses and the Public Prosecutor cannot demand as of right to call any witness not examined before the Committing Magistrate. 14 A. 212.
7. Court can summon witnesses for the just decision of the case and no question of bias against the accused arises unless it is shown that the Court was guiding or assisting the Prosecution. 117 I. C. 213=1929 N. 172=30 Cr. L. J. 728.
8. S. 540 confers very wide power upon a Court. But wider the power, the greater the exercise of discretion required of Magistrate. 1923 C. 690=24 Cr. L. J. 957=75 I. C. 541, 12 A. L. J. 15.
9. While after the close of the case for Prosecution, the Magistrate at the discretion of Assistant Collector who prosecuted the case recalled and re-examined two witnesses. Held, it is illegal. 23 I. C. 743=15 Cr. L. J. 375.
10. Where witnesses were examined on both sides and the Magistrate finding himself unable to arrive at a definite conclusion went to the village of parties and examined without previous notice four witnesses. Held, the procedure is illegal. 1927 M. 361=100 I. C. 123=28 Cr. L. J. 251, 24 C. 167 Dist.
11. Court should inform the parties beforehand the names of Court witnesses, with a view to afford them an opportunity of proper cross-examination. 10 L. 790=1929 L. 120=122 I. C. 95=31 Cr. L. J. 346.
12. S. 540 does not empower a Court to discover witnesses by personal enquiry out of Court. 4 R. 106=97 I. C. 60=1926 R. 180=27 Cr. L. J. 1084.
13. When prosecution fails to examine all the witnesses, the Committing Magistrate should examine them as Court witnesses. 1925 Pat. 5=90 I. C. 661=26 Cr. L. J. 1589.
14. In a Sessions trial for murder, persons who are admittedly present on the scene of occurrence, though given up as defence witnesses, should be examined as Court witnesses. 133 I. C., 488=32 Cr. L. J. 1067=1931 R. 163.
15. A Magistrate misuses S. 540, Cr. P. C. in using it to anticipate the defence of an accused person to his prejudice. 11 P. R. 1886 Cr.
16. S. 540 does not authorize a Sessions Judge to summon witnesses after the assessors have given their opinion. 4 P. R. 1892 Cr.
17. Court is bound to summon and examine any witnesses whose evidence seems to be essential to the just decision of the case. 6 C. W. N. 94.
18. Where in a case of dacoity the Police does not produce eye witnesses, Magistrate should summon them under S. 540. 1934 R. 105=151 I. C. 615.

Court Witness—(contd.)

19. Essentiality and expediency of evidence is the test for taking evidence under S. 540. 1933 Sind 49=34 Cr. L. J. 591.
20. Court should not examine witness under S. 540 merely because complainant suggested it. 1936 A. 269=37 Cr. L. J. 522.

2. Cross-examination of—

1. Both sides have a right to cross examine a witness freely. Questions suggested to Magistrate and put by him is no cross-examination. 24 C. 238, 5 C. 614, 47 A. 147.
2. Cross-examination of Court witness need not be restricted to the points on which he has been examined by the Court. 35 C. 243.
3. A defence witness was given up by accused. The Court examined him as Court witness. The accused has a right to cross examine him. 29 C. 387 but not without leave of Court. 11 B. H. C. R. 166.
4. Court should inform the parties of the names of witnesses beforehand, so that they may prepare the cross-examination. 10 L. 790=1929 Lah. 120=122 I. C. 95.

3. Procedure.

1. Where a witness is examined as a prosecution witness after the close of defence evidence, the trial is vitiated. 1923 L. 953=111 I. C. 396=29 Cr. L. J. 844, 59 I. C. 202.
2. After the close of defence evidence, rebutting evidence by prosecution is admissible if it could not have been produced earlier. 1 R. 303=1923 R. 216=76 I. C. 649=25 Cr. L. J. 217.
3. If an essential document has been overlooked by the prosecution, it is the Judge's duty to have it admitted in evidence. 1929 M. 837=1929 M. W. N. 901=1929 Cr. C. 485=57 M. L. J. 681=30 M. L. W. 642.
4. A Court is not bound to examine the accused again after the examination of a Court witness. 1925 L. 154=89 I. C. 842=26 Cr. L. J. 1418.
5. The power to summon is not limited to the witnesses cited by prosecution or defence. 11 P. R. 1886 Cr.
6. S. 540 does not enable the Court to examine the accused as a witness in appeal. 12 M. 451.
7. Sessions Judge can summon witnesses which the Committing Court refused to summon. 8 A. 668, 14 A. 212.

4. Stage of Summoning.—

1. If the prosecution has wantonly failed to examine the witness, the Court should refuse the application for calling him as Court witness, when it is made after the defence is closed. 1929 M. W. N. 395.
2. Where after the arguments were heard, Magistrate felt that there were some obscure points which should be elucidated, recalled certain witnesses and examined new witnesses and asked the accused if he wanted to say anything. Held, the procedure is not illegal. 1928 L. 647=110 I. C. 676=29 Cr. L. J. 740=10 L. L. J. 262, 75 I. C. 541; (1924 L. 104 and 1925 L. 351 Dist.)
3. Court can summon Court witness after the close of the case by parties. 1924 M. 587 (2)=77 I. C. 290=25 Cr. L. J. 354, 24 C. 167.
4. On the day fixed for judgment, Court examined two witnesses named by the prosecution. Held, the procedure is unjustifiable and retrial was ordered. 75 I. C. 541=1923 C. 690=24 Cr. L. J. 957.
5. Court should not admit further evidence for the prosecution, after prosecution has closed its case, unless there be valid reasons which must be recorded. 10 A. L. J. 383.
6. After the opinion of Assessors, Sessions Judge cannot fish for witnesses. 4 P. R. 1892.
7. An appellate Court can take additional evidence after recording reasons for doing so. 11 Cr. L. J. 511=8 I. C. 145.
8. Court can summon a witness under S. 540 at any stage and can consider his evidence

Court Witness—(concl.)

whether a charge should be framed or not. 1933 L. 561=34 Cr. L. J. 735.

9. When a Court witness gives evidence against the accused, he is not necessarily entitled to further opportunity to produce more evidence. 1936 A. 269=37 Cr. L. J. 522.

CO-VILLAGER. See Confession by inducement—10-B.

COW-KILLING. See Religion—5.

COWRIES—WHETHER INSTRUMENT OF GAMING. See Public Gambling Act.

CREDIBILITY. See Evidence—6.

CRIMINAL BREACH OF TRUST. See Breach of trust.

CRIMINAL CONSPIRACY. See Conspiracy.

CRIMINAL FORCE. Ss. 349, 350, I. P. C. See Assault.

1. **Breaking of lock.**

Breaking open of a lock is not a use of criminal force 105 I. C. 676=1927 L. 830=28 Cr. L. J. 964.

2. **Dispossession from immovable property by—.** See Dispossession from immovable property—3.

3. **Rescuing arrested person.**

Police arrested A under illegal warrant, whereupon certain persons came up, rescued the accused and tore up the warrant but did not cause hurt to any one. Held, they were guilty of using criminal force. 45 A. 142=1923 A. 87=24 Cr. L. J. 151.

4. **What is—.** See Rioting—16.

1. Complainant who halted in front of ploughs, was obliged to run away by reason of the accused's rushing at him with sticks and using threats towards him. Held, it was resort to criminal force under S. 350. 45 A. 25=1923 A. 333.
2. 'Force' applies to force used in connection with human body. 18 C. W. N. 1150.
3. "Criminal force" includes force of almost every kind of which a person is the ultimate subject. + P. R. 1889 Cr.
4. Accused went to the field of another and cut the crops sown by him and on the latter resisting they raised their sticks to strike him and that other man ran away to save himself. Held, that accused were guilty of using criminal force. 12 A. L. J. 154, 24 Cr. L. J. 857=1923 A. 333=74 I. C. 1049.

CRIMINAL INTIMIDATION. Ss. 506, 507, I. P. C.

1. **By Anonymous Communication.** S. 507, I. P. C.

The injury may be one which accused can cause to be inflicted. Hence, a person who sends anonymous letters as if from God, conveying threat of divine punishment if a specified sum of money is not paid to a certain person, is not guilty under this section, as it does not lie in his power to cause the threatened punishment. 48 M. 774.

2. **Charge.**

1. When a charge under S. 506 was not framed against the accused, though it was framed against the co-accused, who was convicted, the omission to frame charge did not prejudice the accused. 1923 A. 476=76 I. C. 568=25 Cr. L. J. 200.
2. The accused were challaned under S. 341, I. P. C. only. The trying Magistrate is justified in charging them under Ss. 341, 506, I. P. C. 129 I. C. 166=1931 O. 73=32 Cr. L. J. 330.
3. Accused was charged under S. 307 and it appeared that shot was fired to scare away the Police. He may be convicted under S. 506, although he was not charged with it. 1931 M. W. N. 861.

3. **Dhurna sitting.—**S. 508, I. P. C. See—9.

4. **Essentials and Evidence.**

1. The gist of the offence is the effect which the threat is intended to have upon the

Criminal Intimidation—(contd.)

mind of the person threatened. Threat may be made directly or communicated in some other way. 15 C. 671.

2. Where one threatens to get another dismissed from the Police service, the illegality of threat has to be proved. 20 Bom. 794.
 3. Where a spiritual *Guru* declared complainant out of caste and forbade other disciples and public generally to associate with him, as he attended a widow marriage. Held, the *Guru* was not guilty. 6 M. 381.
 4. A mere threat to injure a person by "cases" followed up by prosecution does not fall under S. 506, as there was nothing to show that cases were false. 30 C. 418.
 5. Leaders of Hindus and Mohammadans entered into an agreement with *Tasildar* to celebrate their festivals peacefully. The accused threatened both communities that if they did not break the bond, he would get them imprisoned. Held, guilty under S. 506. 1886 A. W. N. 41.
 6. A threat to commit suicide if another person refuses to do a particular act may amount to this offence if the latter is interested in the former. 103 P. R. 1866.
 7. Accused a clerk in the Forest Department was dismissed by the Forest Officer. Accused sent a petition to Commissioner by villagers that if the Forest Officer was not transferred, he would be killed. Held, the threat does not fall under S. 506, as Commissioner is not interested in Forest Officer. 11 B. 376.
 8. Accused issued a notice as President of self constituted Arbitration Court to the complainant to appear or an *ex parte* decree will be passed, was guilty. 27 C. W.N. 479=1923 C. 590=24 Cr. L. J. 396=72 I. C. 508.
 9. It must be proved that accused actually threatened another with injury to his person, reputation or property or to the person or reputation of another in whom that person is interested, with intent to cause alarm. 45 P. R. 1882 Cr.
5. Picketing. See Picketing.

Criminal Intimidation—(concl'd.)

4. If accused sits Dhurna at A's door with the intention of causing it to be believed that by so sitting, he renders A an object of divine displeasure, he is guilty. S. 503 ill (a), M. and M. 453.

10. Threat of excommunication.

1. Where the accused told the complainant to give up the field or else would put him out of caste, they were not guilty. (1882) *Unrep. Cr. C.* 186.
2. A spiritual *Guru* declared complainant out of caste and forbade public generally to associate with him, as he attended a widow marriage, the *Guru* was not guilty. 6 M. 381.
3. Accused threatened that complainant would be socially boycotted and on his death his body would not be carried to the burial place, if he continued to deal in foreign cloth, no offence was committed. 1931 L. 228=134 I. C. 495 (1)=32 Cr. L.J. 1176 (1).

11. Threat of vengeance.

Accused threatened a constable who was taking two suspects with him, with Head Constable's vengeance and as a consequence he had to release them, an offence under S. 506 was committed. 18 Cr. R. 1896.

12. Threat to get a man dismissed or transferred.

1. Accused held out a threat of getting a Head Constable dismissed, he was guilty under S. 506. 20 B. 794.
2. Accused sent a letter to Commissioner that if a certain Forest Officer was not removed, he would be killed. Held, that as the person to whom petition was addressed was not interested in him, the offence is not complete. 11 B. 376.

13. Threat to get a person imprisoned.

1. Accused went to the brother of an adult woman and told him that he had come Government and would get him imprisoned, if he did not let his sister go. 1 no offence was committed. 8 B. H. C. (Cr. C.) 101.
2. Accused held out threats to several persons to get them implicated and imprison they kept to the terms of agreement entered into to keep peace during Moha festival, he was guilty under S. 506. 1886 A. W. N. 41.

14. Threat to commit suicide.

A threat to commit suicide is not within S. 506, unless the other person be interested the person making the threat. 109 P. R. 1866.

15. Threat to kill a person.

Where accused quarrelled with his brother, fetched a sword, but was seized and disarmed by other persons. His threat that he would kill him if he was let go, does amount to an offence under S. 506. 45 P. R. 1882 Cr.

16. Threat to make a false document.

Accused in offering resistance to a Police Officer compelled him to draw up a document to the effect that a search was conducted and nothing incriminating was found, was guilty under S. 506. 17 A. L. J. 1047.

17. Threat to socially boycott.

The complainant was given a threat that he would be socially boycotted and on his death no one would carry his dead body to the place of burial if he continued to deal foreign cloth. Held, that it did not amount to an offence under S. 506. 1931 288=134 I. C. 495 (1)=32 Cr. L. J. 1176 (1).

18. Threatening letters to defendant. See Contempt of Court.**CRIMINAL LAW AMENDMENT ACT (XIV of 1908.)****1. Bail.**

The Act does not restrict the power of the High Court to grant bail under S. 49^c, C. P. C. 37 C. 439.

2. Procedure.

1. The Vakils of the High Court have no right to audience in the High Court in case

Criminal Law Amendment Act (XIV of 1908)—(contd.)

sent up for trial there under the Act. 13 C. W. N. 605.

2. The procedure prescribed under the Act by which an accused under S. 121-A was detained for many months without legal advice, is not desirable. 38 C. 559.

S. 9.

- A Special Bench of the High Court constituted under the Act can try a case under S. 302 read with S. 34 although S. 34 is not mentioned in the schedule. 16 Cr. L. J. 576=30 I. C. 128.

S. 15.

The accused stated that British Raj had come to an end and exhorted people to establish an independent state at Bagrian. He contributed money and asked others to contribute. Held, that he was not guilty under the Criminal Law Amendment Act, as he did not contribute towards an existing unlawful association but guilty under S. 117, I. P. C. 5 L. 1=1924 L. 440.

Ss. 16-17.

1. If an accused admits that he was *Jathadar* of Akali Dal, he admits himself guilty of managing an unlawful association and is guilty. 7 L. 359.
2. A person who urges people to form *Jathas* does not promote or assist in promoting meetings of *Jathas*, when the *Jathas* themselves had not come into existence. 6 L. 359.
3. Exhorting Sikhs to form themselves into *Shahidi Jathas* for the purpose of going to a certain place and collecting funds for a committee which was declared unlawful, is not an offence under S. 17 but under S. 117, I. P. C. 1926 L. 115=89 I. C. 462=26 Cr. L. J. 1374, 5 L. 1=1924 L. 440.
4. A person who takes an active part in organising or assisting to organize a meeting must clearly be regarded as promoting or assisting to promote it. 7 L. 357.
5. The Police made a report that accused was assisting the volunteers by giving shelter in his house. Held, that action taken on it is illegal. 1922 C. 538=71 I. C. 49=24 Cr. L. J. 1.
6. Where everybody knew that Criminal Law Amendment Act had been extended to U. P. and Court convicted the accused on the basis of a Newspaper extract, the conviction is illegal as the Act was not extended by a Notification in the Gazette. 1931 A. 12=129 I. C. 443=32 Cr. L. J. 311=1931 Cr. C. 12.
7. The burden is on the prosecution to prove that accused was a member prior or subsequent to Government notification. The Act imposes no obligation on the members of the association to do anything specific to terminate their membership. Continuance of membership cannot be presumed. 55 B 484=1931 B 129.
8. There must be specific evidence that a member continued to be so after notification. 1931 B. 203=32 Cr. L. J. 725=1931 L. 145=32 Cr. L. J. 700.
9. "Notification" is the act of making known. Mere insertion in the Gazette is insufficient. So in the absence of evidence to show when the Gazette, dated 14th October was published, the arrest of an alleged member of an assembly declared unlawful on the early hours of the 15th October and his conviction are illegal. 55 Bom. 355=1931 B. 132=130 I. C. 577=32 Cr. L. J. 572.
10. Ss. 16-17 do not penalise people for having been members of an association at a time when they were lawful and not unlawful. 55 Bom. 484=1931 B. 129.
11. The fact that accused applied to be enrolled as member of Congress Committee nine months before it was declared unlawful cannot be proof of his membership after the association had been declared unlawful. 1931 L. 361=134 I. C. 782.
12. It is sufficient if a copy of Government Gazette was shown to accused, no matter whether it was issued to the public or not. 33 Bom. L. R. 333=1931 B. 203.
13. Accused cannot be convicted under S. 47 (c) of Bombay Salt Act or under S. 17 (1) of Criminal Law Amendment Act for being in possession of contraband salt in his possession. 134 I. C. 345=1931 B. 409=32 Cr. L. J. 1145.
14. Where it is amongst the regular activities of an unlawful association to picket cloth

Criminal Law Amendment Act (XIV of 1908)—(concl'd.)

shops in order to persuade people not to buy foreign cloth, and the method of picketing was the same as employed by accused, the accused is said to be assisting the operation and an offence under S. 17 (c) is committed. 55 Bom. 442=1931 B. 200.

15. Taking part in a political procession of an unlawful association is assisting in its operation. 1931 Bom. 202=131 I. C. 477=32 Cr. L. J. 723.
16. Reproducing in newspaper an appeal to stop trading in foreign cloth, made by a person describing himself as President of War Council is no offence under S. 17 (1). 1931 Bom. 413=134 I. C. 357=32 Cr. L. J. 1158.
17. Where the prosecution witnesses have no personal knowledge about the membership of the accused, the conviction cannot stand. 1931 L. 153=131 I. C. 360.
18. No member arrested before the publication of the order in the Gazette can be held guilty under S. 17, although accused may have known that association was declared unlawful prior to publication. 12 L. 471=1931 L. 107=32 Cr. L. J. 653.
19. Proof of knowledge on the part of the accused that association is declared unlawful is not condition precedent to his prosecution. Some notice of the declaration should be given to the members to regulate their conduct accordingly. 55 Bom. 356.

CRIMINAL MISAPPROPRIATION. S. 403, I. P. C.

1. Attempt.

1. Accused, a servant in the Postal Department, while assisting in the sorting of letters, secreted two letters, with the intention of handing them over to the delivery peon and sharing with him certain money payable on them. Held, he was guilty under Ss. 511/403 and of theft. 14 M. 229.
2. A gave a letter containing Currency Notes to B to write address on it. He tried to substitute it and struggle ensued. Held, he was guilty of attempt to criminally misappropriate. 1933 Sind. 139=34 Cr. L. J. 802.

2. Bull set at large.

1. Accused caught hold of a *lawaris* bullock, kept it for 20 days and then sold it, he was held not guilty. 1926 A. 251=91 I. C. 37=27 Cr. L. J. 5.
2. A bull set at large in accordance with a Hindu religious usage is not the property of any one. It is not a subject of criminal misappropriation. 8 A. 51, 9 A. 348, 17 C. 852, 18 B. 212.
3. The fact that such a bull receives some attention from the cowherd of the persons who set it at liberty and is daily fed by him and is not used for breeding purposes without their permission, is not inconsistent with a total surrender by those who set it at liberty. 17 C. 852.
4. There can be no criminal misappropriation of things which have actually been abandoned. 8 A. 51, 9 A. 348, 18 B. 212, 17 C. 852.

3. By broker.

A entrusted jewel to a broker for sale who sold it to C. C pawned it to B. Held, that the broker did not misappropriate the jewel but the money received from C, and B was entitled to have the jewel restored under S. 517, Cr. P. C. 12 Cr. L. J. 467.

4. By debtor.

A false denial of loan is not in itself misappropriation. 6 Bom. L. R. 1093, 72 I. C. 172.

5. By finder of article. See—13.

6. By a joint owner or partner.

1. A joint property can be criminally misappropriated. 1 A. W. N. 89, 10 P. R. 1903.
2. Manager of joint Hindu family cannot be prosecuted for criminal misappropriation. (1880) 1 Weir 453.
3. Unless there has been actual division of joint property there can be no criminal misappropriation by a co-partner. (1880) 1 Weir 453.
4. Taking of joint property by partner is not criminal misappropriation unless the partner appropriates it to his own sole use. 1925 C. 154, 55 I. C. 674.

*Criminal Misappropriation—(contd.)***7. By judgment debtor.**

A judgment debtor harvested his crops under attachment. He was guilty under S. 403. 22 M. 151.

8. By servant.

1. A Government servant retained two sums of money for several months instead of paying them in treasury, he was guilty under S. 403, when he paid it there. 12 M. 49.
2. A village Karnam, collecting money for the purpose of remitting it into the treasury, kept it for sometime. Held, he was guilty. (1884) 1 Weir 455.
3. Accused a servant of Postal Department, secreted two letters with the intention of getting money payable on them, was held guilty. 14 M. 229.
4. A Railway Booking Clerk took Rs. 17 instead of 17 pice and retained them for some time. After the inquiry he returned it. Held, he was guilty under S. 403. 2 N. W. P. H. C. R. 475.

9. By trustee. (Supruddar.)

If a person is entrusted with property by Receiver and fails to produce it, he is guilty under S. 403, although there was covenant to pay money as security. 48 A. 288 = 1926 A. 302 = 27 Cr. L. J. 297 = 24 A. L. J. 270 = 92 I. C. 585.

10. Charge.

1. Misappropriation of each separate item of money with which a person is entrusted is a separate offence. The Magistrate selected some items and framed charges thereon and evidence was led specially on those items. (1871) 15 W. R. 5 Cr.
2. But now in the case of misappropriation of money it shall be sufficient to specify the gross sum without specifying particular items on exact dates, provided the time between the first and the last of such dates does not exceed one year. Ss. 222 (ii) and 234, Cr. P. C. 25 M. 61 (P. C.)
3. It is sufficient if the prosecution establishes that some of the money mentioned in the charge is misappropriated, even though it may be uncertain what is the exact amount misappropriated. 52 Bom. 280 = 1928 Bom. 148, 42 A. 542 Diss.
4. When two persons are implicated under S. 403, one should be charged for abetment. 16 C. W. N. 600.

11. Civil Nature.

1. If goods are delivered to the purchaser in pursuance of contract, there is no entrustment and denial of their receipt does not fall under Ss. 403 or 406, the matter being purely of civil nature. 1924 M. 516 = 72 I. C. 172.
2. The mixture of the funds of another with one's own may be in many cases natural and proper and in another case convenient but irregular. Criminal responsibility will follow if the accused in what was done was moved by the guilty mind. 18 C. W. N. 98 = 15 Cr. L. J. 305 = 23 I. C. 657.
3. Refusal of agent to return money received on behalf of principal does not fall under Ss. 403 or 406. 52 I. C. 430.
4. The fact that Prosecutor gave the accused time to make out his accounts and pay the balance does not make it a civil matter (1866) 5 W. R. 56 Cr.

12. Essentials and Evidence

1. If a person sets apart an article for the use of another person of which article he is a trustee, he misappropriates it, even though he has not put it to his own use. 45 A. 288 = 1926 A. 302 = 92 I. C. 585 = 27 Cr. L. J. 297.
2. If a person is entrusted with property by Receiver and fails to produce the property, he is guilty under S. 403, although there was a covenant to pay money as security. 48 A. 288 = 1926 A. 302 = 27 Cr. L. J. 297.
3. Ordinarily mere retention of money is not sufficient to constitute the offence of criminal misappropriation. 1923 Bom. 205 = 111 I. C. 730 = 29 Cr. L. J. 922.
4. A was convicted on his plea of guilty under S. 403 for trying to sell a spanner which he found lying on a public road. Held, that it was not a case where accused had

Criminal Misappropriation—(contd.)

- reasonable means of discovering and giving notice to owner of the spanner, of having found it, which was not of appreciable value. His plea of guilty was mere admission of facts alleged against him and is not guilty. 1930 Bom. 176=32 Bom. L. R. 356=125 I. C. 712=31 Cr. L. J. 926.
5. Taking of joint property by partner is not criminal misappropriation unless the partner appropriates the joint property to his sole use. 1925 C. 154=81 I. C. 157.
 6. Loser was not the true owner of the money lost at gambling. The winner asked the loser to give in writing of such winning. Held, that the demand of writing indicates knowledge on the part of winner that loser was not the owner and hence guilty under S. 403. 11 Cr. L. J. 730=8 I. C. 929.
 7. A person obtaining goods of another innocently and disposing of them fraudulently is guilty as the assuming to one's self the right of disposing another's property is itself conversion. 12 Bom. L. R. 316, 37 Bom. 122.
 8. A Postmaster opening a V. P. article addressed to himself and extracting a Railway Receipt from it, without paying for it for six days is guilty under S. 403. 8 L. 662.
 9. Railway Clum Inspector realizing sale proceeds of certain bags of goat skin but not paying to Railway is guilty under S. 403. 99 I. C. 593=28 Cr. L. J. 161.
 10. A letter thrown away by complainant and picked up by accused and used in Court is no offence. 40 A. 119.
 11. It is sufficient for the prosecution to establish that some of the money mentioned in the charge has been misappropriated by the accused, even though it may be uncertain what is the exact amount so misappropriated. 52 B. 280, 30 Bom. L. R. J. 1530.
 12. The offence consists in dishonest misappropriation or conversion for a time, of property which is already without wrong in possession of the offender. 12 M. 49.
 13. Criminal misappropriation takes place when the possession has been innocently come by, but where, by a subsequent change of intention or from the knowledge of some new fact with which the party was not previously acquainted, the retaining becomes wrongful and fraudulent. 15 C. 388 (400).
 14. Finding of a purse with money belonging to an unknown owner is no offence, but appropriation of it to one's own use is necessary to complete it. 11 P. R. 1908 Cr.
 15. Where there is no intention to cause wrongful gain or wrongful loss of property and there is an intention merely to deprive the owner of temporary use of property there is no offence under S. 403. 27 P. R. 1886 Cr.
 16. The offence does not depend on the consequence which has ensued, but only on the act which has been done. 44 C. 912=21 C. W. N. 573, 24 Cr. L. J. 746.
 17. A wrong opinion that accused was justified in keeping the thing does not constitute the offence under S. 403. 30 Cr. R. 1894=1930 Unrep. Cr. C. 700.
 18. Accused found two logs of wood drifting in a river during a high flood and took possession of them. The logs were left exposed for several months. Held, he was not guilty. (1883) 1 Weir 455.
 19. Accused lost his buffalo, and finding another resembling his buffalo, tied her in his house and refused to give it to the complainant. Held, he was not guilty. 44 M. L. J. 128=1923 M. 364.
 20. Accused removed posts and shutters for firewood from a house which they believed was deserted, they were not guilty under S. 403. 10 Bur. L. R. 356.
 21. Actual accrual of wrongful loss or gain is not necessary. 1934 A. 499=35 Cr. L. J. 982.
 22. Accused took delivery of the property from the Court, although he knew about the stay order by the appellate Court. His disposal of property in such a way as to make it impossible of being returned to the other party does not constitute offence under S. 403. 1934 C. 454=35 Cr. L. J. 886.
 23. If the property is abandoned or of which there is no owner, there cannot be misappropriation. 8 A. 51, 17 C. 852, 9 A. 348, 18 B. 212, 32 Bom. L. R. 356.
 24. Accused dishonestly exchanged his Railway ticket with that of A. Held, he was guilty. 25 A. W. N. 9.

*Criminal Misappropriation—(contd.)***13. Finder of lost article.** See —20.

1. Finding of purse with money belonging to an unknown owner is no offence, but the appropriation of it to finder's own use is necessary to complete it. 11 P. R. 1908 Cr.
2. A Hindu girl finding a gold necklet gave it to a sweeper girl. Accused the brother of finder wrongly stated that it belonged to his friend and thus got possession of it. He was guilty under S. 403. 24 P. R. 1886 Cr.
3. Accused found a purse on the pavement of a temple in a crowded gathering and put it in his pocket, he was not guilty under S. 403. 11 P. R. 1908 Cr.
4. Accused found gold *Mohur* on an open plain and sold it the next day for full value. It was held, he was not guilty. 18 B. 212.
5. If a person finds a property from the nature of which there must be an owner, he must endeavour to find out the owner, but may not advertise. 23 Cr. L. J. 401.
6. Accused found a spanner of no appreciable value in a public road and attempted to sell it, he is not guilty. 32 Bom. L. R. 356.
7. If the logs of wood were found in a river during flood and were kept outside the house for some months; accused is not guilty. (1883) 1 Weir 455.

14. Intention.

1. Accused lost his buffalo and a month later tied up complainant's buffalo openly in the verandah of his house, which strayed into his house and was of similar appearance. Held, there was no dishonest intention in claiming it. 1923 M. 364.
2. Marriage presents were retained by the accused, when marriage negotiations fell through, on the ground that complainant had wrongly broken the engagement. Held, as there was no dishonest intention, no offence under S. 403 was proved. 1922 C. 57=72 I. C. 348.
3. Intention to restore money negatives dishonesty. 39 P. L. R. 1902 Cr.
4. Although an accused is guilty between the periods of misappropriation and the repayment but Court should be slow when repayment is at once made on demand to assume guilt in accused person 97 I. C. 1041=1927 Sind 28=27 Cr. L. J. 1217.
5. In the absence of an overt act, no dishonest intention can be imputed to accused, simply because, he detained certain documents in his custody. 47 I. C. 667.

15. Jurisdiction.

1. Where the accused receives money in respect of which the offence is committed at one place to be handed over at another, the offence is committed at the former place. 1921 P. 85, 134 I. C. 433.
2. The offence under S. 403 is complete the moment the accused receives or retains money with dishonest motive and the failure to return it to his master at Patna was not an essential ingredient. 21 Cr. L. J. 519, 44 C. 912, 35 A. 29, 34 A. 487.
3. The words 'consequence which has ensued' occurring in S. 179 do not apply to criminal misappropriation. Loss is no ingredient of offence. S. 181 (2) controls S. 179. 1921 P. 85, 44 C. 912, 36 M. 639, 23 Cr. L. J. 743, 1 R. 56. *Cont.* 38 M. 779, 19 A. 111.
4. The offence of 'misappropriation' is complete by the Court within whose jurisdiction 'the property is found' 490=32 B. L. R. 1195=129 I. C. 38 135=6 L. L. J. 471.
5. The accused hired a cycle for six hours at Poona and instead of returning it, took it out to Yeola and deposited it with D for Rs. 6 as security. Held, that Poona Magistrate had jurisdiction. 51 B. 101=1927 B. 38=28 Cr. L. J. 44.
6. When the accused withdrew money from the treasury at S but converted to his own use at M. Held, that offence is committed not at S but at M. 1935 O 4=152 I. C. 463=36 Cr. L. J. 112.
7. If the offence is complete in itself by reason of the act having been done and the consequence is a mere result. S. 179 is inapplicable. 1934 A 499=35 Cr. L. J. 982, 35 A. 29, 1930 A. 449 and 1932 A. 367 Diss. from.
8. If there is uncertainty as to place or time of commission of offence, S. 182 would apply. 1934 A. 499=35 Cr. L. J. 982.

*Criminal Misappropriation—(contd.)***16. Misappropriation and other offences—Distinction.**

In theft the original taking is without honesty and without the consent of the owner, and in criminal breach of trust it is with both. In cheating, the taking is dishonest but with the consent of owner and in criminal misappropriation, it is honest but without the consent of the owner. 106 I. C. 678=1928 N. 113=29 Cr. L. J. 85

17. Miscellaneous.

A entrusted jewels to a broker for sale who sold it to C. C pawned it to B. Held, the broker did not misappropriate the jewels but the money received from C and B was entitled to have the jewel returned under S. 517, Cr. P. C. 12 Cr. L. J. 467.

18. Of deceased's property. S. 404, I. P. C.

1. Property does not refer to immovable property. Accused cannot be convicted of misappropriating a house of deceased person. 23 C. 372, 6 B. H. C. (Cr. C.) 33.
2. Where accused removed some rafters from a house which was in the possession of deceased at the time of her death, he was guilty under S. 404. 1925 A. 673.
3. Offence under S. 404 would be committed even if the accused does not bring the money to his own use. (1869) 11 W. R. 1 Cr.
4. S. 404 is intended to punish servants and strangers who could possibly have no right to or interest in the effects of a dead man and who misappropriated such effects but not to punish near relations who take possession under claim to succeed as heir to the deceased. 1914 M. W. N. 791.
5. All evidence necessary to constitute the offence of criminal misappropriation in respect of a person who is alive will be necessary under S. 404, (1869) 12 W. R. 39 Cr.

19. Procedure.

1. Different articles which were the subject of charge in the two trials were stolen from different persons but received at one time. With respect to some, the accused were acquitted in the first trial. Held, the second trial is barred by S. 403, Cr. P. C. 50 C. 594=1923 C. 557=73 I. C. 931.
2. S. 75, I. P. C. does not apply to a person with previous conviction under Chapter XVII, who is found guilty under S. 403, 36 P. W. R. 1911 Cr.=235 P. L. R. 1911.
3. When monies are dishonestly misappropriated and false account is prepared, the offence of falsification of account becomes part and parcel of offence under S. 403, 6 Bom. L. R. 94. (1904).
4. Sessions Judge can convert the conviction from one under S. 405 to S. 403, I. P. C. 1935 O. 4=151 I. C. 463.

20. Secreting letters.

1. A postal servant secreted two letters with the intention of handing them over to the delivery peon and sharing with him certain money payable upon them. It was an attempt to commit misappropriation and theft. 14 M. 229.
2. Accused retained a letter of another and exhibited it in Court. Held, he was not guilty as it was read and abandoned by addressee. 40 A. 119.

21. Strayed cattle.

1. Accused caught a *barwari* bullock, kept for 20 days and not finding its owner, sold it. Held, not guilty. 1926 A. 251=91 I. C. 37=24 A. L. J. 128.
2. Taking possession of a wandering cow of which no owner could be discovered is no offence under S. 403. Finder is not bound to adopt extraordinary means of discovering the owner, nor he should be out of pocket for discovering him. 67 I. C. 497.
3. Trying to sell a missing bullock, as one's own, without making enquiry as to its real owner, falls under S. 403. 1929 A. 917=119 I. C. 863=30 Cr. L. J. 1133, 235 P. L. R. 1911=35 P. W. R. 1911 Cr.
4. A constable caught a strayed sheep and took it to another Thana, to which he was transferred. Held, it was sufficient evidence of dishonesty and was guilty. 17 A. L. J. 14=49 I. C. 774.
5. Where bullocks follow a cow and disappear, they cannot be subject of theft but of criminal misappropriation. 28 I. C. 332.

Criminal Misappropriation—(concl'd.)

6. When a man is found in possession of a camel about seven months after it strayed away, he ought not to be called to account for it. 41 P. W. R. 1915 Cr.=62 P. L. R. 1916=32 I. C. 660.
7. Accused was found riding a mare which had strayed away. He first stated that he intended to ride home and then to loose her but before the Magistrate stated that he wanted to hand it over to Police. Held, was not guilty. 28 P. L. R. 1906.

22. Treasure Trove.

A person who found money from a piece of land purchased by him and appropriated it to his own use was not guilty under S. 403. (1868) Unrep. Cr. C. 8.

CRIMINAL PROCEDURE CODE, V OF 1898. See Index.**CRIMINAL TRESPASS.** Ss. 441—447, I. P. C.**1. Abetment.** *

1. Where a person inciting others to commit an offence under S. 447 is himself present when the offence is committed, he is guilty under S. 447. 1926 B. 512=97 I. C. 737, =28 Bom. L. R. 1029=27 Cr. L. J. 1153, 1925 P. C. 1.
2. Where a person does not personally set foot on the land of another but gets people to build on it in spite of the protests of that other, the person is guilty under S. 447, since his agents do the acts under his orders. 39 A. 722=42 I. C. 1006=15 A. L. J. 793.

2. Absence of owner at the time of— See.—21.**3. Attempt to commit an offence.**

With intent to commit an offence punishable with imprisonment is not the same thing as an attempt to commit such an offence. A mere intent is not by itself an offence. 47 I. C. 77.

4. Bonafide claim of right.

1. An entry upon the land of another under a *bona fide* claim of right does not constitute Trespass, as the specific intent is absent. 2 A. 101, 81 I. C. 888=1925 N. 36=25 Cr. L. J. 1064.
2. Entering a house under a *bona fide* claim of right is no offence. 47 A. 855=1925 A. 540=26 Cr. L. J. 1273, 1925 P. 167=81 I. C. 823=25 Cr. L. J. 1047.
3. Where a person enters upon the land of another under a *bona fide* claim of right, without intending to intimidate, insult or annoy, he is not guilty, although he has no right to the land. 43 C. 1143=20 C. W. N. 1071, 65 I. C. 432.
4. If a person is dispossessed in execution of a decree, he cannot force open the lock put upon his property by decree holder and enter into possession claiming to be still its owner. 43 I. C. 405, 138 P. L. R. 1904.
5. Accused was the prior lessee of property which was sold to the complainant in execution of decree. The latter took possession and exercised undisturbed right of ownership for two months when he was turned out by the accused. Held, that as the accused surrendered possession peacefully, they were precluded from using force to eject him and were guilty irrespective of their title to property. 1 C. L. J. 104 (106-107), 39 M. 57 (59), 25 Cr. L. J. 919=81 I. C. 535.
6. A person entering upon the property which he claimed to have inherited is not guilty. I. P. R. 1884 Cr.
7. Accused obtained a decree for redemption against the mortgagee in possession and who thereupon dispossessed him without further recourse to law. Held, not guilty. 29 P. R. 1882 Cr.
8. A trespass on the land of the complainant, to forcibly prevent the latter from harvesting the crops sown and cultivated by the accused is not an offence under S. 447. 16 Cr. L. J. 271=28 I. C. 159.
9. A person who forcibly ejects a tenant holding over is guilty, although lease permits such re-entry after termination. 38 I. C. 962.
10. Where right of entry exists, entry without complainant's permission or consent is no offence. 1923 R. 157=75 I. C. 353.

Criminal Trespass—(contd.)

11. An owner is not entitled to re-enter on the land without the tenancy being determined. Re-entry amounts to trespass. 1923 R. 245=81 I. C. 187, 41 M. 156, 40 A. 221, 26 A. 194. *Cont.* 1924 Oudh 342=25 Cr. L. J. 313=76 I. C. 1033. See 1925 I. 23=81 I. C. 239.
 12. Where a person, who has an ostensible title, sells land to another and that man goes and ploughs it, it is a *bona fide* claim of civil right and ploughing the field is not an offence under S. 447. 1926 M. 349=91 I. C. 392=27 Cr. L. J. 88.
 13. To enter upon a vacant site with the consent of one who asserts his title thereto, as against a rival claimant, and to put up water Pandal do not amount to criminal trespass, though the land may not be in the possession of the person permitting but of the complainant. 1924 M. 862=83 I. C. 1003=26 Cr. L. J. 219.
 14. Where coins were unearthed from field and taken possession of by persons without the consent of the landlord, whose manager exacted by force coins from the house search and took the accused from whom the coins were recovered to the Police. Held, the manager acted in the *bona fide* claim of right. 1924 P. 655.
 15. Where the accused wishes to obstruct the person who has the title, not by legitimate means but by going upon the land and obstructing his tenants in cultivation of the field, he is guilty and his claim cannot be said to be *bona fide* one. 1928 Bom. 221=112 I. C. 97=30 Bom. L. R. 631.
 16. A person claiming to be heir of deceased cannot take property by force from a person in actual possession of it. 11 P. L. R. 1910=41 P. W. R. 1910 Cr.
 17. Mere assertion by a person of his right to be in possession is no defence. 45 I. C. 677.
 18. Where there is dispute about a wall and there is false attempt to bolster up title, the entry and demolition of wall amounts to criminal trespass. 1935 Sind 263=1935 Cr. C. 1122, 1925 A. 540 Foll.=47 A. 855.
 19. When a person claiming title to a property, whether his title is good or bad enters without legal justification, he is guilty. 11 L. 238=1930 L. 666=31 Cr. L. J. 878.
- 5. Burden of proof.**
- Where a stranger is found lurking in the house of another at night, the inference of guilty intentions can be drawn. If he pleads that his intention was neither to commit an offence nor to intimidate or annoy, the *onus* is on him to prove that particular intent. 40 A. 221.
- 6. By co-sharer.** See—9.
- 7. By decree-holder or bailiff.**
1. A decree-holder trying to get possession of the land of the judgment-debtor by arbitrary means instead of resorting to the Civil Court commits criminal trespass. 1928 N. 79=105 I. C. 664=28 Cr. L. J. 952
 2. If a decree-holder, under colour of enforcing his decree invades the privacy of the judgment-debtor's household, he is guilty under S. 447. 4 L. L. J. 532.
 5. Accused obtained a decree for redemption against the mortgagee in possession and who dispossessed him without further recourse to Law. Held, he was not guilty. 29 P. R. 1882 Cr.
 4. If a bailiff breaks the doors of a third person in order to execute a decree against a judgment-debtor, he is trespasser, if it turns out that the person or goods of the debtor are not in the house. 7 Bom. H. C. R. 83.
 5. A decree-holder with bailiff, finding the house of judgment-debtor shut, entered the compound of the complainant notwithstanding his protest, in order to reach the judgment-debtor's house to execute the warrant. Held, they were guilty of criminal trespass. 26 B. 558.
 6. Delivery of possession to decree-holder for few minutes is sufficient possession. It is not lost by trespasser's sowing and complainant's hesitating to prevent a fray. 1931 N. 36=34 Cr. L. J. 145.
- 8. By heir.**
1. A person entering upon property which he claims to have inherited is not guilty. 1 P. R. 1884 Cr.

Criminal Trespass—(contd.)

2. A person claiming to be an heir, cannot take property by force from a person in actual possession of it. 11 P. L. R. 1910.

9. By joint owner.

1. A joint owner entering on the land intending or knowing that he is to commit an act wrongful to his fellow owners is guilty of trespass. 33 A 773, 8 A. L. J. 927.
2. A prosecution against co-owners will not lie unless there has been an ouster from possession or some distinction or waste of the common property. 3 M. 178.
3. A co-sharer building upon common wasteland against the will of the other co-sharers, whose consent has been previously asked and refused, is not guilty of criminal trespass. 39 A. 474.
4. A joint owner of property is entitled to have joint possession restored to him in a Civil Court but he is not justified in taking the law in his own hands to recover possession. If he does so he is liable for criminal trespass. 10 Bom. L. R. 285, 1927 Sind 92=98 I. C. 467=27 Cr. L. J. 1347.
5. One member of a joint family commits no trespass by entering a house which forms part of the joint property unless it is ordinarily occupied by another member of the family. (1871) 15 W. R. 6 Cr., 1933 Sind 396=147 I. C. 66.
6. The entry of a stranger into a family dwelling house with the permission of one of the members is not criminal trespass. 6 Beng. L. R. App. 80.

10. By judgment-debtor

1. If a person is dispossessed in execution of a decree, he cannot force open the lock put by decree-holder and re-enter into possession claiming to be still its owner. 43 I. C. 405, 138 P. L. 1904.
2. If the actual possession of the land is given to real owner under O. 21 R. 35 C. P. C., the person dispossessed becomes trespasser and cannot remove the crop though grown by him. 1936 C. 124=37 Cr. L. J. 495.
3. In order to effect delivery of possession of an inhabited house, it is necessary to eject the former occupier. Where possession had not *actually* been delivered to the purchaser an entry by the judgment-debtor does not constitute an act of criminal trespass. Mere formal possession by beat of drum is insufficient. 1935 P. 355=155 I. C. 908=36 Cr. L. J. 860.

11. By Landlord.

1. The owner is not entitled to re-enter without the tenancy being determined and if he does so, he commits criminal trespass. 1923 R. 245=81 I. C. 187.
2. A person who forcibly ejects a tenant holding over is guilty although lease permits such re-entry after termination. 38 I. C. 962, 18 Cr. L. J. 402.
3. Where an owner enters in his own land permissively used or occupied by but not in the possession of another, is not guilty. (1882) 1 Weir 521.
4. Where the Zamindar under the pretext that one of his tenants left the village and abandoned his holding, took possession of the land he was not guilty under S. 447. 26 A. 194, 27 A. 298.
5. If a landlord goes upon the land, obstructs tenants in the cultivation of the land, he is guilty under S. 447. 1928 B. 221=29 Cr. L. J. 977=112 I. C. 97.
6. Complainant in possession of land claimed occupancy rights. 'Landlords entered upon the land to compel him to give up possession. Held, they were guilty of trespass. 1934 P. 158=13 P. 268=151 I. C. 844, 26 B. 558, 7 Cr. L. J. 312, 43 C. 1143, 15 Cr. L. J. 725, 41 M. 156, 1925 P. 17, 1925 P. 167, 47 A. 855, 50 A. 637, 110 I. C. 98, 1929 P. 111, 1930 L. 666 Ref.
7. Accused interfered with the cultivation of land over which they had grazing rights. Held, they were not guilty. 43 C. 1143.
8. A zamindar obtained formal possession of land from the Revenue Court. Tenants entered on the land, they were convicted. They were entitled to acquittal. 46 I. C.

Criminal Trespass—(contd.)

9. From the moment the title of tenant expires, the landlord is in possession in the eye of law, provided he does not use undue force. 81 I. C. 535=25 Cr. L. J. 919.
10. A raiyat surrendered his holding to his landlord, who settled on the land with two others. The new tenants and landlord ploughed the land. They were not guilty. 110 I. C. 98.
11. Tenant left the house as it fell down. Entry by landlord is not culpable. 1933 L. 734.
12. **By master or owner.**
 1. Merely sending a servant to plough up land is not an entry by the master. 3 L. B. R. 278, 1 B. L. J. 276.
 2. A lawful owner who merely goes near the land cannot be said to have re-entered on the land. 1932 N. 112=139 I. C. 609=33 Cr. L. J. 861.
13. **By Mortgagor.**
If the property was in possession of mortgagee, entry by mortgagor without a suit for avoidance of mortgage is criminal trespass. 1934 A. 1025 (1027).
14. **By servant or labourer.**
 1. Where a person trespassing upon the property of another is a servant and acts under the orders of his master for the purpose of his employment, S. 447 does not apply to him. 1923 R. 135=25 Cr. L. J. 684=81 I. C. 172.
 2. Where a servant of a proprietor, who had surrendered his estate to the Court of Wards, cut or removed bamboos growing thereon for the benefit of the master, it was held that no offence was committed. 38 C. 180.
 3. Where coins were unearthed without landlord's consent, and the manager forcibly exacted them by house search and took the person who unearthed them to the Police, is guilty of house trespass and not of theft. 1924 P. 655.
 4. Servants are not liable unless they acted *intra vires* and independently of instructions. 1936 R. 116, 1934 A. 1025.
15. **By tenant.**
 1. Where the accused was a tenant-at-will who had come upon the property by right but had continued to remain by wrong, he was not guilty under S. 447. Mere knowledge on his part that he was likely to cause annoyance would not be sufficient. 1927 Sind 159=100 I. C. 829=28 Cr. L. J. 349.
 2. Where the decree for ejectment of tenant was executed before the time fixed for S. 94 of the Agra Tenancy Act, but the tenant subsequently re-entered upon the land. Held, that he was not guilty under S. 447 as he was illegally ejected. 29 Cr. L. J. 1096=112 I. C. 680.
 3. Where a tenant cultivated land for a number of years under a lease from the Forest Department and built a dwelling house and made other improvements, refused to relinquish the land after notice of ejectment was served upon him until he was paid compensation. Held, he was not guilty. 28 P. R. 1878 Cr.
 4. The bare defence "I have not given up and I will not give up actual possession though I have been legally ejected" is tantamount to a plea of guilty, when the complaint is one for trespass. 1924 A. 762=83 I. C. 719=26 Cr. L. J. 159.
16. **Civil Trespass. Sec—21.**
 1. If a landlord after the expiration of the lease exercises his right of re-entry, such an entry is unlawful if though peaceful. It is a trespass and not criminally punishable, as criminal intention which is the gist of the offence is not present. 2 A. 101, 9 A. 58.
 2. If there is no intent specified in the section, it is not criminal trespass but a civil trespass. 75 I. C. 292=1924 O. 207.
 3. Civil trespass is a mere encroachment or an unauthorized entry without criminal intent specified in S. 441. 1 A. 395, 40 C. 342, 23 P. R. 1915 Cr. 1 R. 100=1924 R. 106.
 4. Trespassing on the field of complainant with the intention of taking possession of the

Criminal Trespass—(contd.)

field in dispute is a civil trespass. 1933 O. 179=145 I. C. 625, 1930 L. 666, 41 M. 156.

5. Trespasses arising out of possession of agricultural land amount to civil trespass. 1936 R. 116=161 I. C. 993, 3 L. B. R. 278 Rel. on.
6. If the land is in possession of sub-tenants, mortgagee entitled to possession can file complaint. 1934 A. 1025.
7. Any body can make complaint, but it must be proved that the object of accused was to insult or annoy the person in possession, 1934 A. 1025.
8. A complaint need not necessarily be made by the person injured, but may be made by the person aware of the offence. 1935 A. 938, 18 A. 465 Foll.
9. A peon of the Court of Wards can file complaint under Ss. 447—752. 1935 A. 938, 18 A. 465 Foll.

17. Charge.

1. A person cannot be convicted under S. 447 on a charge under S. 147, where the common object is not specified to be criminal trespass. 18 C. W. N. 992=22 I. C. 764, 23 W. R. 59.
2. For a conviction under S. 447, it is necessary to specify the ulterior offence, the accused intended to commit. 19 M. 240 *Cont.* 11 I. C. 797, 1 Weir 533, 2 P. R. 1887, 24 P. R. 1881, 41 P. R. 1881, 13 and 28 P. R. 1905, 12 P. R. 1906 Cr.

18. Complaint.

1. Where accused has entered upon property in the possession of a tenant with the criminal intent, a complaint by landlord is sufficient to set the criminal law in motion just as much as a complaint by tenant. 1924 L. 286=69 I. C. 379.
2. One B. trespassed in the fields of the accused, who pursued him in the field of S. and gave him beating. Held, no case under S. 447 was made out. 1924 L. 252=74 I. C. 534=24 Cr. L. J. 790.
3. For a trespass on land in the possession of tenant, the person aggrieved is one in actual possession and not the landlord and it follows that the tenant alone can complain. 12 A. L. J. 151.
4. Complaint of husband is not necessary for proceedings for house trespass to commit adultery. 47 I. C. 77.
5. Person not in possession can make a complaint, although the offence is committed against a third person. 49 I. C. 99=20 Cr. L. J. 115.

19. Continuing.

No fresh offence is committed by mere continuing trespass. 1932 N. 112=28 N. L. R. 57=139 I. C. 609=33 Cr. L. J. 861. See 1928 P. 124.

20. Distinction from Trespass on burial places, etc. S. 297, I. P. C.

1. S. 441 cannot be read into S. 297 with any intelligible result. The term trespass in S. 297 appears to mean any violent or injurious act committed in such place and with such knowledge or intention as is defined in that section. 81 I. C. 41=1 R. 690=1924 R. 105, 40 C. 548 23 P. R. 1915 Cr.
2. When accused enters into a Hindu Temple and damages its property, he may be convicted under S. 447 or S. 295. 82 I. C. 37=1925 O. 50.

21. Encroachment or entry upon unoccupied land. See 35-36.

1. Accused included in his own land, a portion of public foot path. Held, he was not guilty under S. 447, though he might be convicted under S. 283, I. P. C. 6 M. II. C. R. App. 26
2. The intention to "make the complainant's property one's own" or intention to squat *viz.*, settling on unoccupied land is not covered by S. 441, I. P. C. 1935 Sind 20=154 I. C. 552=36 Cr. L. J. 577.
3. Mere building on the land of another (e.g., Railway) is not an offence unless the intention specified in S. 441 is proved. 1933 A. 816=147 I. C. 119.
4. But if accused is warned that he is building on the land of another, he is guilty.

Criminal Trespass—(contd.)

1933 A. 816 (818)=147 I. C. 119.

22. Enforcement of Right. S. 141 (4), I. P. C.

1. The fact that a person had a title to a plot, did not give him the right to eject a trespasser in peaceful possession. His remedy was to eject him by civil process. 1924 P. 143=24 Cr. L. J. 745=74 I. C. 73.
2. Merely acting in maintenance of existing peaceful possession is not covered by S. 141 (4). 15 Cr. L. J. 232=23 I. C. 184.
3. If the true owner acquiesced or acted otherwise so that legal possession vested in the trespasser, the true owner can have his remedy through Court only. 1928 P. 124=29 Cr. L. J. 99=6 P. 794.

23. Entry in the absence of owner—

1. A person entering upon the property in the possession of another, when the latter is absent, is not guilty, when he does not enter with intent to commit offence. 17 A. L. J. 334, 26 Bom. L. R. 978=1924 B. 486, 47 A. 855 Cont. 1931 M. 231=54 M. 515.
2. Accused broke open into a house in the absence of the owner, assaulted the servants and took possession of the house. Held, that though there was no intention to annoy the complainant, the accused was guilty as there was intention to commit offence by assaulting servants. 35 M. 186.
3. During the absence of the complainant the accused took possession of the house and established there a boy alleged to be the adopted son of the complainant's father, the accused was not guilty under S. 448. 12 C. W. N. 269.
4. Accused entered the house in the complainant's absence to have sexual intercourse with his widowed mother. Held, he was not guilty. (1896) 1 Weir 537, 4 C. L. J. 169.
5. A girl disappeared shortly before her marriage and was found after some time in the complainant's house. The accused in his absence went to his house and removed the girl. Held, they were not guilty. 5 L. 20=1924 L. 449.
6. Accused gave a notice to the complainant who was his neighbour prohibiting him from raising wall. The next day he raised the height. In his absence accused went into his house and demolished the wall. Held, he was not guilty. 26 Bom. L. R. 978=1924 B. 486=84 I. C. 254.
7. A house was occupied by the owner and his concubine. The accused entered the house at her invitation in the absence of the owner. Held, he was not guilty. 22 O. C. 121.
8. Accused entered a house to carry on intrigue with a girl, on receiving information that her father was absent, but was caught by her uncle, he was not guilty, as he never intended or expected that his conduct would cause annoyance. 27 P. L. R. 385=96 I. C. 871=1926 L. 600=27 Cr. L. J. 1015.
9. Accused cannot be made to say that he could not have caused annoyance merely because the party in possession of the trespassed premises was absent at the time of trespass. 1931 M. 231=54 M. 515=131 I. C. 455=32 Cr. L. J. 749, 1931 M. 560, 41 M. 156 Dist. 2 A. 465 Diss. from.
10. Temporary absence from house does not deprive owner of house from its possession. Accused entering in the absence of owner is guilty. 1934 O. 231=35 Cr. L. J. 964.

24. Essentials and Evidence.

1. Entering a cattle pound with intent to commit an offence under S. 24, Cattle Trespass Act or to intimidate the person, in charge of the pound, is guilty under S. 447. 8 L. 331=1927 L. 495=28 P. L. R. 519=103 I. C. 201=9 L. L. J. 354.
2. The continuance in possession of a trespasser is a recurring wrong and constitutes a new entry every time that the true owner goes upon the land or near it to assert his claim. 6 P. 794=1928 P. 124=29 Cr. L. J. 99.
3. Where there was no pre-arrangement between the accused and any lady in the house and all the ladies in the house were startled at the bold attempt on the part of the accused to force himself into the house. Held, guilty. 4 P. 459=1925 P. 713=87

Criminal Trespass—(contd.)

I. C. 106=26 Cr. L. J. 951=6 P. L. T. 588.

4. An intent to commit an offence or to intimidate, insult or annoy any person in possession of the property is an essential ingredient of the offence of criminal trespass. 1925 P. 167=81 I. C. 823=25 Cr. L. J. 1047.
5. A person entering subsequently with the permission of a trespasser and resisting the entry of the owner is equally guilty. 6 P. 794=1923 P. 124=106 I. C. 691=29 Cr. L. J. 99.
6. A decree holder under colour of enforcing his decree invades the privacy of judgment-debtor's household, he is guilty under S. 447, I. P. C. 73 I. C. 527=4 L. L. J. 532=24 Cr. L. J. 639.
7. In case of criminal trespass the right of private defence continues, so long as the trespass continues. 60 I. C. 33.
8. Intention cannot be inferred from actual or probable results. It is necessary to show the actual intention to insult or annoy before the acts were complete. 1929 P. 111=30 Cr. L. J. 684, 1925 A. 540, 41 M. 156, 19 M. 210, 27 A. 298.
9. Mere knowledge on the part of the accused that he was likely to cause annoyance would not by itself be sufficient. 1927 Sind 159=23 Cr. L. J. 349.
10. A co-sharer building upon common waste land despite the refusal of the consent by others is not guilty under S. 447. The asking of permission would not operate as an admission of the ownership of the person whose consent was asked for. 36 A. 474.
11. Exposure of goods on a public road belonging to District Board, the collection of tolls leviable on which, is leased to another, is not an offence under S. 447. 55 I. C. 721=21 Cr. L. J. 353.
12. A joint owner entering on the land intending or knowing that he is to commit an act wrongful to his fellow-owner is guilty of trespass. 33 A. 773.
13. Use of criminal force is not an essential ingredient of the offence of criminal trespass. 11 Cr. L. J. 594=8 I. C. 219, 28 I. C. 159=16 Cr. L. J. 271.
14. Driving cart on Government waste land in defiance of notice put up by municipality prohibiting cart traffic, is not an offence under S. 447, as the land does not vest in the municipality under S. 78, Burma Municipality Act. 4 I. C. 826
15. A person claiming to be an heir of deceased, cannot forcibly take property in the actual possession of the complainant. 11 P. L. R. 1910=41 P. W. R. 1910 Cr.
16. Trespass includes the mischief which the trespasser commits after entering on the land. 17 I. C. 605.
17. If the inevitable consequence of the act of the accused in breaking open a house be serious mental annoyance to the complainant, then the intention to cause such annoyance follows the knowledge of the accused. 35 M. 186, 9 Cr. L. R. 196.
18. Trespass on the roof is not a house trespass but a criminal trespass. 52 I. C. 59.
19. When a person trespassing upon the property of another is a servant and acts under the order of his master for the purpose of his employment, S. 447 does not apply. 81 I. C. 172=1923 R. 135.
20. An Income Tax Officer has no authority under the Act to enter a firm's premises to inspect account books against the will of proprietors and if he does so he is guilty under S. 447 and they can forcibly turn him out. 7 L. 104=1926 Lah. 326=95 I. C. 308=27 P. L. R. 298=27 Cr. L. J. 772.
21. A man may be guilty of criminal trespass on the land of another without ever personally setting foot on it, if for example, he causes others to build on it against the wishes and protest of the owner. 39 A. 722
22. Use of criminal force is not necessary. 12 M. L. J. 447.
23. Entering upon property in the absence of the owner is not criminal trespass. 47 A. 855, 17 A. L. J. 334, 26 Bom. L. R. 978. See 35 M. 186.

Criminal Trespass—(contd.)

24. A person entering land to cut down trees is guilty. (1864) 1 W. R. 46 Cr.
 25. A having shot a deer near B's land, followed it into D's land, for the purpose of killing it, although he was warned off beforehand, he is not guilty. 4 C. 837.
 26. A person fishing in a tank, to which public has free access is not guilty. 4 C. W. N. 47.
 27. An owner may re-enter the land and eject a trespasser by a reasonable force. 6 P. 704=1924 P. 124=106 I. C. 691=29 Cr. L. J. 99.
 28. A person may have good title to the house. He commits offence if he takes forcible possession. 1934 Oudh 251.
 29. Accused, a claimant to possession of shop, locked it up when he found it empty. He was held not guilty. 47 A. 555=1925 A. 510=25 Cr. L. J. 1273.
 30. Ferry boat is property within the meaning of S. 441. 1934 C. 480.
 31. Entry into an exhibition building without the intent in S. 441 and without ticket is no offence. 6 Bom. H. C. R. 6.
 32. The son of accused stole some jewels and said that he had given them to the Head Master. Accused went and searched his house. Held, he was guilty. 41 M. 156.
25. For committing adultery. See House Trespass.
26. Intention for—
1. In order to constitute criminal trespass, the entry must be with intent to commit an offence or to intimidate, insult or annoy. 4 P. 459=1925 P. 713=87 I. C. 106, 1925 P. 167=81 I. C. 823, 1924 M. 816=82 I. C. 149=25 Cr. L. J. 1221, 26 A. 194, 39 A. 722, 50 A. 687=1928 A. 671, 54 I. C. 620.
 2. Where the servant of a landlord illegally takes possession of tenant's land with the main object of illegally ejecting him, an intention to annoy cannot be presumed. 76 I. C. 1033=25 Cr. L. J. 313=1924 Oudh 342.
 3. Mere knowledge on the part of accused that he was likely to cause annoyance, does not amount to an intent to insult or annoy. 100 I. C. 829=1927 Sind 159=28 Cr. L. J. 349=21 S. L. R. 263, 41 M. 156.
 4. There may be an intent to annoy without any primary desire to annoy. 75 I. C. 292=1924 Oudh 297.
 5. An intent to annoy is essential for S. 441 but it is not negated by the existence of some other intention also. A person breaking open a house delivered through Court to the complainant is guilty of criminal trespass. 43 I. C. 405=19 Cr. L. J. 117.
 6. Accused broke open into a house during owner's absence, assaulted servants and took possession. Held, though there was no intention to annoy the complainant, the accused was guilty as there was intention to commit offence by using criminal force to the servants. 35 M. 186.
 7. Alienor trying to take possession by force without legal justification is guilty as the presence of criminal intention can be rightly inferred. 11 L. 238=1930 L. 666, 12 P. R. 1906 Foll. 1926 L. 600, 41 M. 156 and 17 I. C. 415 Dist.
 8. A person who enters upon property in the possession of another may produce feelings of annoyance but if he did not do with that intention, the result produced is immaterial in determining his liability. 19 M. 240.
 9. A school was built on public subscription and put in charge of a teacher. In his absence Managers of the school took possession of the building and started certain classes. Held, not guilty under S. 447. 17 A. L. J. 334.
 10. It must be proved that criminal intent was present in the mind of the accused. Because an act is unlawful and is one that the civil law will restrain or for which it will compensate the injured party with damages is not sufficient. 29 P. R. 1882 Cr., 5 L. 20=1924 L. 449.

Criminal Trespass—(contd.)

11. A person entering the premises of another with intent to commit adultery with his wife is guilty. 19 Cr. L. J. 887.
12. A conviction could not follow merely because one could pronounce with certainty that accused must have known that his act would cause annoyance. 47 A. 855.
13. Although a trespasser knows that his act if discovered, will be likely to cause annoyance, it does not follow that he does the act with that intent. 19 M. 240.
14. Criminal trespass depends on the intention of the offender and not upon the nature of the act. If a person to save his family from imminent destruction cuts an embankment belonging to his neighbour by entering on his land, he is not guilty of any offence. 41 C. 662.
15. If the entry is to commit an offence, the accused is guilty. (1864) 1 W. R. 46 Cr.
16. Accused opened the lock of the cattle pound and drove off his cow. Held, he was guilty, as he entered to commit an act, which was made an offence by the Cattle Trespass Act. 1927 L. 495=28 Cr. L. J. 665=103 I. C. 201.
17. Accused's son having stolen jewels, told his father that he gave it to school master, who kept it in a box in his house. Accused with others went to his house and searched the complainant's house in spite of his protest and nothing was found. Held, they were not guilty of criminal trespass. 41 M. 156 overruling 35 M. 186, 19 M. 240 Diss. from.
18. When a person claiming title to property, whether his title be good or bad, enters without any legal justification, he must be inferred to have had an intent to annoy the person in possession. 12 P. R. 1906 Cr.
19. The doctrine of presuming intention from knowledge cannot be safely applied to the Indian Penal Code. 40 A. 221.
20. Entering with the intent to have illicit intercourse with a widow is no offence. 38 A. 517.
21. A Headman was holding a trial and the accused came on behalf of his nephew. He was ordered by Headman to withdraw but he refused and was therefore pushed out. Held, he was not guilty under S. 447. 2 B. L. J. 17.
22. Collection of *lathis* and brickbats by trespassers on the property indicates an intention to annoy or insult. 1928 P. 124=6 P. 794=29 Cr. L. J. 99.
- 27. Knowledge that it is likely to annoy or insult.**
 1. Mere knowledge that his act is likely to insult or annoy, etc., is not sufficient. 1927 Sind 159=100 I. C. 829=28 Cr. L. J. 349, 1935 Sind 20=154 I. C. 552=36 Cr. L. J. 577, 1933 A. 816, 47 A. 855=1925 A. 540, 41 M. 156, 19 M. 240.
 2. Such knowledge coupled with other circumstances may give rise to an inference that the accused had the requisite intention. 5 S. L. R. 29=9 I. C. 895=12 Cr. L. J. 148.
 3. If the trespass is committed with the knowledge that annoyance will certainly be caused, it is an offence. 1933 O. 469, 1933 O. 436=34 Cr. L. J. 1055, 12 P. R. 1906 and 1924 O. 297 Rel. on, 41 M. 156 Dist.
- 28. Land disputes.** See—16 Civil Trespass.
- 29. On roof.**

Entry upon roof is a criminal trespass and not house trespass. 9 P. R. 1887 Cr., 15 P. R. 1907 Cr., 9 P. R. 1890 Cr., 1933 L. 433 (1).
- 30. Possession.**
 1. The offence of criminal trespass can only be committed against a person who is in actual physical possession of the land in question. 110 I. C. 681=29 Cr. L. J. 745=1929 O. 369, 33 A. 773, 43 I. C. 405.
 2. The bare defence "I have not given up and I will not give up actual possession though I have been legally ejected" is tantamount to plea of guilty when complaint is one of trespass. 26 Cr. L. J. 159=83 I. C. 719=1924 All. 762.
 3. S. 441 does not require the land to be in the actual possession of the complainant. 1923 Bom. 221=112 I. C. 97=30 Bom. L. R. 631, 21 Bom. 536 Cont., 21 I. C. 691

Criminal Trespass—(contd.)

= 14 Cr. L. J. 633, 1925 A. 540.

4. Physical and not judicial or constructive possession of the complainant is necessary for criminal trespass and any disobedience to notice of ejectment is not a criminal trespass. 35 I. C. 810.
5. In prosecution for criminal trespass, it is necessary to determine in whose possession the property was at the date of the alleged trespass. 19 Cr. L. J. 761.
6. The accused were tried for cutting and removing bamboos from a bamboo clump belonging to the complainant and acquitted. The order of the Magistrate that complainant should retain possession of the bamboo clump until ousted by Civil Court is illegal. 20 C. W. N. 1302=38 I. C. 1002=18 Cr. L. J. 442.
7. The possession must not be that of a trespasser but some one else. 28 P. R. 1875 Cr., 23 Cr. L. J. 440, 12 A. L. J. 151, 7 P. L. T. 347.
8. A trespass on the property in the possession of complainant cannot be sustained in the face of an order prohibiting him from taking possession. 11 Cr. L. J. 644.
9. The actual possession may not have originated in a right. (1869) 11 W. R. 11 Cr.
10. To sustain a charge of criminal trespass against the judgment-debtor, the possession of the auction purchaser must be actual and not formal, *e.g.*, by beat of drum. 1935 P. 355=155 I. C. 908=36 Cr. L. J. 860.

31. Procedure.

1. High Court has no jurisdiction to permit on revision the compromise of an accused convicted under S. 447. 43 C. 1143.
2. A person convicted of criminal trespass cannot be bound over under S. 106, Cr. P. C. 29 M. 190, See 7 C. W. N. 25.
3. Accused forcibly taking possession of ferry boat and plying it is triable at the place where boat was taken. 1934 C. 480.

32. Right of Private Defence. See Right of Private Defence.

1. If an Income-tax Officer enters the firm's premises against the will of the proprietors to inspect account books, he is guilty of trespass and can be forcibly turned out, S. 99, I. P. C., would not deprive them of the right of private defence. 7 L. 104=1425 L. 326=95 I. C. 308=27 Cr. L. J. 772=27 P. L. R. 298.
2. The right of private defence, in criminal trespass continues, as long as the trespass continues and is controlled by S. 99. 60 I. C. 33=20 Cr. L. J. 177.
3. A person who, under a mistake of fact kills a person while that person is attempting to enter the accused's house thinking him to be a burglar, while he is not, does not exceed his right of private defence of property. 1926 C. 1012=98 I. C. 183=27 Cr. L. J. 128, 1926 L. 28=6 L. 463=91 I. C. 70=26 P. L. R. 719=27 Cr. L. J. 38.
4. When a person in possession of property runs away from his field when attacked and is pursued by trespassers to another field and beaten there the right of private defence of property came to an end when he left his field. 1924 P. 275=74 I. C. 717=24 Cr. L. J. 813.
5. Where a party tried to get possession by force and gave a lathi blow to a member of the party, in the head and the latter killed one of the aggressive party. Held, that the right of private defence was not exceeded. 1924 C. 449=51 C. 271.

33. Sentence.

1. When the accused enters a Hindu temple and damages its property, the offence under S. 447 is inseparable from that under S. 295, and it is improper to pass consecutive sentences for each of the offences under the sections, for both really are one and the same offence. 82 I. C. 37=25 Cr. L. J. 1173=1925 O. 50.
2. A trespasser committing an offence is liable to the cumulative punishment both for trespass as well as the offence committed, if the trespass is not a part of the offence committed. 75 I. C. 77, 95 I. C. 528=5 P. 464=1925 P. 372.

34. Unlawful remaining on the property.

1. If the entry has been lawfully obtained, there must be unlawful remaining rather

Criminal Trespass—(concl'd.)

directly or constructively against the will of the person, in possession, to constitute this offence, 2 A. 465.

2. A person who unlawfully continues in possession after he has been convicted for original trespass is guilty, as each time the true owner goes upon the property to make a claim and is opposed by trespasser, a new offence is committed. 6 P. 794 = 1928 P. 124 = 106 I. C. 691 = 29 Cr. L. J. 99.
3. The accused placed bricks on complainant's land with his permission and subsequently refused to remove them. Held, he was not guilty. 26 P. L. R. 247.
4. Under S. 145, Cr. P. C., Magistrate cannot dispossess a party by appointing a receiver. Persons who continue to remain on the property after the appointment of receiver is not guilty under S. 448. 3 P. L. J. 147 = 19 Cr. L. J. 249.
5. Accused entered a house, remained there and committed an assault. Held, that although the original entry might not have been unlawful, the remaining in the house and committing assault is unlawful and therefore he was guilty. (1883) 1 Weir 528.
6. If a person enters a house at the invitation of another and a quarrel breaks out between them in the house, he is not guilty under S. 447 though he may be under S. 504. 1936 N. 176.
7. An unlawful entry followed by unlawful continuance is offence under S. 441. 1933 A. 816, 1928 P. 124 Rel on.
8. Lawful entry into one part of Railway does not make entry into every part lawful. 1935 M. 3(1) = 152 I. C. 615 = 36 Cr. L. J. 128.

35. Vacant House or Place.

1. If the house was absolutely vacant there is no intention to annoy or insult. 47 A. 855 = 1925 A. 540.
2. Tenant left the house when it fell down. Owner's entry does not fall under S. 447 1933 L. 734.

36. Waste land.

The accused had been ordered by the Collector not to cultivate the village waste land. Held, that their cultivating it amounted to trespass, as there is intent to commit an offence under S. 188, I. P. C. 5 M. H. C. R. App. 17.

CRIMINAL TRIAL. See Trial, etc.

The object of criminal court is to punish crime and not primarily to do justice between the parties. 1935 A. 883 = 36 Cr. L. J. 1035.

CRIMINAL TRIBES ACT (III OF 1911).**Ss. 3, 23.**

Member of a tribe notified under S. 3, is liable to enhanced punishment after the notification, provided he has had previous conviction. 36 I. C. 143, 45 B. 1082

S. 5.

The order of the Magistrate refusing to remove the name from the Register is in administrative capacity and the High Court therefore cannot interfere. 57 I. C. 101.

Ss. 18, 19.

Second conviction means conviction subsequent in point of time. 21 P. R. 1879 Cr.

S. 19.

Absence without leave is punishable with imprisonment and whipping. 166 P. L. R. 1905.

S. 22.

- (1) If a member of a criminal tribe fails to report himself or his change of residence, he is liable under S. 22 (2) of the Act. 56 I. C. 226 = 21 Cr. L. J. 434.
- (2) A registered member reported his departure to the Chawkidar of the village but did

Criminal Tribes Act (III of 1911)—(concl'd.)

not report his arrival to the Chaskidar of village. Held, he is guilty under S. 22 and can be tried summarily. 50 A. 718=1924 A. 719.

(3) Absence from house for a night is offence. 1934 A. 767.

S. 23.

It is enough for the purposes of S. 23, if the accused has been previously convicted, whether before or after his registration as criminal. 53 I. C. 612, 35 I. C. 824, 40 M. 923, 45 B. 1082, 1923 A. 551=116 I. C. 750=25 A. L. J. 727.

Second or third conviction must be after the tribe is declared to be criminal or after registration. 50 M. 474=1926 M. 1165=98 I. C. 477, 40 M. 923.

The proviso to S. 23 indicate that all convictions before the Act, shall count as one. A second conviction can only be after registration of accused or his tribe. 1925 M. 466=86 I. C. 715=26 Cr. L. J. 859=21 M. L. W. 37.

Where accused's previous conviction was under S. 457, 380 or 441, I. P. C. Held, the previous convictions must be assumed to be under S. 411 and S. 23 (1) (b) did not apply. 1927 M. 973=105 I. C. 464=23 Cr. L. J. 944.

That the offence is not of a serious nature is no ground for reducing the sentence, but youth, age, illness, sex or interval between the commission of offence and coming out of jail are good grounds for reducing the sentence. 53 M. 80=50 M. 474.

If the offences are not specified in Schedule I, accused cannot be sentenced to transportation for life. 1933 A. 115.

S. 24.

Accused was found near a pond with scissors and a match box, conviction under S. 24 (b) is not tenable. 1928 M. 479=108 I. C. 901=54 M. L. J. 444.

S. 25.

A registered member was discharged on probation, and his probation was cancelled for misconduct and was recalled for settlement. His refusal to go can be dealt with under S. 25, and the special order of the Local Government is not necessary. 51 B. 409=1927 B. 159=100 I. C. 1050.

S. 26.

Reasonable time should be given to the occupier of land to communicate the arrival on his land of any member of a criminal tribe to the nearest Police Station. 39 I. C. 984=18 Cr. L. J. 616.

CROPS. See S. 424, I. P. C.

Right to growing crops goes with the land in the absence of express provision to the contrary, and in the case of court sale the right to possession of the crops accrues from the date of delivery of possession of land. 1934 C. 610=151 I. C. 662, 13 M. 15, 48 I. C. 678=20 Cr. L. J. 38 Rel. on.

CROSS-COMPLAINT. See Counter case.**CROSS-EXAMINATION.****1. Absence of.—**

Oral evidence is of little value without cross-examination. 5 P. R. 1903 Cr., 1925 O. 726=26 Cr. L. J. 1236=88 I. C. 852, 17 C. W. N. 230.

2. Adjournment for.—

1. When a Magistrate has refused an adjournment for cross-examination of prosecution witnesses when the defence counsel is absent, although he has prayed for it, having been engaged in a Session trial. Held, that the Magistrate acted hastily and unreasonably in refusing adjournment. 1932 N. 71=138 I. C. 700=33 Cr. L. J. 731, 41 C. 299, 53 B. 578=1929 B. 309=31 B. L. R. 593=1929 Cr. C. 130.

2. Adjournment for considering whether witness should be cross-examined after charge can be claimed but it is not mandatory. 1934 N. 209.

3. As to previous statement. S. 145, Evidence Act.

1. If the witness's answers have differed from his previous statements, the contradiction cannot be put on record unless he is allowed an opportunity of explaining or

Cross Examination—(contd.)

- reconciling his statement. 38 M. 166, 11 L. 410=1930 L. 991=123 I. C. 278, 31 C. 142, 39 B. 441, 1934 P. 55, 1934 R. 273, 1934 A. 225, 1934 A. 956, 54 C. 307, 8 L. 605, 7 A. 862, 32 I. C. 267-291, 1923 P. C. 95, 1931 L. 38.
2. If the previous statement is made in the absence of accused and not subjected to cross-examination, it cannot be used for contradicting the witness, nor can be transferred under S. 288, Cr. P. C. 23 C. 361.
 3. Where an admission is not put to a party making it and he is not examined on it under S. 145, the admission is not legal evidence. 1930 L. 695=125 I. C. 886, 31 P. L. R. 243, 21 C. W. N. 280.
 4. Depositions taken in the Committing Magistrate's Court which contradict the evidence given in Sessions Court cannot be put in without putting them to the witnesses under S. 145. 1930 P. 338=129 I. C. 666, 1922 P. 40, 7 A. 862, 28 A. 683 Expl. 1930 L. 991=123 I. C. 278=31 P. L. R. 243.
 5. A witness cannot be disbelieved without his attention being drawn to the document inconsistent with his deposition even though the documents were produced after his examination. In such a case he should be recalled for further cross examination. 1923 P. C. 95=77 I. C. 141=28 C. W. N. 589, 1923 P. C. 31.
 6. Previous statements under S. 164, Cr. P. C., used for discrediting the evidence of a witness cannot be used as substantive evidence. 1927 A. 705=105 I. C. 677=28 Cr. L. J. 965, 34 C. 129, 26 M. 191.
 7. First information report can be used only to corroborate or contradict the person who makes it. 116 I. C. 187=1928 L. 913, 8 L. 605=1928 L. 17.
 8. A statement made before investigating Police Officer can be used for contradicting the witness after strict compliance with the provisions of S. 145, Evidence Act. 8 L. 605=1928 L. 17=105 I. C. 807=28 Cr. L. J. 983.
 9. Extracts from Newspaper by itself is not admissible, though can be used to contradict or corroborate the writer. 119 I. C. 337=1929 O. 494.
 10. Cross-examiner need not account for his custody of the document, containing the contradictory statement. 1934 N. 35.
 11. Former statements can only be used for the purpose of contradiction, when witness has been confronted with it. 1935 Pesh. 148=1935 Cr. C. 1118.
 12. A witness cannot be contradicted with an unwritten record of unmade statement to Police. Omission is no contradiction. 1933 M. 372 (2)=56 M. 475, 1932 L. 103 and 1926 P. 20 Rel. on, 1926 P. 362 Expl., 16 A. 207 Ref. See 1928 L. 257-9 L. 389.
 13. An inadmissible confession may be used to contradict the confessor when he is examined as defence witness. 1934 C. 616=61 C. 907. But not an involuntary confession. 61 C. 399=1934 C. 636.
 14. In order to let in proof of contradictory statement, it is not necessary that the witness should have specifically denied having made the statement, e. g., when he says he does not remember if he made the statement. 1932 L. 103=33 Cr. L. J. 97, 1930 L. 491=11 L. 460.
4. **Before charge.** See 29.
- Court cannot refuse to allow accused to cross-examine prosecution witnesses before charge is framed. 1932 M. 559=34 Cr. L. J. 738, 1924 M. 735 Coll., 58 I. C. 689, 21 C. 642, 1926 P. 214, 43 M. 411, 46 M. 449, 49 M. 978, 1920 P. 149, 12 Cr. L. J. 277, 1935 S. 13=36 Cr. L. J. 5-1, 1935 N. 8=30 Cr. L. J. 576 Cont. 54 A. 212, 1949 C. 822.
5. **Before Committing Magistrate.** S. 208 (2), Cr. P. C.
1. Refusal by Magistrate to allow cross examination of witnesses is arbitrary and improper. Depositions so taken are inadmissible under S. 288. 21 C. 642.
 2. Where application was made before charge was framed and before the Magistrate decided to commit the accused, he was bound to allow cross-examination of prosecution witnesses. 51 C. 442 (445).
 3. Cross-examination should not be reserved until after the examination-in-chief of all

Cross Examination—(contd.)

- the witnesses. 10 A. L. J. 144, 44 I. C. 343=19 Cr. L. J. 327.
4. It is open to Magistrate to allow cross-examination even after charge. 39 C. 835.
 5. Cross-examination must be allowed before determining whether case is to be committed to Sessions. 1930 C. 754=32 Cr. L. J. 182=57 C. 945.
 6. In an enquiry conducted under chapter 18, accused has no right to reserve cross-examination. 57 C. 44=119 I. C. 803=1929 C. 593, 6 P. 329.
 7. Lengthy cross-examination should not be allowed in committal proceedings as the Magistrate has to find only whether a *prima facie* case is made out or not. 117 I. C. 773=30 Cr. L. J. 845=1929 Sind 137.
 8. For postponing cross-examination of prosecution witnesses for obtaining copies of statements to Police, importance of contradiction between the statements should be looked to. 6 P. 329=1927 P. 243=103 I. C. 597=28 Cr. L. J. 709.
 9. A Magistrate cannot refuse to postpone case to allow accused to cross-examine witnesses after obtaining copies under S. 162. 6 P. 606=1927 P. 248.
 10. Where a warrant case is subsequently converted into an enquiry and where the accused has not cross-examined the witnesses, he has the right to have the witnesses recalled for cross-examination. 1921 A. 148=62 I. C. 192=22 Cr. L. J. 496.
 11. Accused has no further right of cross-examination after the framing of charge under S. 210, Cr. P. C. 1931 A. 434=32 Cr. L. J. 849 *Conf.* 134 I. C. 1230.
 12. S. 205 does not give a separate and independent right of cross-examination. 1931 A. 621=1932 A. L. J. 5=1931 Cr. C. 973.
6. By accused. S. 138, I. E. Act.
1. Cross-examination, if properly conducted is one of the most useful and efficacious means of discovering truth. 19 B. 759.
 2. Where a witness called by one of the parties is a competent witness, the opposite party has a right to cross-examine him, though the party calling him has declined to ask a single question. 15 W. R. 134 Cr., 6 Bom. L. R. 88 (App).
 3. Where at a Sessions trial defence counsel applied for postponement of cross-examination on the ground that he had been unprepared for the evidence given and this was refused and the result was that the witnesses were not cross-examined. Held, that the accused was prejudiced by the refusal and retrial was ordered. 41 C. 299.
 4. As a rule the proper time for the cross-examination of prosecution witnesses is at the commencement of accused's defence, but the Court may allow it at a later stage. 4 M. 130, 2 A. 253, 7 C. 28, 8 C. L. R. 325, 22 W. R. 44 Cr.
 5. If the accused did not cross-examine the prosecution witnesses immediately but applied for leave to examine them after the close of the case for the prosecution, the Magistrate can refuse the application if the Magistrate has decided to commit the case to the Sessions. 36 C. 48, 20 A. 264; 26 A. 177 and 21 C. 643, Dissented.
 6. Although new matter may be introduced in the re-examination, the prosecution is not entitled to examination in-chief on the substantive case after the cross-examination. 1923 P. 116=60 I. C. 662.
 7. It is not in the province of courts to examine witnesses. The Court should leave witnesses to Pleaders to be dealt with as provided for under S. 138. Where the complainant or his Pleader was not permitted to examine the witnesses. Held, it is a good ground for transfer. 1924 O. 371=25 Cr. L. J. 1226.
 8. S. 138 deals not with right of the party but the order in which proceedings are to be conducted. 1929 C. 822=125 I. C. 281=31 Cr. L. J. 809.
 9. Where a witness dies after examination-in-chief and before cross-examination the evidence is admissible but its probative value will be very small. 1925 M. 497=48 M. 1=93 I. C. 705, 1929 C. 822=125 I. C. 281; 1933 L. 561=24 Cr. L. J. 735. See 50 A. 113=1928 A. 140, 5 C. W. N. 230 (n).
 10. If the opportunity is not offered for cross-examination even before charge the evidence is inadmissible. 1923 P. 53=24 Cr. L. J. 595, 1924 M. 735=81 I. C. 44, 1929 A. 236=117 I. C. 624, 11 C. L. J. 124=3 I. C. 374.

Cross-Examination—(contd.)

11. Oral evidence is of little value without cross examination. 5 P.R. 1903 Cr., 26 Cr. L. J. 1236=1925 O. 725, 17 C. W. N. 230, 1929 A. 236.
12. Right of Counsel to ask witness to repeat whole story in cross-examination is doubted. 89 P. L. R. 1914=30 P. W. R. 1914 Cr.
13. Statements transferred under S. 288 should not be read before accused was given opportunity to cross-examine. 3 L. 144=1922 L. 1=23 Cr. L. J. 513.
14. The right of cross-examination given by S. 138 is not fettered by the fact that there are Police papers which are not referred to by the prosecution. It is not limited to matters raised in evidence. 12 Cr. L. J. 277=10 I. C. 917.
15. In a warrant case until the stage provided for S. 256 is reached, the accused has no right to cross-examine and therefore the evidence of a witness given before framing of charge is not admissible under S. 33. 1929 C. 822=125 I. C. 231=31 Cr. L. J. 809.
16. Admission in cross-examination that the accused is a bad character is inadmissible. 9 Cr. L. J. 578=2 I. C. 349.
17. Accused's Counsel should not fill up gaps in prosecution evidence by his cross-examination. 1929 M. W. N. 365.
18. The nature of defence can be ascertained not only from the statement of the accused but also from the trend cross-examination and arguments. 1930 C. 442=127 I. C. 263=31 Cr. L. J. 1203.
19. The evidence of a witness not recalled by prosecution when required by accused for cross-examination cannot be used to support the charge. 3 P. W. R. 1911 Cr.=12 Cr. L. J. 35=9 I. C. 232.
20. Parties cannot, without leave of court, cross-examine a witness, whom the parties have already examined or declined to examine, and the court has examined him. 11 B. H. C. R. 166.
21. Evidence in S. 252 includes examination, cross-examination and re-examination of a witness. 1935 Sind 13=154 I. C. 762=36 Cr. L. J. 531. 8 C. W. N. 833, 1926 M. 989=49 M. 978.
22. Cross-examination need not be confined to matters mentioned in examination-in-chief. (1871) 15 W. R. 34 Cr., 12 Cr. L. J. 277.
23. Judge cannot shut out leading questions in cross examination. It is illegal for a judge to threaten witness with penalties of law. 14 A. 242, 8 A. 672.

7. By Co-accused.

One accused person can cross-examine a witness called by another for his defence, when the case of the second accused is adverse to that of the first. 21 C. 401.

8. By Court.

If accused is not represented by a Pleader, the Magistrate should cross-examine the prosecution witnesses 1930 R. 349=128 I. C. 845=1930 Cr. C. 1177.

9. Compelling counsel to disclose question of—

A Court cannot compel counsel to disclose questions which he desires to put in cross-examination. 32 Cr. L. J. 666=131 I. C. 138=1931 Sind 38.

10. Controlling of—by Court—

1. The Court should control the cross-examination and insist that witnesses should understand the question put before an answer is obtained or recorded. Cross-examination tends to be abused and the words of advocates are recorded as the words of witnesses when the witness has only given affirmative or negative monosyllable. 1935 P. 263=14 P. 225=156 I. C. 921.

2. If the questions are misleading or improper Court should control cross-examination. 1933 L. 667=34 Cr. L. J. 606.

11. Damaging—

It is a curious conception of the duty of an Advocate to fill up by means of cross-examination the gaps in the case against his client, left by the inaptitude of the prosecution.

Cross-Examination—(contd.)

1929 M. W. N. 365.

12. Death of witness before—

1. Evidence of a witness who dies before cross-examination is inadmissible. 30 A. 113=25 A. L. J. 775=1928 A. 140=107 I. C. 243, 5 C. W. N. 230.
2. A witness examined in committal proceedings was not cross-examined immediately. He died before the Sessions trial. Held, his deposition was admissible in Sessions trial. 101 I. C. 661=1927 C. 398=31 C. W. N. 410=28 Cr. L. J. 485, 25 B. 168, 17 C. W. N. 230.
3. Evidence of a witness dying before cross-examination should not ordinarily be acted upon, though admissible. 11 Cr. L. J. 145.
4. Dying declaration was made to a Sub-Inspector, who was examined by the Committing Magistrate but was not cross-examined. He died before the Sessions trial. Held, his evidence was admissible. 1930 C. 223=125 I. C. 743=31 Cr. L. J. 916.

13. Defamatory Questions in. See Defamation.

14. Examination-in-chief—

1. A compound question, one part of which is admissible and the other inadmissible, may rightly be excluded as a whole. *Woodroffe Ev.* 9th Ed. 979.
2. Leading or scandalous questions are not permitted. See Ss. 141—143—151.
3. If a question of the nature of cross-examination is put to one's own witness without declaring him hostile, the question and answer are both inadmissible and cannot be taken into consideration. 1 P. 758=24 Cr. L. J. 69, 53 C. 372=1926 C. 139=27 Cr. L. J. 266.

15. Fixing time limit for— Lengthy—

1. Where a Court fixed arbitrary limit of 5 minutes for cross-examining a witness in an inquiry under S. 133, a retrial was ordered. 62 I. C. 412=22 Cr. L. J. 524.
2. Where the Court is satisfied that the cross-examination of a witness is being unnecessarily prolonged, it can order it to be concluded within a certain time. 30 C. 625, 1924 P. 284=72 I. C. 748.
3. In committal proceedings Magistrate should not allow lengthy cross-examination. 117 I. C. 773=30 Cr. L. J. 845=1929 Sind 137=23 S. L. R. 340.
4. Protracted cross-examination with irrelevant questions must be deprecated. 1932 P. C. 69=136 I. C. 102=62 M. L. J. 457.

16. Further— Ss. 256-257, Cr. P. C.

1. Accused has right to cross-examine witnesses for the prosecution after charge. 4 M. 130, 24 Cr. L. J. 371, 27 C. 370, 2 Bom. L. R. 542, 20 I. C. 212.
2. If the witnesses have been allowed to depart on the representation of the accused, it is in the discretion of the Court to summon them under S. 257. 43 M. 411.
3. Omission on the part of the Magistrate to ask the accused, whether he wishes to recall any witness for cross-examination will invalidate the conviction and involve retrial of the case. 11 P. R. 1914 Cr.
4. Accused has no right of further cross examination after charge is framed by the Committing Magistrate. 32 Cr. L. J. 849=1931 A. 434=132 I. C. 47.
5. Accused should be given opportunity to cross-examine witnesses through Pleader, if he is ignorant and the case is complicated. 31 I. C. 642.
6. The accused in a warrant case has got three opportunities of cross-examining the prosecution witnesses viz., under S. 252, S. 256 and S. 257, and in the last section unless the examination is vexatious. 46 M.
7. Where the application under S. 257 is made by the accused to examine a witness as a defence witness. Held, the accused had the right to cross-examine him. 20 C. 551.
8. Where accused obtained process for the attendance of a witness but subsequently declined to examine him and the Court examined him under S. 540, the accused had

Cross Examination—(contd.)

- the right of cross examination. 29 C. 387.
9. Refusing adjournment so that the accused may cross examine the prosecution witnesses, vitiates trial. 53 B. 578=1929 B. 309=1930 Cr. C. 130.
 10. Where prosecution witnesses have come from a Native State and it would be difficult to secure their attendance again, it is an excellent reason for asking the accused forthwith whether they wish to cross examine any one of them. 1926 L. 434=27 Cr. L. J. 720.
 11. The word "recall" in S. 256 does not mean resumption. Magistrate after framing a charge can ask the defence counsel after recording reasons to further cross-examine the prosecution witnesses then and there. 1930 A. 495=31 Cr. L. J. 764.
 12. Even if a warrant case is tried summarily the provisions of S. 256 apply. 1930 Sind 146=124 I. C. 370=31 Cr. L. J. 683=1930 Cr. C. 529.
 13. A person proceeded against under S. 110, Cr. P. C. has no right to further cross-examine the prosecution witnesses under S. 256. 8 L. 265=1927 L. 470.
 14. Under S. 256 an accused has an absolute right to recall witnesses for cross examination at the expense of prosecution. 59 I. C. 416=22 Cr. L. J. 112, 1929 L. 23=117 I. C. 667=30 Cr. L. J. 814.
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 20. In a summary trial of a warrant case no charge is framed and therefore further cross-examination cannot be claimed as of right. 1932 O. 242.
 21. A Magistrate has large discretion under S. 257. When accused clearly explains that his Vakil is ill and wants adjournment and if the witnesses are subsequently present there is no reason for not letting them to be cross-examined. 1930 M. 632=124 I. C. 606=31 Cr. L. J. 720=3 M. Cr. C. 208.
 22. If after charge *de novo* trial is held, the accused cannot summon prosecution witnesses for further cross-examination. 1935 M. 258.
 23. Accused refused to cross-examine prosecution witnesses but subsequently requested to recall them. Held, that Magistrate refusing to call them is justified. 1936 L. 914, 32 Cr. L. J. 1202=1931 L. 186=134 I. C. 580 Diss. from.
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6. The accused in a warrant case has got three opportunities of cross-examining the prosecution witnesses, viz., under S. 252, S. 256 and S. 257, and in the last section unless the Magistrate decides that the application for cross-examination is vexatious. 46 M. 449 (463), 43 M. 411, 53 B. 578, 32 M. 218.
7. Where the application under S. 257 was rejected and accused cited a prosecution witness as a defence witness. Held, he was a prosecution witness and the accused had the right to cross-examine him. 28 C. 594, 1922 M. 32.
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Cross-Examination—(contd.)

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11. The word "recall" in S. 256 does not mean resummon. Magistrate after framing a charge can ask the defence counsel after recording reasons to further cross-examine the prosecution witnesses then and there. 1930 A. 495=31 Cr. L. J. 764.
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Cross-Examination—(contd.)

17. Inadmissible evidence in—.

1. Admission in cross-examination that accused has had bad character is inadmissible. 9 Cr. L. J. 578.
2. Hearsay evidence in cross-examination is inadmissible except when it touches the credibility of the witness examined. 16 C. 210

18. Incomplete—.

1. Deposition before the Committing Magistrate may on appeal be looked into by the High Court where the cross-examination in the Sessions Court is not full. =12 I. C. 223.
2. Where the cross-examination of prosecution witness is perfunctory owing to the inaptitude of the counsel and facts were not fully ascertained retrial should be ordered. 1924 C. 257=81 I. C. 353=25 Cr. L. J. 817=28 C. W. N. 170.

19. In Re-examination.

1. Where a witness unexpectedly turns hostile in cross-examination, the court can permit the party producing the witness to challenge by way of cross-examination the veracity of the witness. 42 C. 957, 6 C. W. N. 513.
2. Where prosecution tenders a witness as being "won over" without examining him, the prosecution is not entitled to cross-examine the witness after he has been cross-examined by defence. 1928 P. 203=7 P. 55.

20. Of accused. See Examination of accused—10.**21. Of Court witness. See Court witness—2.****22. Of Hostile witness. See Hostile witness—7.****23. Of prosecution witnesses called as defence witnesses.**

1. Magistrate refusing to resummon prosecution witnesses for cross-examination, the accused cited them as defence witnesses. Held, that accused had right to cross-examine them, as it did not change their character. 28 C. 594, 1 C. W. N. 19, 1922 M. W. N. 120.
2. A witness mentioned by prosecution but not examined must still be regarded for all practical purposes as prosecution witness, even if examined by the defence. 71 P. L. R. 1910.
3. If the accused did not cross-examine the witnesses as he could not get copies of statements, and cited them as defence witnesses, the Court cannot refuse to recall them. 1931 L. 186=134 I. C. 580=32 Cr. L. J. 202.
4. Prosecution witness, if present, can be allowed to be cross-examined at defence stage. 1932 N. 137 (1)=33 Cr. L. J. 940=140 I. C. 117.

24. Of witnesses not examined in chief.

1. The ordinary practice in courts is that where the witness for the prosecution is not examined by the Crown, he is placed in the witness box, in order that the defence may have an opportunity of cross-examining him. 5 C. 614, 14 A. 521, 14 C. 245.
2. There is no provision analogous to English practice entitling a prisoner, as a matter of right to have a witness for prosecution who is not called, put into the witness box for cross-examination. 14 C. 245, 14 A. 521.

25. Of witnesses withdrawn from box and made accused.

Where the witness who gave evidence against accused was withdrawn from witness box and made accused the appellant should be acquitted on the ground that he could not cross-examine him, as he was withdrawn from the witness box. 1935 C. 355.

26 Opportunity for preparing—.

1. If the witness is not named under S. 252 (2), Cr. P. C., and is sprung upon the accused all of a sudden, sufficient opportunity should be given to the accused to prepare his cross-examination. 11 Bom. L. R. 1153, 41 C. 299.
2. The Court should inform the parties of the name of Court witnesses before trial with a view to afford them opportunity of preparing cross examination. 10 L. 74

Cross-Examination—(contd.)

= 1929 Lah. 120 = 122 I. C. 95 = 31 P. L. R. 39.

27. Refusal to allow question in—Record of.

Where a question is disallowed, the record should show what the question asked was and why it was disallowed. 55 I. C. 593 = 21 Cr. L. J. 321, 17 Cr. L. J. 500.

28. Reserving or postponing.

1. If the application for postponement of cross-examination is reasonable one under the circumstances, the Judge should allow cross-examination to be reserved. 41 C. 299.
2. In summons cases, cross-examination cannot be postponed or reserved. 3 P. L. T. 347.
3. There is no law for postponing cross-examination. 2 Weir 381.
4. It is not a convenient procedure to allow cross-examination to be reserved until after the examination-in-chief of all the witnesses has been finished, 10 A. L. J. 144.

29. Right of—before charge. See—4.

1. Accused has a right to cross examine prosecution witness before charge. 1935 N. 8 = 36 Cr. L. J. 576, 1923 C. 127 = 50 C. 939, 1925 N. 44 = 26 Cr. L. J. 971, 1920 M. 201 = 43 M. 411, 1923 M. 609 = 46 M. 449 Rel. on., 1929 C. 822 = 125 I. C. 281 and 8 C. W. N. 838 Dist., 1935 Sind 13 = 36 Cr. L. J. 581.
2. If the witnesses examined by the Committing Magistrate are not examined before Sessions Judge, the accused is entitled to have them put in the witness box for cross-examination. 27 C. W. N. 820 = 1923 C. 717 = 25 Cr. L. J. 190.
3. Accused has right to cross examine a witness called by the opposite party although the party calling him has declined to put a single question. 15 W. R. 34 Cr.
4. If the accused reserved his cross examination and then the trial was converted into committal inquiry, he has the right to have the witness called for cross-examination. 19 A. L. J. 463.

30. Stopping of—

1. Sessions Judge is not justified in stopping cross examination of a witness and turning him out of Court, because in his opinion witness is not speaking the truth. 1900 A. W. N. 149.

31. Suggestions by Pleader.

Suggestions by counsel do not amount to evidence unless they are partly or wholly accepted by the witness for the prosecution. 1932 C. 375 = 33 Cr. L. J. 725.

32. Tending a witness for—

1. Where a witness was examined by the Committing Magistrate and was tendered for cross-examination and his evidence before the Committing Magistrate was marked as Exhibit, the procedure is illegal. 30 I. C. 439 = 16 Cr. L. J. 615.
2. Prosecution is not bound to tender a witness for cross-examination, it should only make a witness appear in Court, so that the accused may call him or not as he likes. 14 C. 245.
3. The Prosecution need not examine a witness, who, it has reason to believe will not speak the truth but should tender him for cross examination. If the defence omits to claim the privilege of cross-examining him, it cannot make capital of the fact that these witnesses were not cross-examined. 1930 C. 134 = 31 Cr. L. J. 918.
4. Witness examined by the Committing Magistrate and given up by the Public Prosecutor as untruthful should be tendered for cross-examination. 7 A. 904.
5. If the defence reserved the cross-examination of a witness for the Sessions trial, the Public Prosecutor must tender him for cross-examination. If he declines, the Court ought to call the witness. 11 Bom. L. R. 1162 = 10 Cr. L. J. 538.
6. If a prosecution witness examined in Committing Magistrate's Court is not examined in Sessions Court, the Judge can draw an inference against the accused or examine him as Court witness. But he cannot compel the Crown either to examine such witness or to tender him for cross examination. 1935 S. 60 = 1935 Cr. C. 248.

Cross-Examination—(contd.)

7. It is irregular to allow a Public Prosecutor to examine in chief a witness tendered for cross-examination and had been cross-examined by the defence. 1923 P. 116=22 Cr. L. J. 262.
33. **Undefended accused.** See—7.
34. **When no—concerning defence version.**
 1. When the defence does not cross-examine prosecution witnesses concerning defence version, it is usually safe to conclude that it is an after-thought and the defence evidence is a concocted one. 1935 R. 393.
 2. The fact that certain evidence has not been tested by cross-examination does not affect its *admissibility* but only its *Probative Value*. 48 M. 1, 1929 L. 840, 14 Cr. L. J. 70, 5 P. R. 1903 Cr., 11 Cr. L. J. 145, 1925 O. 726=26 Cr. L. J. 1236, 1923 P. 53, 1932 O. 298=34 Cr. L. J. 58, 41 C. 299.
35. **When witness cannot be found or is dead.** Ss. 33 and 158, Evidence Act.
 1. In order that previous statement should be admissible, there must have been right and opportunity to cross-examine. 21 W. R. 12, 24 W. R. 18, 8 A. 672.
 2. There may be circumstances when accused has a right but no opportunity, e.g. where witness is at a great distance and accused is too poor to engage a counsel. 19 Bom. 749 (757).
 3. It is not necessary that accused should exercise his right. 20 W. R. 69.
 4. If the cross-examination of a witness is reserved by a Magistrate during committal proceedings of his own accord, that deposition is inadmissible in evidence at the trial in the Court of Session. 1930 Lah. 54=31 Cr. L. J. 121=120 I. C. 524.
 5. In a warrant case until the stage of S. 256 is reached, accused has no right to cross-examine and consequently the evidence of a witness given before framing of the charge is not admissible under S. 33. 1929 C. 822 *Cont.* 1935 N. 8.
 6. A witness was examined by the prosecution but not cross-examined. After charge he was too ill to be subjected to cross-examination. Held, that his statement was admissible, but the weight to be attached to such statement depends upon the circumstances of each case. 1929 L. 840=118 I. C. 647=30 Cr. L. J. 951.
 7. Copy of statement in one case is inadmissible to prove loss of property in another case. 4 L. L. J. 418.
 8. The provisions of S. 33 are not affected by S. 350. Cr. P. C. 1927 Lah. 332=101 I. C. 483=28 Cr. L. J. 451=8 L. 570.
 9. Mere opportunity to cross-examine is not sufficient, there must be right as well. 52 A. 1=1930 P. C. 79.
 10. Examination of a doctor is not essential before evidence can be admitted under S. 33, if the witness is ill. 103 I. C. 846=1927 Cal. 679.
 11. Opportunity to cross-examine does not imply that the actual presence of the cross-examining party or his agent before the Court is necessary. 10 Bom. 749.
 12. Where a commission was returned before a witness was fully cross-examined, it was held to be inadmissible. 5 C. W. N. 230.
 13. When a witness is going to England and accused requires him after charge, the Court can examine him under S. 33, Evidence Act. 1927 R. 248=28 Cr. L. J. 861.
 14. The statement of a Police Officer that witness could not be found is insufficient. 41 C. 601.
 15. A witness who had died and whom the accused had an opportunity to cross-examine in the previous trial is admissible in *de novo* trial. 1932 M. 559.
 16. Accused has right to cross-examine Prosecution witness before charge. Hence if such witness cannot be found for further cross-examination, his evidence can be used under S. 33, Evidence Act. 1935 N. 8=154 I. C. 369=36 Cr. L. J. 576.
 17. A witness proved a horoscope in the lower Court but did not appear in the Sessions Court, though summoned. Held, that his deposition could not be transferred to the Sessions' file. 1934 C. 766.

Cross-Examination—(concl'd.)

18. A witness from Calcutta was fully cross-examined before and after charge. His depositions could be read as evidence when the case was tried *de novo*, as his being summoned would involve expense and delay. 1935 R. 484.
19. Where the testimony of a witness remains unfinished due to his death, sickness, etc., it may not be rejected. But if it is not substantially complete it must be rejected. 1933 L. 561=34 Cr. L. J. 735.
20. Where a statement is admitted under S. 33, Evidence Act, all statements may be proved under S. 158, Evidence Act, either to contradict or corroborate it. 1926 L. 122=26 Cr. L. J. 1425, 1930 L. 409.

CROWD.

1. **Collecting of—** See Public Nuisance—8.

2. **Expression of feeling of—** S. 32 (8), Evidence Act.

Expression of feeling or impression of crowd is admissible. 23 W. R. 35 Cr.

CULPABLE HOMICIDE (NOT AMOUNTING TO MURDER). S. 304, I. P. C.**1. Applicability of first part of S. 304.**

1. The first part of S. 304 applies where there is a guilty intention. The second part applies when there is no guilty intention but there is a guilty knowledge. 1931 C. 345=130 I. C. 884=58 C. 1138=32 Cr. L. J. 598=58 C. 1138.
2. If there is no intention to commit murder, case falls under S. 304, part 2. 1932 L. 372=137 I. C. 239=33 Cr. L. J. 445=33 P. L. R. 474.

2. Applicability of S. 34 and charge.

1. S. 34, I. P. C., which is based on common intention cannot possibly be used with the second part of S. 304, which expressly excludes intention. 1925 C. 913=86 I. C. 475=26 Cr. L. J. 827 *Cont.* 1927 C. 324=100 I. C. 718=28 Cr. L. J. 334.
2. Two accused had the common intention of beating the party of which deceased was a member. The death was caused by a blow in the beating. Held, that both the accused were guilty under S. 304 and S. 34, I. P. C., and were sentenced to 2 years' R. I. and Rs. 150 fine. 1935 A. 504=154 I. C. 628, 1933 A. 528=55 A. 607=34 Cr. L. J. 1234 *Rel. on.*, 40 A. 686 *Ref.*, 40 A. 103 *overruled*.
3. If accused is not misled in defence he can be convicted under S. 34 although not charged. 1933 L. 313=34 Cr. L. J. 724, 49 B. 84.
4. Conviction under S. 304 (2) or in the alternative under S. 325 is not proper. 1933 L. 865.
5. Accused must be given clear notice of the part of S. 304, I. P. C., under which he is charged. 1935 Sind 23=154 I. C. 138=36 Cr. L. J. 504.

3. Burden of proof.

1. Accused professed to be able to render a person immune from the effect of snake bite by tattooing him. He tattooed a number of villagers and allowed a poisonous snake to bite one of them, who died. Held, that the burden of proving that accused was justified in believing, was on him, otherwise he was guilty under S. 304. 60 I. C. 843.
2. Eight men, none of whom carried *lathis* attacked and beat a man to death by breaking his ribs, the *onus* is on the prosecution to prove that the common intention was to break the ribs. The persons who sat on the body and put pressure on the ribs are guilty under S. 304—149 and the rest under S. 323—149. 1929 A. 575=118 I. C. 369=30 Cr. L. J. 903.
3. Where accused caused death by a *lathi* blow fracturing skull, the burden is on him to prove that it was removed from the category of murder by one of the exceptions. 52 I. C. 224, 11 Cr. L. J. 345, 1930 O. 408, 25 Cr. L. J. 1005, 53 I. C. 495. See 1933 L. 1055, 1933 R. 142.

4. Death by abstaining from giving nourishment to child.

Accused causing death of a child by purposely abstaining from giving it any nourishment is guilty under S. 304. 18 P. R. 1870 Cr.

Culpable Homicide (not Amounting to Murder)—(contd.)

5. Death by beating.

1. Accused killing his wife by single blow is guilty under S. 304. 5 P. R. 1893.
2. The husband and father of the woman, who had been enticed away lay in wait for the offender and beat him with sticks on the back and chest and he died. Held, he was guilty under S. 304. 10 P. R. 1890 Cr.
3. Accused assaulted a thief and gave him blows bearing 141 marks on his body and several of his ribs were broken and he died. Held, he was guilty under S. 304. 5 N. W. P. 235.
4. S. 304 (2) is applicable, when death is caused by *chhavi* blow on the head in a sudden quarrel. 3 P. L. R. 1914.
5. Where the accused caused the death of a man by an unmerciful beating mostly on the legs and arms but no bones were broken and not single one of the injuries individually amounted to more than simple hurt, the accused was guilty under S. 304. 2 Lah. C. 112.
6. Accused hit his brother's wife with a *moosal* and dragged her inside the house. Since then she was not seen. Held, he was not guilty under S. 304 but S. 323 only. 92 I. C. 451=26 P. L. R. 642=27 Cr. L. J. 275.
7. Where accused struck two *lathi* blows one severe and the other slight on the head of a person which caused his death, it is safer to convict him under S. 326 than under S. 304. 1929 L. 37=115 I. C. 66=30 Cr. L. J. 378.
8. Deceased spilt some oil and her mother-in-law gave her beating. There was no evidence showing intention or knowledge of likelihood of causing death. She was not guilty under S. 304 but S. 323 only. 26 Cr. L. J. 470=1925 A. 126.
9. Accused broke into a house at night and in order to evade arrest, struck wildly with dangerous weapon and caused the death of a person. Held, he was guilty under S. 304. 12 P. R. 1911 Cr.
10. Accused struck three blows with a *lathi*, fracturing arms and legs, to a person who died of gangrene supervening. Held, he was either guilty under S. 304 or S. 323. 42 A. 302 See 1923 Oudh 97=24 Cr. L. J. 513.
11. Accused causing the death by fracturing legs and other minor injuries, was guilty under S. 304. 10 L. 477=1929 L. 157=113 I. C. 333=30 Cr. L. J. 141.
12. Accused a girl of fifteen years gave a blow to another small girl whose uncle gave a *lathi* blow on the head of the elder girl and caused her death. Held, he was guilty under S. 304. 6 P. 638=1928 P. 169.
13. Accused in order to chastise the owners of cattle which caused damage, gave them blows with *lathis*, one of which hit the temple and killed the deceased, the accused is guilty under S. 323. 1925 Oudh 482=26 Cr. L. J. 1160.
14. Accused inflicted four wounds, none of which was on the vital part and the deceased died of septic poisoning after 15 days, held, that he was guilty under S. 304. 1924 R. 212=77 I. C. 889=25 Cr. L. J. 489.
15. Accused gave his weak, frail wife of 14 years savage beating and then threw her into a dry well 33 feet deep. Held, his conviction under S. 304 was too merciful and he should have been convicted under S. 302. 1923 A. 545=81 I. C. 191=25 Cr. L. J. 703.
16. Accused hit the deceased on the temple with *lathi* and caused his death, he was guilty under S. 304. 26 Cr. L. J. 1160=1925 Oudh 482.
17. Accused struck the deceased with a *lathi* on the head causing his death, he was guilty under S. 304. 1925 L. 111=51 I. C. 143=25 Cr. L. J. 655.
18. Deceased was taking cattle of accused to impound them when the latter asked him to release them. On refusal he laboured him with *lathis* and he died after a few days. He had an enlarged heart. Held, accused was guilty under S. 323. I. P. C. 1932 Oudh 279=9 O. W. N. 655=140 I. C. 706=34 Cr. L. J. 69.
19. Accused gave beating to his old mother and kicked her. He was guilty under S. 304. 7 M. H. C. R. 119.

Culpable Homicide (not Amounting to Murder)—(contd.)

20. Accused assaulted a thief so severely that he died, one hundred and forty-one marks were found on the body. Held, he was guilty under S. 304. 5 N. W. P. H. C. R. 235.
21. Where the common intention of the assailant was to cause grievous hurt and there was only one serious blow on the head, the case fell under S. 304(2). 1935 L. 80.
22. Deceased was attacked by four men. It was not known whose blow was fatal. All are guilty under S. 304. 1934 A. 739, 35 A. 560, 40 A. 686 foll. 40 A. 103 not foll.
23. Unpremeditated joint attack with sticks falls under S. 304. The death cannot be imputed to accused collectively. 1936 N. 103=37 Cr. L. J. 607, 35 A. 506 and 1923 A. 88 Diss.

6. Death by blows on arms and legs and not on vital parts.

1. Where accused caused the death of a person by unmerciful beating mostly on the legs and arms and no bone was broken and none of the injuries individually was more than a simple hurt, he was guilty under S. 304. 2 Lah. C. 112.
2. Accused gave thrashing to the deceased, fractured his legs and inflicted other minor injuries, he was guilty under S. 304. 10 L. 477=1929 L. 157=30 Cr. L. J. 141=113 I. C. 333.
3. Accused inflicted four wounds none of which was on vital parts of the body and the deceased died owing to septic poisoning 15 days after occurrence he was guilty under S. 304. 77 I. C. 889=25 Cr. L. J. 489=1924 R. 212.
4. If the assault is unpremeditated and blows are not aimed at vital part of the body, the accused is guilty under S. 304, Part 2. 1934 L. 332.
5. If death is caused in affray and no grievous wound on the vital part of the body is caused, offence falls under S. 304, Part 2. 1934 L. 341=151 I. C. 449.
6. In a merciless beating with hands and fists when bone is broken, conviction should be under S. 304 (2). 1933 L. 883=35 Cr. L. J. 65.

7. Death by blows on head.

1. Where accused struck two *lathi* blows, one severe and the other slight, on the head of a person, it is safer to convict him under S. 325 rather than S. 304. 1929 L. 37=115 I. C. 66=30 Cr. L. J. 378.
2. In most instances when a blow is given with a *dang* on the head, the accused must know that such a blow is likely to cause death. But when the blow is not a very violent one and skull is not fractured and the person assaulted is able to attend the hospital and walk about for two days, the accused would be guilty under S. 325 and not under S. 304. 106 I. C. 440=29 Cr. L. J. 24.
3. A girl of 15 years gave a blow to another young girl whose uncle came and who gave a *lathi* blow on the head of the elder girl and caused her death. Held, he was guilty under S. 304. 7 P. 638=1928 P. 169=29 Cr. L. J. 17=110 I. C. 433=9 P. L. T. 286.
4. Where the accused gave blows on the head, causing fracture with a stick weighing 62 tols and measuring 25 inches in length, the accused was guilty under S. 304. 5 R. 817=29 Cr. L. J. 487=104 I. C. 215=1928 R. 64.
5. Where three persons attacked a fourth with *lathis*, the blows being directed at the head, knowledge that they were likely to cause death must be presumed. 1923 L. 621=7 L. L. J. 534=26 P. L. R. 702=27 Cr. L. J. 26.
6. When it is not certain which of the two accused inflicted fatal blow on the head, both are guilty under S. 325. 37 P. R. 1914 Cr. L. L. J. 208, 1918 P. 318=6 L. L. J. 517, 7 L. L. J. 44. See 52 M. 147=1929 M. 34, 1-29 M. W. N. 1-14=116 I. C. 135=30 Cr. L. J. 628.
7. Owing to a quarrel accused gave deceased a blow with an iron stick on the head. Held, he was guilty under S. 304. 41 P. 27.
8. Seven persons deliberately attacked the deceased and caused his death by fracturing his ribs, rupturing spleen and inflicting injuries on his head. Held, they were guilty under S. 304 and not under S. 325. The total number of blows was 24, of which 20 were caused when he became unconscious and fell down. 1935 Oudh 3-18=154 I. C. 88=37 Cr. L. J. 575, 1922 Oudh 135=25 Cr. L. J. 1145, 1932 Oudh 1-10.

Culpable Homicide (not Amounting to Murder)—(contd.)

=33 Cr. L. J. 561, 1935 Oudh 52=36 Cr. L. J. 268, 1931 C. 261=32 Cr. L. J. 187 and 1929 L. 157=10 L. 477 Ref. and discussed.

9. Death was caused by fracture of skull. Assault was not deliberate but due to provocation, accused is guilty under S. 304 (1). 1934 L. 345.

8. Death by dysentery and septicaemia.

Accused fired at point blank range and wounded a man on the thigh. The injury was not fatal but he died of wound getting septic and dysentery supervening. The accused was guilty under S. 326. 120 I. C. 183=1929 Lah. 433=31 Cr. L. J. 44.

9. Death by emasculation.

Where a man of full age submitted himself to emasculation performed neither by a skilful hand, nor in the least dangerous way, the persons performing it are guilty under S. 304, when he died. (1866) 5 W. R. 7 Cr.

10. Death by exorcising evil spirit or sorcery.

1. Where the accused, in exercising the spirit of a girl, whom they believed to be possessed, subjected her to a beating which resulted in her death, he was guilty under S. 304. 10 L. 555=1928 Lah. 917, 44 I. C. 679.
2. Where the injuries caused to the girl, in exorcising the spirit, were not severe, the accused were acquitted. (1895) Unrep. Cr. C. 785.
3. Accused deliberately murdered his wife under the belief that she was haunted by evil spirits or that if he murdered her, the spirits would leave her. Held, he was guilty of murder. 3 P. L. W. 356.
4. Accused murdered a person believing her to be a witch and under the belief that by so doing he would be helping the recovery of his wife and children, whose illness he attributed to the deceased. Held, he was guilty of murder. 1 P. L. T. 222.
5. Accused threw his child to crocodiles under the belief that they would return it unharmed and it would lead a charmed life, but it was devoured by them. Held, he was guilty under S. 304. 25 C. W. N. 676.
6. Accused giving kicks to drive away evil spirit and causing death is guilty under S. 304 (2), 1928 L. 917=114 I. C. 438=30 Cr. L. J. 299.
7. Abetment to murder by sorcery or other impossible means is unknown to Penal law. 10 B. H. C. R. (Cr. C.) 75.
8. Devil dancers branded wife with the consent of husband to exorcise evil, with hot ladle which resulted in her death. They were guilty under S. 326 and not under S. 304-A. 1935 A. 282=36 Cr. L. J. 346.

11. Death by fire.

1. Accused struck a man on the head and believing him to be dead, set fire to the hut with a view to remove all evidence of crime and it was found that blow only stunned him and he died of burning, he was guilty of attempt to murder. 15 Bom. 194, 25 Cr. L. J. 703=1923 A. 545, 32 Cr. L. J. 483.
2. Where the accused were not likely to know that the deceased or any one was within a chaupal to which they set fire in a riot, a conviction under S. 304 was wrong. 1924 A. 781=82 I. C. 54=25 Cr. L. J. 1190.

12. Death by firing or shooting.

1. The accused who was full drunk, fired at the deceased at point blank range and caused a wound on the thigh. The injury was not fatal but died after 2 months after the wound became septic and dysentery supervening. Held, he was guilty under S. 326 only. 1929 L. 433=120 I. C. 183=31 Cr. L. J. 44=11 L. L. J. 44.
2. Injuries caused were not the direct cause of death. Deceased died of gangrene. Accused guilty under Explanation to S. 299, I. P. C. 1936 R. 525.
3. Accused fired towards ground in direction where none was standing with the object of scaring pursuers, one of the person rebounded and struck a person. Held, he is neither guilty under S. 324 nor S. 327. 1933 Oudh 269.

13. Death by gangrene Supervening. See Wound—15.

1. Accused struck three blows with a lathi, fracturing arms and legs of a person who

Culpable Homicide (not Amounting to Murder)—(contd.)

died of gangrene supervening. Held, that he was guilty either under S. 304 or S. 325. 42 A. 302. See 1923 Oudh 97=24 Cr. L. J. 513.

2. Accused hit a man with axe on left arm causing compound fracture. Death was due to gangrene. He is guilty under S. 326, and one year's imprisonment was sufficient. 1936 L. 833.

4. **Death by hanging (strangulation).** See Hanging, Strangulation.

Accused struck his wife a blow on her head with a plough-share, which rendered her unconscious and believing her to be dead, hanged her on a beam by a rope and thereby caused her death, in order to give a colour of suicide. Held, he was guilty under S. 325 only. 17 A. L. J. 56, 19 C. W. N. 1279, 28 Cr. L. J. 401. 1928 Oudh 36. See 48 P. W. R. 1915.

15. **Death by iron shod stick.**

1. Owing to a quarrel accused struck the deceased with an iron shod stick on the head, he was guilty under S. 304. 41 Bom. 27.
2. There was altercation regarding branches and leaves lopped off. Tree belonged to the accused, who hit deceased with iron bound stick. Held, two years' sentence under S. 304 (1) was proper. 1933 L. 1052=147 I. C. 681.

16. **Death by inserting rod in the rectum.** See Rectum.

A Superintendent of Jail, on grave and sudden provocation, put a rod in the rectum of a prisoner and caused his death. Held, he was guilty under S. 304 (2). 1932 L. 199=33 Cr. L. J. 365=136 I. C. 729 (2).

17. **Death by kicks.**

1. Accused assaulted his wife and gave her kicks, blows and slaps. The kicks were given below the naval. She became unconscious and believing her dead, he hanged her to give a colour of suicide. Held, he was guilty under S. 325. 18 C. W. N. 1279, 42 M. 574.
2. Every body knows that the abdomen is a most delicate and vulnerable part of the human body and if a man kicks the abdomen with such a violence as to rupture the spleen which was normal and causes the fracture of two ribs, he is guilty under S. 304. 1926 L. 313=96 I. C. 641=27 Cr. L. J. 977, 14 Bom. L. R. 1887.
3. Accused gave blows and kicks to drive away an evil spirit and thereby caused the death of a person. Held, he was guilty under S. 304 (2). 1928 L. 917=114 I. C. 438=30 Cr. L. J. 299.
4. A man who kicks a prostrate woman on the side must be credited with the knowledge that he is likely thereby to cause her death and is guilty under S. 304. 1924 M. 41=73 I. C. 961=24 Cr. L. J. 721.
5. Kicking a girl of tender years with such force as to produce rupture of abdomen and causing death is an offence under S. 304. 4 C. 764.
6. Accused killed his mother by beating and kicking. Held, he was guilty under S. 304. 7 M. H. C. R. 119.

18. **Death by knife.** See Wound—14-B.

Death was caused by knife stabbed in a sudden fight, the offence under S. 304 (2) was committed. 1925 L. 148=82 I. C. 361=25 Cr. L. J. 1289.

19. **Death by Meningitis.** See Wound—15.

When injuries were not sufficient in the ordinary course of nature to cause death, and death was due to Meningitis and compression of brain but they had no direct connection with the injuries, the offence falls under S. 325 and not under S. 302. 1934 L. 363=151 I. C. 318, 1928 L. 851 not foll.

20. **Death by negligence.** See Death by negligence.

1. Where accused killed a man with a club, being at the same time under the belief that the object struck was something supernatural, but through terror took no steps to satisfy himself whether it was a human being. Held, he was guilty under S. 304. 1898 A. W. N. 163.

Culpable Homicide (not Amounting to Murder—(contd.)

2. If one gives wounds to another who neglects to cure them and if he dies it is murder or man slaughter according to the circumstances. 29 Cr. L. J. 345.

21. Death by pneumonia-supervening. See Wound—15.

1. The accused fell down after two blows and was taken to Hospital. He left it when he was progressing well. A month and a half afterwards he died of pneumonia. Medical evidence did not show that death was due to injury. Held, that no offence under S. 304 was committed. 1924 A. 411=81 I. C. 181=25 Cr. L. J. 693.
2. If a person receives injuries and is detained in hospital and as a result of those injuries pneumonia supervenes and the victim dies, the perpetrators of attack are guilty of murder. 1928 L. 851=110 I. C. 230=29 Cr. L. J. 678, 7 S. L. R. 83, 31 Cr. L. J. 198.
3. L attacked B with stick. Learning that G was coming to help B, he brought a chopper and renewed his attack on B. B was sent to Hospital where he died of septic pneumonia. Held, that there being no intention to cause death, he was guilty under S. 326 only. 42 M. 547.

22. Death by push.

Accused pushed deceased who fell on the road to a distance of two cubits and a half but died of tetanus. He was guilty under S. 323. 1 M. 224.

23. Death by rape. See Rape.

A boy of 18 had sexual intercourse without her consent with a well developed girl of 12 years. There was no ancillary violence but her vagina was ruptured and as a result she died of shock. Held, that he was not guilty under S. 304, I. P. C. 3 P. 410=1924 P. 553=26 Cr. L. J. 91=83 I. C. 651.

24. Death by rash driving. See Rash driving.

1. Accused drove his motor car in a rash manner during night, while he was in a drunken condition and ran his car against four persons carrying a bier and injured two of them so seriously that they died. Held, he was guilty under Ss. 337-304, I. P. C. 1929 M. W. N. 395.
2. Accused drove his car rashly and in swerving on the wrong side in order to avert a collision due to the negligence of the driver of the bullock cart, overturned his car and one passenger was killed. Held, he was guilty under S. 304. 1931 A. 708=133 I. C. 601=32 Cr. L. J. 1061.

25. Death by rupture of spleen. See Hurt, Grievous Hurt—7. Spleen—4.

In a verbal wrangle accused struck his wife on the left side and as a result of which she bled from nose and death was caused by rupture of spleen. He was guilty of grievous hurt only. 3 A. 776.

26. Death by shock. See Wound—38.

1. Where the injuries on the deceased were all simple excepting one but he died of shock, the accused were guilty under S. 304 (2). 1925 L. 549=26 Cr. L. J. 890.
2. A boy of 18 had sexual intercourse with a girl of 12 who was very well developed and her vagina was ruptured and she died of shock. Held, that accused was not guilty under S. 304. 3 P. 410=26 Cr. L. J. 91=1924 P. 553.
3. Accused squeezed her husband's testicles but he died of shock, she was guilty under S. 304. 19 M. 356.
4. The fatal wound was a punctured wound 5 inches deep and death was due to shock and heart failure, the accused was guilty under S. 304. 1933 L. 313=34 Cr. L. J. 724.

27. Death by snake-bite.

1. A snake charmer exhibited in public a venomous snake, whose fangs he knew had not been extracted and to show his skill, placed the snake on the head of a spectator, who was bitten and died in consequence. Held, he was guilty under S. 304. 3 C. 351. See 12 W. R. 7 Cr. (1869).
2. Accused, who professed by tattooing to render persons immune from the effect of snake bite, caused a poisonous snake to bite the deceased whom he had tattooed and who

Culpable Homicide (not Amounting to Murder—(contd.)

died. Held, he was guilty under S. 304. 11 L. B. R. 56=64 I. C. 843.

28. Death by squeezing testicles. See Testicles.

1. A woman by squeezing the testicles of her husband reduced them to a pulpy condition and he died of shock so inflicted on the nervous system. Held, she was guilty under S. 304. 19 M. 356.
2. Where testicles were not squeezed hurt owing to injuries to the deceased who had unsound bodily condition were not sufficient to endanger life, the offence committed was hurt only. 19 Bom. L. R. 823.

29. Death by stabbing. See Murder—43. Wound—14.

Where accused stabbed a person with knife in a sudden quarrel, he was guilty under S. 304, 1 P. C. 1925 L. 148=82 I. C. 361=25 Cr. L. J. 1289.

30. Death by strangulation. See—14. See Strangulation, Hanging. Murder—43.

1. On a quarrel accused got the deceased down and strangled him to death with his hands. Held, he was guilty under S. 304 and a sentence of 4 years was proper. 68 P. L. R. 1912.
2. On a sudden quarrel over beating dog, accused strangled a person by turban and caused his death. Held, he was guilty under S. 304 (2). 1931 L. 189=134 I. C. 583=32 Cr. L. J. 1205.
3. Where it is evident that accused was violent, but if a doubt remains whether so far his intention went the deceased's death was not accidental, the accused is entitled to benefit of doubt. Conviction under S. 302 was altered to one under S. 304. 1933 L. 511.

31. Death by stuffing cloth in the mouth. See Suffocation.

Accused stuffed a cloth in the deceased's mouth in order to silence him and not with any idea of killing him. Held, they were guilty under S. 304. 1915 M. W. N. 621.

32. Death by tetanus supervening.

Accused gave a severe push to the deceased who fell on the road below to a distance of two cubits and a half and received injuries from which tetanus resulted, which caused his death on the fifth day. Held, he was guilty under S. 323 only. 1 M. 224.

33. Death by throwing child to crocodiles

Accused threw his child to crocodiles under the belief that they would return him and it would lead a charmed life afterwards, but they devoured him. Held, he was guilty under S. 304. 33 C. L. J. 179=25 C. W. N. 676.

34. Death by throwing stone. See Murder—42.

There was no enmity between the accused and the deceased. There was a quarrel over a pumpkin and the accused threw a lump of lime stone weighing 3 pounds which fractured her skull. Held, he was guilty under S. 304. 1925 A. 4=81 I. C. 320.

35. Death by unskilful medical treatment. See Death by negligence—7, Wound—17.

Where a man of full age submitted himself to emasculation, performed neither by a skilful hand nor in the least dangerous way and died from the injury, the persons concerned in the act were guilty under S. 304. (1866) 5 W. R. 7. Cr.

36. Death by wounds becoming septic. See Wound—15.

1. Accused inflicted four wounds, none of which was on the vital part and the deceased died owing to septic poisoning 15 days after the occurrence. Held, he was guilty under S. 304. 77 I. C. 889=25 Cr. L. J. 489=1924 R. 212.
2. Accused who was full drunk, fired at the person at point blank range and caused a wound on the thigh which was not fatal, but he died two months afterwards as the wounds became septic and dysentery supervened. Held, he was guilty under S. 326 only. 1929 L. 433=120 I. C. 183=31 Cr. L. J. 44.
3. A blow was given on the head with a *Takua* on provocation and no further advantage was taken of the fallen man, and it was not dangerous but the victim died of septicæmia long after keeping a normal temperature. Held, that offence fell under S. 326. 1931 L. 103=135 I. C. 668=1931 Cr. C. 167.

Culpable Homicide (not Amounting to Murder)—(contd.)

4. Accused gave a *lathi* blow on the head, the injury was not sufficient in the ordinary course to cause death. Death was caused by septic meningitis due to neglect in treatment after three weeks. Conviction under S. 304 was bad. Accused was guilty under S. 325 only. 1935 O. 446=36 Cr. L. J. 1262=157 I. C. 667.

37. Death caused at the request of deceased.

Causing death at the request of deceased is only culpable homicide and falls under S. 304. 131 I. C. 147=1931 M. 436=54 M. 504, 43 I. C. 413, 36 A. 26, 1929 L. 50=117 I. C. 890=30 Cr. L. J. 855.

38. Essentials and Evidence.

1. Where the prosecution witnesses are not impartial and story put forward by them is false which does not explain injuries caused to the accused, conviction should be set aside. 95 I. C. 597=27 Cr. L. J. 821=8 L. L. J. 183.
2. When there was a fight between two parties and one of them set up a right of private defence and there was no independent witness, the sentence should not be severe. 1923 L. 313.
3. Accused hit his brother's wife with *Moosal* and dragged her inside and she was not seen afterwards. Held, that as there was no evidence about the nature of wound, he was guilty under S. 323. 92 I. C. 451=27 Cr. L. J. 275.
4. Where a man receives only one blow on the head and dies and there is no evidence to show which of the two persons gave the blow, they are guilty under S. 325. 37 P. R. 1914 Cr., 6 L. L. J. 268, 6 L. L. J. 317, 7 L. L. J. 44. See 52 M. 147.
5. Accused went to take possession by force and in the fight one of the accused gave blow with an iron shod *lathi* which proved fatal. Held, he was guilty under S. 304 (2) and the rest under S. 325. 9 L. L. J. 529=29 P. L. R. 265=1927 L. 881.
6. If a person was suffering from an injury which would render injuries fatal to that person, it does not follow as it would in the case of a healthy man, that the person inflicting the injuries knew it to be likely that death would be caused thereby. 34 C. L. J. 515.
7. If the skull is fractured in a sudden fight by a *lathi* blow on the head, the intention to kill cannot be inferred. 1927 P. 406=28 Cr. L. J. 541=8 P. L. T. 594.
8. Where the sole inmates of a house were a man and his two wives and the elder wife was habitually ill-treated and half starved and was taken to hospital with a serious injury on head of which she died on the third day. Held, that the explanation of the husband being unsatisfactory, he must be presumed to have caused the injury. 150 P. L. R. 1913.
9. If a person causes death by doing an act merely with the knowledge that he is likely by such act to cause death, the act comes under S. 299 and not S. 300. 9 P. R. 1891 Cr.

39. Nature of weapon.

Nature of weapon used and the number and nature of wounds determine the intention of the accused. 8 L. B. R. 125.

40. Neglect to get medical aid. See Murder—79.

After the deceased was progressing all right in the Hospital, he left it and went home and 1½ months after the occurrence he died of pneumonia. Medical evidence did not show that death was due to injuries. Held, that no offence under S. 304 was committed. 1924 A. 441=81 I. C. 181=29 Cr. L. J. 345.

41. Procedure.

If the jury find that accused's intention was to cause only such injury as was likely to cause death, they should find the accused guilty under S. 304. The general conduct of the accused at the time of committing the act, the nature of the weapon used and the number and nature of the wounds inflicted are considerations which should guide the jury in arriving at the intention of the accused. 8 L. B. R. 125.

42. Sentence.

1. In a quarrel between the accused's wife and his brother's wife, the latter abused the accused's daughter, and accused hit her a single blow on the head with a stick.

Culpable Homicide (not Amounting to Murder)—(contd.)

picked up then and there which caused her death. Held, that a sentence of 3 years' rigorous imprisonment would meet the ends of justice. 29 Cr. L. J. 33=106 I. C. 449.

2. In case the accused exceeded right of private defence one year's rigorous imprisonment was sufficient. (1864) 1 Weir 34, (1866) 6 W. R. Cr. 89.
3. Accused caught the deceased in the act of adultery with his married sister and struck him one blow on the head with a stick which killed him, one year's rigorous imprisonment was sufficient. 4 P. R. 1904 Cr.
4. When it is not certain as to who gave the fatal blow, a sentence of 5 years is proper. 1930 B. 483=129 I. C. 351=32 B. L. R. 1143.
5. Where injury is caused in a sudden quarrel, without premeditation, a sentence of seven years is excessive. 1923 L. 170=5 L. L. J. 414.
6. When deceased used abusive and provocative words and accused dealt a single blow which proved fatal, he was guilty under S. 304, Part II and a sentence of three years' rigorous imprisonment was sufficient. 1931 L. 523 (2)=32 P. L. R. 387=133 I. C. 874 (1)=32 Cr. L. J. 1082.
7. Accused was convicted under S. 304, Part I, for having exceeded the right of private defence a sentence of transportation for life was too severe. 1932 L. 344.
8. If death is caused in a riot, the ring leader should be given 10 years' rigorous imprisonment instead of transportation for life. 1932 Oudh 247=33 Cr. L. J. 566.
9. Accused killed his wife under a mistaken belief that she was unchaste, High Court passed a sentence of transportation. 8 C. W. N. 218.
10. Where a man finds his wife in actual intercourse with her paramour, a sentence of six months for causing death is sufficient. (1897) Unrep. Cr. C. 932, or one year. 4 P. R. 1904 Cr., 1931 M. W. N. 553.
43. **Single blow.** See—46.
44. **Sudden quarrel.** See Murder—81.
45. **Treatment of wounds.** See—35, Murder—86. Wound—17.
46. **Who gave the fatal blow not certain—Single blow.**
 1. If it is not certain as to who caused the fatal injury on the head, accused are guilty under S. 325. 37 P. R. 1914 Cr., 6 L. L. J. 268=1924 L. 555, 6 L. L. J. 317=1924 L. 654=86 I. C. 341, 29 A. 282, 86 I. C. 337.
 2. When it is not certain which of the several accused gave the fatal blow, a sentence of 5 years is proper. 1930 B. 483=129 I. C. 351=32 B. L. R. 1143.
 3. Where five persons armed with dangerous weapons made an attack upon another and death was due to a single blow inflicted by one of them, but who that one was, was not proved, they should be convicted under S. 325 read with S. 114. 1925 L. 117=86 I. C. 337=26 Cr. L. J. 753, 84 I. C. 861.
 4. Accused can be convicted under S. 304, if it is shown that there was an unlawful assembly of five or more persons whose common object was to commit an offence under S. 304 and accused was one of them. 69 I. C. 380.
 5. Two persons joined to assault a third. One assaulted him in a manner likely to cause death and the other standing by without interfering or helping deceased. He is liable under Ss. 304—34. 1929 P. 65=30 Cr. L. J. 276.
 6. One member of the unlawful assembly was a Sikh who unsheathed his *kirpan* which he was wearing and gave a fatal blow to the victim. Held, that other members were not constructively liable for causing death. 1930 L. 532=122 I. C. 721.
 7. Where the accused have been convicted under Ss. 304—149, they cannot be convicted under Ss. 325—149 for the same act, as major offence included the minor. 1925 L. 539=91 I. C. 804=27 Cr. L. J. 132.
 8. In case of concerted attack by two accused armed with deadly weapons, both are guilty of murder. It does not matter which of them attacked with the weapon. 1936 L. 341=37 Cr. L. J. 504. 52 M. 147, 1929 A. L. J. 244.
 9. Three persons came armed to take possession of the *Taur* armed with clubs, and one

Culpable Homicide (not Amounting to Murder)—(concl.)

of them who was armed with an iron shod *lathi*, inflicted fatal injury on the head of deceased. Held, he was guilty under S. 304 second part and others under S. 325. 29 P. L. R. 265=9 L. L. J. 529.

CURRENCY NOTES. See Disposal of property—3, Counterfeiting currency notes.

CUSTODY. See Detention, Discovery—5, Confession to Police—11.

CUSTOM AS DEFENCE. See Bigamy—9.

CUSTOMER.

Taking property on approval by—. See Breach of trust—12.

D.

DACOITS—(BELONGING TO A GANG OF). See Gang of Dacoits.

DACOITY. Ss. 391—395, I. P. C.

1. Abetment.

1. Where accused point out the house to be robbed and was incharge of canals of the dacoits. When dacoity was being committed he is an abettor under S. 395/109, I. P. C. 15 P. R. 1901 Cr., 21 A. 263, 16 A. 437.
2. The words of S. 397 are not such as to exclude the operations of Ss. 114 and 31, I. P. C. 82 I. C. 45=25 Cr. L. J. 1181=1925 N. 136.
3. Knowing of a design to commit a dacoity and voluntarily concealing the existence of that design, with the knowledge that such concealment will facilitate the commission of dacoity is not abetment. (1865) 4 W. R. 2 Cr.
4. A person not taking part in dacoity but bringing food to gang prior to dacoity is guilty of abetment. 1934 R. 30=35 Cr. L. J. 863.
5. Accused was present when dacoity was planned and it was his hut from which the dacoits started and to which they returned after committing dacoity. Held, he was guilty of abetment. 1903 A. W. N. 2.
6. A conspirator who stands out of a house to watch which his friends loot it, is guilty of abetment under S. 114. 1 Bom. L. R. 351.

2. Assembling for— See Assembling for committing dacoity. S. 402, I. P. C.

3. Attempt.

1. A person guilty of attempt to commit dacoity should be convicted under S. 395 and not S. 511, I. P. C. which is inapplicable. 23 A. 78, (1867) 7 W. R. 48 Cr.
2. Attempt on the part of dacoits to dig hole in the wall of a house while they intended to rob is only preparation under S. 399 and not an attempt. 23 A. 78.

4. Charge.

1. A conviction for dacoity founded on a common object not charged is not sustainable. 1924 M. 584=77 I. C. 444=25 Cr. L. J. 396.
2. An accused cannot be charged with more than three dacoities. Particular dacoity must be stated in the charge. 13 I. C. 781=13 Cr. L. J. 125.
3. Alternative charges under S. 457 and S. 395 are not bad. 31 Cr. L. J. 610.
4. Other persons besides the accused need not be referred in the charge. 12 Cr. L. J. 193.

5. Corroboration of Approver's Testimony. See Accomplice.

1. Some common things were found in the search and some other things found were claimed by the accused and not mentioned in the first information report. A sword and a gun were found which were concealed because complainant did not hold the licence. Held, there was no sufficient corroboration of approver's story. 1923 L. 385=76 I. C. 716=25 Cr. L. J. 252.
2. Where a witness stated that he identified the accused but omitted to name the dacoits in the F. I. R. Held, that it was no corroboration of approver's testimony. 114 I. C. 623=1929 N. 222=30 Cr. L. J. 331.
3. Mere fact that the accused were seen with the approver a few days before dacoity is

Dacoity—(contd.)

not material corroboration but the production of stolen property by the accused is sufficient corroboration. 1924 L. 727=82 I. C. 707=25 Cr. L. J. 1347.

4. The discovery of stolen property out of a house jointly occupied by accused and his uncle is sufficient corroboration of approver's evidence. 1923 L. 335.
5. Where articles recovered were incapable of identification, it is no corroboration of approver's testimony. 1925 L. 44=84 I. C. 1052=26 Cr. L. J. 412.
6. The only incriminating statement which the approver made was that he was offered Rs. 100 after the dacoity which he took. Held, that it was not the confession that he committed dacoity and that it could not be taken into consideration against the rest. 1926 C. 374=42 C. L. J. 496=26 Cr. L. J. 1146.

5. Direction to Jury.

1. In cases of dacoity, the Judge ought to explain to the Jury the ingredients of robbery as defined in S. 300, I. P. C. If he does not it is a real and not technical defect. 1924 O. 411=25 Cr. L. J. 1129, 25 C. 711, 39 A. 348, 30 M. 44.
2. The Judge must direct the Jury to find whether in committing dacoity the accused intended to cause wrongful gain or loss of property. (1864) W. R. 8.
3. The Judge must explain to the Jury that unless there are five or more persons, there can be no dacoity. (1903) I. Weir 446

7. Essentials.

1. An offence under S. 395 is committed only if the finding is that the number of persons concerned in the robbery is not less than five. 6 L. 24=1925 L. 337=88 I. C. 513=26 Cr. L. J. 1153, 39 A. 348.
2. When out of five one turned approver and two were acquitted, the remaining two cannot be convicted of dacoity. 1927 L. 519=28 Cr. L. J. 547.
3. Where three known and named persons were charged with dacoity along with two other unknown men and Jury acquitted one of the three. Held, that the conviction of the remaining two is not illegal. 1928 M. 144=29 Cr. L. J. 5.
4. Where Magistrate finds that there is no reliable evidence that more than four persons took part in the alleged dacoity, he can discharge them. 82 I. C. 767=25 Cr. L. J. 1375=1925 O. 233.
5. Where accused Nos. 4, 5 and 6 stood by and encouraged accused Nos. 1, 2 and 3 who were making a sort of raid on their brother's property in order to retake it. Held, that accused Nos. 4, 5 and 6 were no party to any robbery. 1922 M. 195=71 I. C. 877
6. If the robbers scared away the owner of house before they entered, the offence is complete. 1924 A. 701=83 I. C. 705.
7. A dacoity begins as soon as there is an attempt to commit robbery and a shot fired thereafter in order to keep off a rescue party and to allow a theft to be committed is an act in the committing of dacoity. 26 Cr. L. J. 1364=1925 O. 723.
8. If no property is carried off, there is no dacoity but an offence under S. 402. (1868) 9 W. R. 5.
9. It cannot avail the accused to say that no hurt was caused, when no body dared to resist the overwhelming force. 10 Bom. L. R. 632.
10. When out of six accused three were acquitted the rest were guilty under S. 392 and not S. 395. 1928 M. 144 (1)=29 Cr. L. J. 5=53 M. L. J. 732, 39 A. 348.
11. Where accused did not actually take part in dacoity, but was put in charge of a boat at a distance of 5 miles, he was not guilty of dacoity. 42 C. L. J. 496=1926 C. 374=26 Cr. L. J. 1146=42 C. L. J. 496=88 I. C. 458.
12. If accused acted under a claim of right in good faith, they would not be guilty although acted erroneously. 3 M. H. C. R. 254.
13. Accused were arrested out side Agra at mid night carrying arms concealed and none of them could give satisfactory explanation, the burden of proving that they were not there to commit dacoity was on them, when Agra was notorious for dacoity. 23 A. 124.

*Dacoity—(contd.)***8. Evidence.**

1. Where in the first information report only two dacoits are alleged to have been recognized at the time of commission of dacoity, subsequent evidence that they were all identified cannot be relied upon. 93 P. L. R. 1915=8 P. W. R. 1915 Cr.=16 Cr. L. J. 204.
2. Where evidence of identification is not reliable, accused cannot be convicted. 71 P. L. R. 1910=2 P. W. R. 1911.
3. Mere association with the dacoits may create suspicion but is no proof that the persons so associating took part in the dacoity. 43 I. C. 111.
4. Persons who remain outside the house when dacoity is committed are by no means the least guilty. 1931 O. 74=126 I. C. 498=31 Cr. L. J. 1017.
5. Dacoity cases require great caution in the question of evidence as to identification of dacoits. 39 I. C. 296, 27 P. R. 1868 Cr., 1923 L. 161=5 L. L. J. 82.
6. Mere pointing out stolen property by a dacoit is not sufficient to convict him. 23 I. C. 1004=15 Cr. L. J. 404.
7. When no stolen property is found in possession of the accused and their names not mentioned in F. I. R. and no identification parade by a Magistrate. Held, their conviction solely based upon the evidence of complainant is not sustainable. 1928 O. 417=112 I. C. 109=29 Cr. L. J. 989.
8. Dacoits assembled at the accused's hut before and after the dacoity and some stolen property was found near his hut, held he is not guilty. 1924 O. 367=81 I. C. 597=25 Cr. L. J. 949.
9. In dacoity cases evidence against each accused should be discussed separately. 76 I. C. 573=1924 R. 67=Cr. L. J. 205.
10. The Court should examine witnesses on minutest details as to the part taken by each dacoit. Mere evidence "they were all in it" is neither satisfactory nor sufficient. 6 C. W. N. 72, 38 I. C. 730.
11. The mere fact that a person started off with the dacoits does not make him liable for dacoity. 17 W. R. 50 Cr.
12. Five or more Hindus forcibly seized one ox and two cows from a Mohammadan to prevent their slaughter, Held, the accused did not act dishonestly within the meaning of S. 24, I. P. C., and hence not guilty under S. 395. 15 A. 22. See 15 A. 299.
13. When the common object of Mohammadans was to hurt Hindus wherever they meet, and rob their shops and houses, any person who is proved to have taken part in disturbance is guilty of rioting and dacoity. 1927 Oudh 70=99 I. C. 238.
14. Where accused were tried for dacoity, the fact that certain other persons were previously tried for complicity in that dacoity is irrelevant. 1927 O. 369 (2).
15. Evidence of a person who knew the accused previously and who had ample opportunity of observing the accused at the dacoity and who immediately named him to the villagers and the Police, as one of the dacoits is credible. 8 I. C. 317.
16. Where there was enough light from fire burning in the courtyard and the lanterns carried by dacoits to identify the accused and some of the stolen property was also recovered from the accused, the conviction was sound. 1923 O. 39.

9. Identification of dacoit. See Identification.

1. When complainant followed the accused on a dark night, their identification is doubtful. 1923 L. 161=5 L. L. J. 82.
2. In case of dacoity, evidence adduced as to identification should not be accepted too readily, but should be looked with great caution. 1932 O. 317=139 I. C. 751=32 Cr. L. J. 920, 4 O. L. J. 83.
3. Identification made at night during dacoity when blows are struck and people are terrorised is generally of little value. 1927 C. 820=23 Cr. L. J. 874.
4. In dacoity cases no Court will convict the accused unless identified in jail soon after his arrest. 1924 A. 445=25 I. C. 245=26 Cr. L. J. 301.

*Dacoity—(contd.)***10. Judgement.**

In a case of dacoity, the Judge should give a general outline of the case, the course of the investigation, arrest of the various accused, and then the case for and against each accused should be dealt with in detail and he should arrive at a conclusion with regard to each accused. 2 Bur. L. J. 199.

11. Judicial notice of.—

Court can take judicial notice of the fact that at a particular time in a particular district dacoities or any other crimes were rife. 23 A. 124.

12. Jurisdiction:

1. Where dacoity was committed in a Native State and part of the stolen property was found in British territory, the offence of dacoity could not be tried in British India although one under S. 411, I. P. C., could be tried. 1 B. 50, 10 B. 186, 6 C. 307, 1 M. 171, *Cont.* 5 B. 338 (345), 28 A. 266, 37 P. R. 1881.
2. Accused, who were foreign subjects committed dacoity outside British India. They had resided for three years in British territory. Held, they could not be tried in British India. 37 P. R. 1881 Cr., 1 P. R. 1885 Cr.

13. Making preparation for.— S. 399, I. P. C.

1. Mere assemblage does not amount to preparation. Where the accused armed with weapons actually proceeded to the scene of occurrence, they are guilty under S. 399. 9 L. 550=1928 L. 193, 6 P. R. 1915 Cr., 41 Cr. 350.
2. Persons hiding near a village armed with gun which they used when pursued by villagers, are guilty under S. 399. 27 Cr. L. J. 1161=97 I. C. 745.
3. It is not necessary that the persons making preparation should be five or more. But it is necessary that the raid for which they were making preparation was to be committed by five or more. 71 I. C. 360=24 Cr. L. J. 136.
4. Mere discussing the possibilities of committing dacoity and various suggestions to loot is not sufficient. 32 I. C. 833=17 Cr. L. J. 97.
5. S. 402 applies to mere assembling without further preparation. S. 399 applies to a case where such preparation is proved in addition. 41 C. 350.
6. Attempt on the part of the dacoits to dig a hole in the wall of a house which they intended to rob, is only preparation under S. 399 and not an attempt. 23 A. 78.
7. Making preparation should be by some overt act like collection of arms, men, provisions etc., along with circumstances pointing to the intention. 6 P. R. 1915 Cr.
8. A group of persons were warming themselves round a fire in the open field and two of them were armed. Some of them ran away when headman's armed party came there. Held, it did not amount to making preparation for dacoity 1935 R. 294.
9. Accused were found in a room armed with guns, spears, torches, etc., one of them fired at the Sub-Inspector when he opened the room. Held, that the offence under S. 399 was proved and the burden of proving that they were there for some lawful purpose was on the accused 1935 O. 471=156 I. C. 819=36 Cr. L. J. 1003, 22 C. 391, 23 M. 159 and 23 A. 124 Appr. 32 I. C. 833=1916 L. 380 doubted.
10. Where persons from long distances are found in company of dacoits and are unable to account for their presence, inference that they belonged to the party is inevitable. 1933 O. 53=34 Cr. L. J. 101.

14. Presumption from possession of stolen property.

1. Where persons are found within six hours of the commission of dacoity, with portion of the plundered property, the presumption of law is that they are participators in the dacoity. (1865) 3 W. R. 10 Cr.
2. Where a prisoner is apprehended eight days after a dacoity with part of plunder in his possession, he may be charged with dacoity or receiving property dishonestly. (1866) 5 W. R. 66 Cr.

15. Procedure.

1. A person convicted of dacoity cannot be convicted also under Ss. 411—412, I. P. C.

Dacoity—(contd.)

(1870) 13 W. R. 42 Cr.

2. Six dacoities were committed in one night. More than three cannot be tried together. 1934 N. 325, 25 M. 61 Foll.

16. Receiving property stolen in dacoity. S. 412, I. P. C.**17. Sentence.**

1. A person found guilty of dacoity with torture should not in the matter of sentence be treated leniently. 56 I. C. 771.
2. When dacoity is committed with cruelty, additional sentence of whipping is proper. 1921 A. 408=61 I. C. 525=22 Cr. L. J. 397.
3. Where the accused were first offenders and had means of livelihood but acted under the transitory spirit of lawlessness, a sentence of transportation and of ten years is too severe. 1923 O. 39=9 O. L. J. 500.
4. A sentence of transportation must be for life or for a period not exceeding 10 years, if given in lieu of imprisonment. 31 P. R. 1903 Cr.
5. If dacoity is committed, when accused were smarting with indignation against the outrages upon their sacred places, a lenient sentence should be given. 1926 O. 281=98 I. C. 542=290 C. 336.
6. A sentence of 5 years when a gun was fired to scare away villagers is inadequate. 25 Cr. L. J. 785.
7. Where the dacoity is planned and is of the worst description, deterrent punishment is necessary. 1935 C. 580=39 C. W. N. 188.
8. Where accused are possessed of superior education and social status, a sentence of imprisonment will be irksome and deterrent. Their sentences were enhanced to six years' imprisonment. 1935 R. 491.
9. Seven years for an offence under Ss. 392-75 is not too severe a sentence. 1934 O. 122 (1)=35 Cr. L. J. 566.
10. Accused committed two dacoities and was given separate sentences. Held, separate sentences can be awarded. The sentence was reduced. 1934 R. 122.

18. Similar acts of—

1. In a charge of dacoity evidence of other dacoities committed by the accused is inadmissible either under S. 24 or S. 15, Evidence Act. 13 Cr. L. J. 125.
2. Evidence of the commission of other offences like theft does not show an intention to commit a different kind of offence, such as dacoity and is not therefore relevant as showing the existence of any relevant state of mind. 1930 B. 157=32 Bom. L. R. 324=31 Cr. L. J. 1168=127 I. C. 189.
3. Where the accused pleads that his presence at the spot where dacoity was committed, was innocent or accidental, evidence of previous armed raids by one or more of the members of the gang is admissible. 71 I. C. 360=24 Cr. L. J. 136.

19. With attempt to cause death or grievous hurt. S. 397, I. P. C.

1. A *lathi* or *dag* cannot be described as deadly weapon within the meaning of S. 397. 19 P. W. R. 1912 Cr., 117 P. L. R. 1912, 1927 L. 149=99 I. C. 49=28 Cr. L. J. 17. See 1925 N. 136=82 I. C. 45.
2. The words 'uses deadly weapon' in S. 397 include the carrying of a weapon for overawing the person robbed. 14 I. C. 651=13 Cr. L. J. 257, 1931 A. 367=130 I. C. 640=32 Cr. L. J. 567, 1933 L. 35=34 Cr. L. J. 45, 1926 Sind 150=27 Cr. L. J. 334.
3. Accused is not guilty under S. 397 because one of his associates carried a deadly weapon. 20 I. C. 416=14 Cr. L. J. 432.
4. S. 397 does not constitute a separate offence. It merely regulates punishment already provided for dacoity. 25 Cr. L. J. 259=1923 L. 389 (2)=76 I. C. 819, 47 A. 59, 51 C. 265.
5. A person charged under S. 397 can be convicted under S. 326. 37 M. 237.
6. Accused is liable under S. 397 if his confederate caused the grievous hurt. 21 A.

Dacoity—(cont'd.)

- 20A, 28 A. 404, 13 I. C. 282, 51 C. 265.
7. If some of the accused use deadly weapons, all are liable. S. 34, I. P. C., applies to such a case. 1923 L. 104=68 I. C. 817 *Cont.* 27 Cr. L. J. 1098, 8 L. L. J. 454, 28 Cr. L. J. 17=156, 4 O. W. N. 450, 3 O. C. 263.
 8. The highest punishment under S. 397 can be inflicted only on the offender who actually uses a deadly weapon. S. 34 cannot be applied to other offenders to make them liable to enhanced punishment. 62 I. C. 865=22 Cr. L. J. 593, 28 A. 404, 19 A. W. N. 189, 22 M. L. J. 186, 51 C. 265, 1925 N. 136=82 I. C. 45=25 Cr. L. J. 1151.
 9. The sentence for four years under S. 397 must be enhanced to seven years. 106 I. C. 451=29 Cr. L. J. 35=1927 L. 516.
 10. Accused and another attacked a man and there was no evidence as to who broke the finger, they were not liable to enhanced punishment under S. 397. 3 O. C. 263.
 11. Accused fractured one of the arms of a woman by striking stick blows, he was guilty under S. 397, when he took her pony and rode off. 117 P. L. R. 1912.
 12. When accused were endeavouring to break into a house and used violence while attempting to escape. Held, they were not guilty under S. 397. 23 A. 78.
 13. Mere levelling of revolver without firing is sufficient. 1932 O. 103.
 14. If dacoity was a brutal one a sentence of 7 years was not severe. 130 I. C. 640=1931 A. 367=32 Cr. L. J. 567=1931 Cr. C. 623.
 15. S. 34 does not apply to an offence under S. 397. 130 I. C. 640=1931 A. 367, 28 A. 404, 1924 C. 643=51 C. 265.
 16. S. 397 covers the case of a person who displays a deadly weapon to frighten others. It is not confined to cases where such weapons are used actually for causing injury. 1934 L. 522. 1933 N. 252, 1924 C. 643=51 C. 265, 1925 A. 305.
 17. Charges under Ss. 397—393—394 cannot be joined unless they form part of the same transaction. 1933 L. 512=34 Cr. L. J. 402.
20. **With murder.** See Dacoity with murder. S. 396, Penal Code.
21. **When armed with deadly weapon.** S. 398 I. P. C.
1. S. 398 is not a substantive offence. It regulates punishment. 52 B. 168.
 2. It applies to attempt to commit robbery or dacoity and has no application when they have been actually committed. 7 Luck. 543.
 3. It must be proved that accused carried a deadly weapon and not merely that one of his companions carried one. 33 Cr. L. J. 460.
 4. S. 34 has no application to this section. 51 C. 265.
 5. A person cannot be convicted of abetment of this offence. The charge was altered in appeal to one under Ss. 393—114 (1926) 5 B. L. J. 103.

DACOITY WITH MURDER. S. 396, I. P. C.**1. Abetment.**

1. If a person is not found guilty of the substantive offence of dacoity, but only of its abetment, he cannot be held constructively liable for murder committed by the party. 15 P. R. 1901 Cr., 2 Bom. L. R. 325, 4 P. R. 1900 Cr., 1927 L. 149=99 I. C. 49, 51 C. 265.
2. If a person pointed out the house to be robbed or held the camels of the dacoits at a distance, he is guilty of abetment. 15 P. R. 1901 Cr., 4 P. R. 1900 Cr.

2. Burden of Proof.

The burden of proving all the ingredients of offence under S. 396 is on the prosecution. 51 I. C. 685=20 Cr. L. J. 525.

3. Charge.

1. Separate charges for murder and dacoity are unnecessary. The accused should be charged under S. 396. 1925 L. 337=6 L. 24.

Dacoity—(contd.)

(1870) 13 W. R. 42 Cr.

2. Six dacoities were committed in one night. More than three cannot be tried together. 1934 N. 325, 25 M. 61 Foll.

16. Receiving property stolen in dacoity. S. 412, I. P. C.

17. Sentence.

1. A person found guilty of dacoity with torture should not in the matter of sentence be treated leniently. 56 I. C. 771.
2. When dacoity is committed with cruelty, additional sentence of whipping is proper. 1921 A. 408=61 I. C. 525=22 Cr. L. J. 397.
3. Where the accused were first offenders and had means of livelihood but acted under the transitory spirit of lawlessness, a sentence of transportation and of ten years is too severe. 1923 O. 39=910, L. J. 500.
4. A sentence of transportation must be for life or for a period not exceeding 10 years, if given in lieu of imprisonment. 31 P. R. 1903 Cr.
5. If dacoity is committed, when accused were starting with indignation against the outrages upon their sacred places, a lenient sentence should be given. 1926 O. 281=98 I. C. 542=290 C. 336.
6. A sentence of 5 years when a gun was fired to scare away villagers is inadequate. 25 Cr. L. J. 785.
7. Where the dacoity is planned and is of the worst description, deterrent punishment is necessary. 1935 C. 580=39 C. W. N. 188.
8. Where accused are possessed of superior education and social status, a sentence of imprisonment will be irksome and deterrent. Their sentences were enhanced to six years' imprisonment. 1935 R. 491.
9. Seven years for an offence under Ss. 392-75 is not too severe a sentence. 1934 O. 122 (1)=35 Cr. L. J. 566.
10. Accused committed two dacoities and was given separate sentences. Held, separate sentences can be awarded. The sentence was reduced. 1934 R. 122.

18. Similar acts of—

1. In a charge of dacoity evidence of other dacoities committed by the accused is inadmissible either under S. 24 or S. 15, Evidence Act. 13 Cr. L. J. 125.
2. Evidence of the commission of other offences like theft does not show an intention to commit a different kind of offence, such as dacoity and is not therefore relevant as showing the existence of any relevant state of mind. 1930 B. 157=32 Bom. L. R. 324=31 Cr. L. J. 1168=127 I. C. 189.
3. Where the accused pleads that his presence at the spot where dacoity was committed, was innocent or accidental, evidence of previous armed raids by one or more of the members of the gang is admissible. 71. I. C. 360=24 Cr. L. J. 136.

19. With attempt to cause death or grievous hurt. S. 397, I. P. C.

1. A *lathi* or *dang* cannot be described as deadly weapon within the meaning of S. 397. 19 P. W. R. 1912 Cr., 117 P. L. R. 1912, 1927 L. 149=99 I. C. 49=28 Cr. L. J. 17. See 1925 N. 136=82 I. C. 45.
2. The words 'uses deadly weapon' in S. 397 include the carrying of a weapon for overawing the person robbed. 14 I. C. 651=13 Cr. L. J. 257, 1931 A. 367=130 I. C. 640=32 Cr. L. J. 567, 1933 L. 35=34 Cr. L. J. 45, 1926 Sind 150=27 Cr. L. J. 334.
3. Accused is not guilty under S. 397 because one of his associates carried a deadly weapon. 20 I. C. 416=14 Cr. L. J. 432.
4. S. 397 does not constitute a separate offence. It merely regulates punishment already provided for dacoity. 25 Cr. L. J. 259=1923 L. 389 (2)=76 I. C. 819, 47 A. 59, 51 C. 265.
5. A person charged under S. 397 can be convicted under S. 326. 37 M. 237.
6. Accused is liable under S. 397 if his confederate caused the grievous hurt. 21 A.

Dacoity—(concl'd.)

263, 28 A. 404, 13 I. C. 282, 51 C. 265.

7. If some of the accused use deadly weapons, all are liable S. 34, I. P. C., applies to such a case. 1923 L. 104=68 I. C. 817 *Cont.* 27 Cr. L. J. 1098, 8 L. L. J. 454, 28 Cr. L. J. 17=156, 4 O. W. N. 459, 3 O. C. 263.
8. The highest punishment under S. 397 can be inflicted only on the offender who actually uses a deadly weapon. S. 34 cannot be applied to other offenders to make them liable to enhanced punishment. 62 I. C. 865=22 Cr. L. J. 593, 28 A. 404, 19 A. W. N. 186, 22 M. L. J. 186, 51 C. 265, 1925 N. 136=82 I. C. 45=25 Cr. L. J. 1181.
9. The sentence for four years under S. 397 must be enhanced to seven years. 106 I. C. 451=29 Cr. L. J. 35=1927 L. 516.
10. Accused and another attacked a man and there was no evidence as to who broke the finger, they were not liable to enhanced punishment under S. 397. 3 O. C. 263.
11. Accused fractured one of the arms of a woman by striking stick blows, he was guilty under S. 397, when he took her pony and rode off. 117 P. L. R. 1912.
12. When accused were endeavouring to break into a house and used violence while attempting to escape. Held, they were not guilty under S. 397. 23 A. 78.
13. Mere levelling of revolver without firing is sufficient. 1932 O. 103.
14. If dacoity was a brutal one a sentence of 7 years was not severe. 130 I. C. 640=1931 A. 367=32 Cr. L. J. 567=1931 Cr. C. 623.
15. S. 34 does not apply to an offence under S. 397. 130 I. C. 640=1931 A. 367, 28 A. 404, 1924 C. 643=51 C. 265.
16. S. 397 covers the case of a person who displays a deadly weapon to frighten others. It is not confined to cases where such weapons are used actually for causing injury. 1934 L. 522. 1933 N. 252, 1924 C. 643=51 C. 265, 1925 A. 305.
17. Charges under Ss. 397—393—394 cannot be joined unless they form part of the same transaction. 1933 L. 512=34 Cr. L. J. 402.

20. With murder. See Dacoity with murder S. 396, Penal Code.

21. When armed with deadly weapon. S. 398 I. P. C

1. S. 398 is not a substantive offence. It regulates punishment. 52 B. 168.
2. It applies to attempt to commit robbery or dacoity and has no application when they have been actually committed. 7 Luck 543.
3. It must be proved that accused carried a deadly weapon and not merely that one of his companions carried one. 33 Cr. L. J. 460.
4. S. 34 has no application to this section. 51 C. 265.
5. A person cannot be convicted of abetment of this offence. The charge was altered in appeal to one under Ss. 393—114 (1926) 5 B. L. J. 103.

DACOITY WITH MURDER. S. 396, I. P. C.

1. Abetment.

1. If a person is not found guilty of the substantive offence of dacoity, but only of its abetment, he cannot be held constructively liable for murder committed by the party. 15 P. R. 1901 Cr., 2 Bom. L. R. 325, 4 P. R. 1900 Cr., 1927 L. 149=99 I. C. 49, 51 C. 265.
2. If a person pointed out the house to be robbed or held the camels of the dacoits at a distance, he is guilty of abetment. 15 P. R. 1901 Cr., 4 P. R. 1900 Cr.

2. Burden of Proof.

The burden of proving all the ingredients of offence under S. 396 is on the prosecution. 51 I. C. 685=20 Cr. L. J. 525.

3. Charge.

1. Separate charges for murder and dacoity are unnecessary. The accused should be charged under S. 396. 1925 L. 337=6 L. 24.

Dacoity with Murder—(contd.)

2. When out of a number of persons charged with dacoity, half are acquitted, the charge does not necessarily fail. 12 Cr. L. J. 193, 31 Cr. L. J. 112.
3. Where death was the result of blows causing rupture of liver and fracture of four ribs and accused took away lot of jewellery. Held, it is proved that accused intended to kill and the offence fell under S. 460. 1 L. L. J. 252.
4. Although charge under S. 396 has incidental reference to charge of murder, yet a conviction of murder will not be if there is no mention of S. 302 in the charge. 1933 C. 294.

4. Essentials and Evidence.

1. A shot fired to keep off rescue party, so that theft may be committed, is an act committed in committing dacoity. 1925 O. 723=26 Cr. L. J. 1364.
2. A shot fired in the compound of the house raided, at the time when dacoits were making good their escape falls under S. 396. 1923 L. 329=76 I. C. 1039.
3. Accused sent to jail for not being able to furnish security under S. 110, Cr. P. C., is irrelevant in proceedings under S. 396. A presumption under S. 144, Evidence Act will not alone justify fixing a person with more than knowledge that the goods were obtained by dacoity. 59 I. C. 204=22 Cr. L. J. 60.
4. For S. 396 it is not necessary to prove that the murder was committed jointly by all the accused. 91 I. C. 233=1926 O. 245=27 Cr. L. J. 257.
5. Where it is established that dacoity was committed by five persons and one of whom committed murder, the four accused are guilty under S. 396 although the fifth accused is not traced and identified. 1930 L. 263=31 Cr. L. J. 112.
6. Murder committed by dacoits while retreating or carrying away stolen property is murder committed in the commission of dacoity. 1925 L. 142=81 I. C. 188=25 Cr. L. J. 700, 2 L. 275=1921 L. 115=63 I. C. 623, 17 M. L. J. 118, 2 Bom. L. R. 325, 25 Cr. L. J. 319.
7. To constitute this offence, it must be proved (i) that dacoity is the joint act of the accused, (ii) that murder was committed in the course of commission of dacoity. 29 C. L. J. 325, 6 C. W. N. 72.
8. If during dacoity a dacoit commits murder, the other members are guilty of murder, although they did not participate in it or although it was not committed in their presence. 17 A. 86, 6 Bom. L. R. 248, 44 P. L. R. 1904 Cr.
9. If the dacoits are not carrying stolen property and are interrupted by villagers and some of them, in order to facilitate the escape, killed one of the pursuing party. Held, this section did not apply. 26 A. W. N. 47.
10. Where death was the result of blows causing rupture of liver and fracture of four ribs and accused took away lot of jewellery. Held, it is not proved that accused intended to kill and offence fell under S. 460. 1 L. L. J. 252.
11. In a case under S. 396, I. P. C., the result of proceedings taken under S. 110, Cr. P. C., is not admissible. 59 I. C. 204=22 Cr. L. J. 60.
12. If in the commission of dacoity a murder is committed, it matters not whether a particular dacoit was inside or outside the house, so long as the murder was in the commission of dacoity. 17 A. 86, 6 Bom. L. R. 248, 4 P. R. 1960 Cr.
13. A dacoit kills a person pursuing him, the murder is committed while committing dacoity. 1932 C. 818=33 Cr. L. J. 722=139 I. C. 213.
14. When shooting was resorted to for removing opposition to commit dacoity, all persons are guilty under Ss. 396—149. 1934 R. 30=35 Cr. L. J. 863.
15. S. 396 is applicable when murder is committed for facilitating the escape of the perpetrators of the crime while retreating. 1935 O. 190=153 I. C. 973.
16. If a murder is committed while committing dacoity, S. 149, I. P. C., read with S. 149, 1935 O. 190
17. S. 397 does not provide that if a gun is used at a dacoity by a person or persons unknown all the dacoits must be punished with at least seven years imprisonment.

Dacoity with Murder—(continued.)

The section does not provide joint liability as S. 149 does. 1935 A. 132=154 I. C. 1015.

18. Where the shots were fired not on the upper part of the body but on the lower part only. Held, that intention of the dacoit was not to kill and they were guilty under S. 395 and not S. 396. 1935 C. 580=39 C. W. N. 188.
19. Murder was committed by a dacoit in attempting to carry away stolen property soon after dacoity. Held, every one of the dacoits is liable to be punished for the same even though they have not abetted or taken part in it. 1933 L. 977, 2 L. 275=1921 L. 115, 1923 L. 322, 1925 L. 142=25 Cr. L. J. 700 and 17 A. 86 Rel. on.

5. Jurisdiction.

Dacoity was committed in British India but murder was committed soon after in a Native State while attempting to carry away stolen property. Held, that British Indian Courts had jurisdiction to try the offence under S. 396, I. P. C., without certificate. 1933 L. 977=157 I. C. 2.

6. Sentence.

1. Separate sentences can be awarded to run consecutively for different dacoities and to these can be added a consecutive sentence of participation in conspiracy. 5 O. W. N. 985=1928 O. 507.
2. If accused are convicted under Ss. 396—502 read with S. 149 the minimum sentence is transportation for life. 1935 O. 190=153 I. C. 978, 1933 A. 31.
3. Sentence of 14 years' transportation is illegal. 1934 O. 354.
4. Murder committed not in self defence, nor in retreat but wantonly to intimidate the owner of the house and the villagers, maximum sentence is proper. 1935 R. 504.
5. Reasons should be given for not imposing death penalty. 1933 R. 61 (1).

DAILY FINE. See Fine—4.**DAIS.**

1. Witnesses are not to sit on dais while giving evidence. 63 I. C. 461=22 Cr. L. J. 669.
2. Court Inspector should not sit on dais, as it raises doubt about the impartiality of the Judge. 12 Cr. L. J. 579.
3. It is undesirable that the Magistrate whose order is under appeal or who promoted prosecution or the Police Officer should sit on the bench beside or converse privately in Court with the Judge hearing the appeal. 8 Bom. H. C. (Cr. C.) 126.

DAM. See Right of private defence—10.**DAMAGING ONE'S OWN PROPERTY. See Mischief—14.****DANG. See Deadly weapon—1.****DARK NIGHT. See Identification—21.****DATE OF HEARING.**

1. When date of hearing is accelerated and the accused's Counsel is unable to attend hearing on the altered date, the accused is prejudiced. 14 P. R. 1898 Cr.
2. When a case is fixed for a future date, it cannot be heard at an earlier date without notice to the accused. 1929 N. 42=112 I. C. 676=29 Cr. L. J. 1092=16 P. W. R. 1919 Cr.

DAY TO DAY HEARING.

When there was delay in disposal of a case, it was ordered to be heard from day to day. 1927 L. 66 (1)=99 I. C. 596=28 Cr. L. J. 164=27 P. L. R. 705.

DEAD BODY.

1. Cremation of—. See Public Nuisance—10.
2. Identification of—. See Identification of dead body.
3. Post-mortem of—. See Post-mortem.

Dead Body—(concl.)

4. *Putrification of*— See *Putrification*.

5. *Rigor mortis*. See *Rigor mortis*.

DEADLY WEAPON.

1. *Bamboo stick, dang, etc.*

1. *Lathi* or *dang* is not a deadly weapon. 1927 L. 149=28 Cr. L. J. 17=99 I. C. 49, 19 P. W. R. 1912 Cr., 8 P. R. 1892 Cr.
2. *Lathi* is not a deadly weapon unless and until it is used on the head or on some vital part. 12 Cr. L. J. 103.
3. In this country as many murders are committed by sticks, therefore they are deadly weapons. 82 I. C. 45, 1925 N. 136=25 Cr. L. J. 1181.
4. The question whether *lathi* is a deadly weapon is a question of fact to be determined by the circumstances of each case. 15 A. 19.
5. Bamboo sticks two inches in thickness are deadly weapons, if used on a vulnerable part of the body. 1929 M. W. N. 583.

2. *Carried by some*. See Ss. 34—397, I. P. C.

3. *Nature and use of*— See *Murder*—84.

DEAF AND DUMB. S. 341, Cr. P. C. See *Reference*. See *Witness*.

1. If the deaf and dumb accused understands the character of his criminal act, he is liable to punishment. 40 B. 598, 10 L. 566, 1927 L. 799, 3 Bom. L. R. 371.
2. When deaf and dumb persons are on trial, some means of communication should be attempted. 8 Bom. L. R. 849.
3. Where deaf and dumb accused was found guilty of attempt to commit suicide and made certain signs indicating his guilt, he was sentenced to a day's imprisonment. 25 Bom. L. R. 43=1923 B. 194=72 I. C. 349=24 Cr. L. J. 349.
4. Magistrate cannot pass a sentence against a deaf-mute. 37 P. R. 1859 Cr., 2 Weir 401.
5. A deaf-mute should not be tried summarily. 8 Bom. L. R. 849.
6. If the accused does not understand proceedings, he should be discharged in petty cases and referred to Local Government in other cases. 1 L. 260.
7. In a case of deaf and dumb accused charged with murder, the case should be reported to High Court. 13 P. R. 1901 Cr., 35 P. R. 1885, 37 P. R. 1889.
8. A deaf and dumb was convicted on his confession indicated by signs, he was sentenced by High Court to one day's simple imprisonment. 1923 B. 194=72 I. C. 349=24 Cr. L. J. 349.
9. If a deaf and dumb accused convicted under S. 454, I. P. C., is not able to understand the proceedings, his case should be reported to the Local Government and should be detained in custody pending such orders. 1935 O. 414=36 Cr. L. J. 880=154 I. C. 85, 37 P. R. 1889, 13 P. R. 1911 Rel. on, 22 W. R. 35 Cr. and 22 W. R. 72 Cr. Ref.
10. If a deaf and dumb accused is found in possession of stolen property and proof as to knowledge of accused regarding the nature of property is not available, he is not guilty. 1935 P. 451.

DEATH. See *Abetment*, *Culpable homicide*, *Murder*. Ss. 45—176, Cr. P. C.

DEATH BY DRAGGING BY THE NECK.

Accused put his turban round the neck of a boy on his refusal to accompany him to a place and dragged him about 60 yards, who died. Held, that an offence under S. 302 and not under S. 304 A. or S. 304 was committed, as grave hurt was not the natural consequence of his act. 1931 L. 375 32 Cr. L. J. 124.

DEATH BY NEGLIGENCE. S. 304-A, Penal Code.

1. *By accidents from Motor-cars.* See *Accident*, S. 3, *Motor Vehicles Act*.

1. Where two drivers of motor cars caused a collision by driving their cars in opposite directions and several passengers were killed. Held, that the offence under S. 304-A, and not under S. 304, was committed. 1931 M. W. N. 411.

Death by Negligence—(contd.)

2. The mere fact that a driver lost his head is not of itself sufficient to absolve him, unless an unforeseen emergency suddenly occurred, which made him lose his presence of mind or rendered him incapable of fully exercising his faculties. 28 Cr. L. J. 351 (b) - 1927 L. 165 = 28 P. L. R. 99 - 100 I. C. 831.
3. Overloading a lorry is not a rash and negligent act within S. 304-A., I. P. C. 1932 L. 366 = 137 I. C. 262 = 33 Cr. L. 436.
4. Driving motor car slowly at night along a road under repairs where persons were sleeping and who were killed is not an offence under S. 304-A. 35 C. 333.
5. If the car is driven on the wrong side, horn is not blown and the driver accelerated the speed before actually clearing up a stationary tram car and in so doing fractured the head of boy alighting from the rear of the tram car, accused is guilty under S. 304-A. 1928 B. 208 = 111 I. C. 657 = 29 Cr. L. J. 897.
6. Where one of the hunting party accidentally shot his companion instead of the game, the firing was neither rash nor negligent within S. 304-A. 1927 L. 880 = 29 P. L. R. 45 = 9 L. L. J. 482.
7. If a motor-car goes off a road and dashes into a tree it is evidence of negligence unless the driver explains the circumstances, which were beyond his control. Accused was convicted under S. 304-A. and sentenced to 4 months. 1934 M. 209 = 35 Cr. L. J. 691 = 148 I. C. 573.
8. Driving car recklessly until it came so close to pedestrian that it is impossible to avoid collision, amounts to rash and negligent driving. Mere negligence of pedestrian is not sufficient. 1935 N. 200, 55 A. 263 = 1933 A. 232 Dist., 1931 A. L. J. 770.

2. By beating a child.

To kick a girl of tender age with such force as to produce rupture of the abdomen in a healthy subject, appears to be an act of such a character that no reasonable man could be ignorant of the likelihood of its causing death. 4 C. 764

3. By believing a person to be ghost. Mistake of fact

1. Where a person believing in good faith that the object of his assault was not a human being but a ghost, caused fatal injuries on another which resulted in the death of the latter, it was held that in view of S. 79 of the Penal Code, the accused was not guilty of an offence under this section. 1926 L. 554 = 28 Cr. L. J. 39 - 99 I. C. 71.
2. Where the accused entertained a belief that a stooping child whom he caught sight of in the early gloaming was a spirit or demon, the child being in a place which the accused and his fellow villagers deemed to be haunted, and acting on this belief caused the death of the child by blows he inflicted before he discovered his mistake, it was held that the accused was guilty under S. 304-A. 11 P. R. 1888 Cr.
3. Where devil-dancers branded the wife with hot ladle with the consent of husband they were guilty under S. 326. 1935 A. 282.

4. By charm.

1. Administering poison to another believing it to be a charm for making the other man poor falls under S. 304-A. 31 A. 290, 1924 P. 635 = 25 Cr. L. J. 449 = 77 I. C. 801.
2. Accused professed to secure immunity from snake-bite by tattooing another and caused him to be bitten by snake from which he died. Accused is guilty under S. 304-A. 64 I. C. 843.
3. Accused gave hard beating to another in order to turn ghost out of her, in consequence of which she died. Accused was guilty under S. 304-A. 44 I. C. 679.
4. The accused believed that the immunity of his child would be obtained by offering it to crocodile, who would take it away and return it. But the crocodile never returned the child. He was guilty under S. 304-A. 62 I. C. 414 = 25 C. W. N. 670.

5. By excessive sexual intercourse.

1. A person who has sexual intercourse with his minor wife and causes her death is liable under S. 304-A. 42 I. C. 731 = 18 Cr. L. J. 1003.
2. Accused caused the death of his wife who was only 11 years 3 months by excessive sexual intercourse. He was held guilty under S. 338, I. P. C. 18 C. 49.

*Death by Negligence—(contd.)***6. By love potion (poison).**

1. The accused gave white powder to a woman to administer it to one I., so that she would become richer. Four persons died as the powder was arsenic. Accused was guilty under S. 304-A. 31 A. 290, 60 P. R. 1887 Cr.
2. A wife administering love potion to her husband which was given to her by her mother, to stimulate his passions is guilty under S. 304-A., when the powder turned out to be arsenic. 39 C. 855, 17 Bom. L. R. 217, 25 Cr. L. J. 449, 19 Bom. L. R. 34.
3. Mere administering of love potion is no offence. But where the wife administers it to her husband, at the instance of his enemy without due care and caution or any enquiry as to what really is, she is guilty under S. 304-A. 1924 P. 635=77 I. C. 801.
4. Wife administered poison to her husband at the instance of her paramour, but she did not know what it was, till she saw the effect, she was guilty under S. 304-A. 60 P. R. 1887 Cr., 8 P. R. 1869, 35 P. R. 1884 Cr.

7. By medical man.—Unskilful treatment.—See Wound—17.

1. If a medical man whether licensed or unlicensed administers to a patient a poisonous medicine to cure a disease and it kills the patient, he is guilty under S. 304-A. 42 A. 272.
2. Accused cut out the piles with ordinary knife which caused profound bleeding and death was caused, the accused was guilty. 14 C. 566, 5 C. 351.
3. An unqualified person in charge of medicine instead of giving quinine, gave strychnine hydrochloride and seven men died. Held, he was guilty. 42 A. 272.

8. By Railway servant.

1. A Railway servant disobeyed the instruction to move some trucks on the incline and a cooly was killed while stopping it. He was guilty under S. 304-A. 6 A. 248.
2. An engine driver failed to sound whistle and a boy painting waggon was killed. He was guilty. (1894) Unrep. Cr. C.
3. B an Assistant Station Master in disobedience to rules wrote out a conditional line clear and guard without his knowledge tore it and gave it to the engine-driver. Collision followed. Held, B was not guilty. But guard was guilty. 32 C. 73.

9. By shooting.

1. Accused were practising target shooting at a place near a public road. One of the bullets killed a person. Held, they were guilty, 13 C. W. N. 362=36 C. 302.
2. Where one of the hunting party shot his companion instead of game, he was not guilty. 1927 L. 880=29 P. L. R. 45=9 L. L. J. 482.
3. Sub-Inspector firing four shots in air while running on uneven ground is guilty under S. 304-A. when a person died of injuries. Sentence of fine was half sufficient. 1933 R. 326=147 I. C. 60.

10. By unloading pistol.

Accused, knowing that a pistol was loaded, unloaded it negligently and in so doing killed another. He is liable under S. 304-A. 1930 L. 462=32 Cr. L. J. 463.

11. Contributory negligence.

1. If the proximate cause is the negligence of the accused contributing negligence is no defence. 1925 Sind. 233=92 I. C. 433=18 S. L. R. 199.
2. The fact that deceased in part contributed to his own death by his negligence does not exonerate the accused from the consequences of his negligent act. 6 A. 248, 16 A. 472., 22 P. R. 1905 Cr.
3. A guard failed to give signal to driver to sound the whistle before starting. The driver started the train without whistle and a baby working on the line was run over. The guard was guilty under S. 304-A. (1894) B. P. R. 271.
4. Accused sent fire works by train under the false declaration that boxes contained iron locks. The box was dropped by a cooly when it exploded and killed him. It was argued for the accused that if the cooly had not negligently dropped the box, the accident would not have occurred. The Court holding that contributory negli-

Death by Negligence—(contd.)

gence was out of place in criminal cases, found the accused guilty under S. 304-A. 22 P. R. 1905 Cr.

5. The fact that the deceased was standing on the brink of a precipice, down which he fell by push given by the accused does not exonerate him because of the perilous situation in which the deceased had already placed himself. 33 P. R. 1889. Cr.
6. If accused is charged with contributing to the death of the deceased by his negligence, it matters not whether he was deaf or drunk or negligent or in part contributed to his own death. 6 M. H. C. App. 31.
7. Death should be the direct result of a rash and negligent act of the accused. The act must be the proximate and efficient cause without the intervention of victim's negligence. 55 A. 263=1933 A. 232, 1935 N. 200.

12. Criminal Act.—Applicability of S. 304-A.

1. The word 'act' signifies that the act in doing which rashness or negligence is committed is a lawful act but not a criminal act. 12 M. 56. (1897—1901) 1 U. B. R. 314, *Cont.* 1934 M. W. N. 856.
2. Acts probably or possibly involving danger to others but which in themselves are not offences may be offences under Ss. 336, 337, 338 or 304-A. 4 C. 764.
3. Accused killed his mother by beating and kicking her. Held, he was guilty under S. 304 and that 304-A. had no application. (1871-1874) 7 M. H. C. R. 119.
4. Accused struck the deceased several blows on the nape of the neck and the spine was fractured. Held, he was guilty under S. 304 and not S. 304-A. 12 M. 56
5. S. 304-A. is not applicable to cases of death caused by direct violence intended to cause bodily injury. 34 P. R. 1887 Cr.

13. Essentials and Evidence.

1. A Police Officer who was once fired at by thieves received a report that there were some near about. He found a man crawling under a tree and killed him. He was guilty under S. 304-A. (1881) 1 A. W. N. 156.
2. Accused assaulted an old man causing several fractures. Knowledge that death would be caused must be presumed 1923 L. 516=77 I. C. 489.
3. Accused in trying to hit a woman accidentally hit a child carried by her and killed it. He was guilty under S. 304-A. 1921 L. 297=4 L. L. J. 487.
4. The accused who is arraigned with negligence cannot claim the benefit of an error of judgment when he exercised none. 1925 Sind 233=92. I C 433=18 S. L. R. 199
5. The accused struck his servant with a stick for refusing to obey his orders. The servant was suffering from enlarged spleen and its rupture caused his death. Held, that the conviction under S. 304-A. was illegal. 7 P. R. 1877 Cr.
6. If death is caused by an act which is itself an offence, S. 304-A. is not applicable. 15 P. R. 1882. Cr.
7. S. 304-A. is not applicable to cases of death caused by direct violence intended to cause bodily injury. 34 P. R. 1887. Cr.
8. Death must be direct result of rash and negligent act. It is not sufficient that accused was driving fast. 1933 A. 232=55 A. 263, 4 Bom. L. R. 679.

14. Of child in the arms of a woman.

Where accused struck a person and the blow fell on the child, the act was either rash or negligent. 28 P. R. 1888 Cr. A sentence of six months was considered sufficient because the stick was a light one. 4 L. L. J. 487. But in 3 C. 623 it was held that it amounted to be grievous hurt.

15. Rash or negligent act.—What is—.

1. Criminal rashness is hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury or knowledge that it will probably be caused. 53 C. 333=1926 C. 300=27 Cr. L. J. 153=91 I. C. 889, 3 A. 776.
2. Culpable rashness is acting with the consciousness that mischievous and illegal consequences may follow, but with the hope that they will not follow. 7 M. H. C. R. 119.

Death by Negligence—(continued)

3. A Railway official, after being instructed to move some trucks down an incline, disobeyed the instruction and lost control over them in uncoupling and a cooly was killed while stopping it, he was guilty. 6 A. 248.
4. An engine driver failed to sound a whistle and a boy painting a wagon was killed, he was guilty under S. 304-A. (1894) Unrep. Cr. C. 721.
5. Accused hit a person carrying a child and the blow fell on the child and killed it. Held, he was guilty. 28 P. R. 1888 Cr., 3 C. 625, 4 L. L. J. 487.
6. Where a lesser of a ferry allowed an unsound boat to be used, which sank, he was guilty. 16 A. 472.
7. Accused being absorbed in witnessing a festival, drove over a child and killed it, he was guilty. (1886) L. Weir 327.
8. Accused sent two boxes of fire works to Railway company, falsely declaring them to contain iron locks, with the result that in unloading one of the boxes exploded killing one cooly, he was guilty under S. 304-A. 22 P. R. 1903 Cr.
9. Where a Station Master gave a line clear on a foggy night when he knew that another train was standing on the line, which collided, it was held, that giving of line clear was a rash and negligent act under S. 304-A. 15 A. L. J. 590.
10. A girl of seventeen, who happened to be carrying an infant on her back, having been exasperated at a quarrel with her husband, attempted to commit suicide and jumped into the well. Held, he was guilty under S. 309 and S. 304-A. with regard to the death of her child. 27 Bom. L. R. 604 = 1925 B. 310-26 Cr. L. J. 1016.
11. The accused and the deceased were standing on the parapet of the well and on altercation ensuing accused struck the deceased on the head with a lathi. He lost his balance, fell into the well and was drowned. Held, he was guilty under S. 304-A. 33 P. R. 1889 Cr.

16. Rash or negligent act—What is not —.

1. Accused pushed the deceased who fell and broke his toe. He died on the fifth day of tetanus. Held, he was not guilty under S. 304-A. but S. 323 only. 1 M. 224.
2. Accused was watching his field and hearing a noise found a thief. He gave him stick blows, who died after some days. Held, he was not guilty under S. 304-A. 1 A. W. N. 103.
3. Accused threw a stick with such a force that it punctured the head of the deceased, he was not guilty under S. 304-A. (1893) Unrep. Cr. C. 673.
4. Accused kicked a person on the stomach and struck a stone on his head. He died after 10 days. The accused was not guilty under S. 304-A. 14 Bom. L. R. 1887 = 1 Bom. Cr. C. 183.
5. Intentional violence is not a rash or negligent act. 11. P. R. 1880 Cr.

17. Unskillful treatment See—7.

DEBTOR. See Concealing property—1. Criminal misappropriation—4.

DECEASED'S PROPERTY. See Criminal misappropriation—18.

DECREE-HOLDER.—TRESPASS BY—. See Criminal Trespass—7.

DECREE OF CIVIL COURT. See Judgment.

1. Altering date of.— See Forged document using as genuine—1. S. 471, I. P. C.

2. Effect of previous or subsequent decree on the order of maintenance. See Maintenance—13. S. 488, Cr. P. C.

3. Effect of—on proceedings under Ss. 145-146, Cr. P. C. See Ss. 145-146.

4. Effect on Criminal Courts.

1. Decision of Civil Court is not binding on Criminal Court with regard to the validity of marriage. 18 P. R. 1881 Cr.
2. Save for exceptional reasons a criminal Court shall not go behind the finding of a Civil Court and convict an accused of cheating. 33 P. R. 1910 Cr.
3. Court should determine guilt of accused upon evidence and not on finding of fact by

Decree of Civil Court—(concl'd.)

Civil Court. 1932 C. 293=59 C. 136.

5. **Fraudulent execution of—S. 210, I. P. C.** See Fraudulently obtaining decree—3.

6. **Fraudulently obtaining of—** See Fraudulently obtaining decree—3.

7. **In a case of maintenance.** See Maintenance—13.

DEFAMATION. Ss. 499—500, I. P. C.**1. Abetment**

1. A proprietor of a newspaper is not guilty of abetment when the defamatory article is published by the editor. 12 P. R. 1883 Cr.
2. For the full discussion of abetting the selling or offering for sale of a newspaper containing defamatory matter. See 8 P. R. 1891 Cr.

2. Abuse. See—23.**3. Association or collection of persons.**

1. An imputation against an association or collection of persons may amount to defamation, but the identity of person or persons against whom imputation is made, must be established. 1922 P. 101=67 I. C. 609.
2. For defamation of Police force as a whole, complaint by an individual is not competent. 1925 C. 1121=90 I. C. 387=26 Cr. L. J. 1539.
3. Two constables were accused of a particular act. It did not follow that all constables suffered in their reputation. The complaint by others or in representative capacity was not competent. 1922 P. 101=1 P. 414=23 Cr. L. J. 433.
4. An article alleged that girls of a certain college were habitually misbehaving. Held, that all the girls suffered in reputation and the complaint by some of them was competent. 1935 A. 743=155 I. C. 638=36 Cr. L. J. 816, 1 P. 414=1922 P. 101 Dist.

4. Burden of proof.

1. Where the statements made by the defendant are *per se* defamatory the burden is on the defendant to prove that the allegations on which his comments are based are substantially true. 1929 Sind 172, 1929 Sind 90=30 Cr. L. J. 548.
2. Prosecution must make out a case for conviction but the accused must prove that his case comes within the exceptions. 105 I. C. 820=1928 N. 58, 56 C. 1013.
3. The exceptions should be considered by Court even if accused does not rely on them. 33 C. N. W. 446=1929 C. 346=56 C. 1013.
4. If the prosecution proves that accused made the imputation which is *prima facie* defamatory, the onus is on the accused to prove that it is covered by any exception to S. 499. 29 A. 685=17 B. 573, 1931 R. 83=32 Cr. L. J. 934, 1927 B. 436, 35 I. C. 813, 4 P. W. R. 1910.

5. Charge.

1. Charge must specify the particular occasion on which the offence is committed. 30 C. 402.
2. A charge under S. 211, I. P. C., can be altered into one for defamation. 25 A. 209.
3. The Appellate Court may alter a conviction from S. 182 to S. 500. 25 A. 534.
4. A conviction under S. 501 cannot be altered into one under S. 500. 18 P. R. 1889 Cr.
5. That there was no publication to the person mentioned in the charge is a technical plea although there was publication, the defect is curable under S. 537. 1927 S. 58.
6. The words constituting the offence must be set out in the charge. 1925 C. 1121=90 I. C. 387=29 C. W. N. 904=26 Cr. L. J. 1539. See 1932 Sind 158.
7. A charge should set out the defamatory words. 1925 C. 1121.
8. If the charge is clear and accused is not prejudiced, the mere fact that exact defamatory words are not produced does not vitiate charge. 1932 N. 158=34 Cr. L. J. 154.

9. Where defamatory words are uttered on several occasions, the charge must give particulars of various occasions. 1930 S. 62=30 Cr. L. J. 1073.

6. Civil and Criminal Proceedings.

1. Civil liability for defamation is determined by the principles of English Law but criminal liability is governed by the provisions of Indian Penal Code alone. 1926 A. 287, 36 M. 216, 48 C. 388, 29 A. 685, 22 A. 234, 50 B. 162, 1927 A. 707, 98 I. C. 392, 51 B. 167, 46 M. 605, 49 M. 315, 49 M. 728, 96 I. C. 977.
2. The difference between a criminal case and civil suit for defamation is not merely of form but of substance. 1923 A. 316=26 A. L. J. 760.

7. Complaint. S. 198, Cr. P. C.

1. Husband is an aggrieved person for the defamation of his wife. 14 M. 379, 25 B. 151, 20 P. R. 1882, 5 L. 301=1924 L. 559, 1925 M. 320, 51 B. 512=1927 B. 410 *Cont.* 22 P. R. 1884 Cr., 10 Cr. L. J. 263.
2. The brother of a Hindu widow, with whom she is living is an aggrieved person in respect of imputation of unchastity made against her. 32 C. 425,—1060.
3. Son is not aggrieved person in respect of defamation of his mother. 1893 A. W. N. 207.
4. Where a Police Officer is defamed, a complaint by his superior official on the ground that the good name of the Police force has been attacked, cannot be entertained. 23 Cr. L. J. 641=1923 O. 4=69 I. C. 81, 26 M. 43.
5. President of Municipal Committee cannot institute complaint for defamation of Health Officer who is his subordinate on the ground that imputation against his subordinate affects his administration. 26 M. 43.
6. A charge of defamation not contained in the complaint but added subsequently during examination is not a legal complaint. 10 A. 39, 5 A. 233, 29 C. 415.
7. Complaint must be to a Magistrate. A complaint to the Police is not sufficient. 1923 M. 59=68 I. C. 624=23 Cr. L. J. 592.
8. In a case under S. 500 master is not the aggrieved party for defamation of servant. 11 Cr. L. J. 594, 26 M. 43, 26 O. C. 44 (47).
9. Defamation of Police force as a whole, complaint by an individual is incompetent. 1925 C. 1121=26 Cr. L. J. 1539, 1923 O. 4. *See* 1935 A. 743.
10. A letter containing a charge of defamation addressed to the President of First Class Bench of Magistrates with a request to forward it to the District Magistrate can be treated to be complaint by an aggrieved person. 1930 M. W. N. 855.
11. Adopted son residing with his adoptive mother who was defamed is an "aggrieved person." 1928 N. 58=105 I. C. 820=28 Cr. L. J. 996, 32 C. 425, 1924 L. 559, 25 B. 151, 14 M. 379 *Foll.*
12. No specific reference to every exhibit need be made in a complaint of defamation. 1924 M. 340=81 I. C. 129=25 Cr. L. J. 641.
13. A letter of the Prosecuting Inspector cannot be treated as an adequate complaint where the aggrieved Sub-Inspector made no complaint under S. 500 I. P. C. 1923 O. 4=69 I. C. 81=23 Cr. L. J. 641, 18 P. R. 1889, 25 B. 151, 14 M. 379, 1924 L. 559 *Ref.*
14. Absence of complaint is fatal to the prosecution for defamation. 1930 M. 705=125 I. C. 557=31 Cr. L. J. 859=1930 M. W. N. 413=1930 Cr. C. 652.
15. A brought a complaint that accused had made a false charge against him of poisoning A's daughter-in-law with a view to injure his reputation. The Court instead of proceeding under S. 211, I. P. C., convicted him under S. 500. Held, that the complaint was valid and legal. 24 P. R. 1884 Cr.
16. A complaint under S. 501, I. P. C., cannot be altered into one under S. 500. 18 P. R. 1889 Cr.
17. For an imputation that complainant's daughter is unchaste, a complaint by the complainant is invalid. 39 P. R. 1887 Cr.
18. Where an Editor writes a defamatory article against spiritual head of a community,

Defamation—(contd.)

a complaint by an individual of that community is not competent. 1934 Sind 188.

19. A devotee cannot file complaint with regard to defamatory statement made against the religious head. 1935 Sind 98.
20. In case of complaint on behalf of woman who ought not to be compelled to appear in public, the leave of Court is necessary. Trial and conviction without such leave are void, even if objection is not raised in the trial Court. The Magistrate has no jurisdiction. 1935 O. 6 = 152 I. C. 478 = 36 Cr. L. J. 116, 55 M. 343 Ref.
21. Other near relation of the woman defamed can complain. 32 C. 425, 3 Cr. L. J. 187, 1928 N. 58.
22. The test is whether the complainant's *own* personal reputation has been harmed directly or indirectly. 1934 S. 188.
23. Where a class of persons (e. g., students of a particular college) are defamed in such a way that defamation can be brought home to the individual members of the class, any member of the class can complain. 1935 A. 743.
24. Superior official of the person defamed is not necessarily entitled to complain under S. 500. 26 M. 43, 1923 O. 4.
25. Appellate Court can alter a conviction to one for any offence mentioned in S. 198 notwithstanding absence of complaint as required by it. 25 A. 534.
26. In case of complaint of an offence if the evidence discloses offence under S. 198, Cr. P. C., Court cannot proceed with it. 10 A. 39, 5 P. R. 1879, 18 P. R. 1889, 1923 O. 4. See 20 C. 483.

8. Complainant's character.

In a case of defamation general bad character of the complainant may be proved. 4 L. 55 = 1923 L. 225 = 24 Cr. L. J. 693.

9. Corporation (Company). See—22.

1. A Corporation cannot well suffer damage in mind or body. An incorporated Company may have a reputation for the good conduct of the business or undertaking of the Company and the Company's reputation may be quite distinct from that of any. 51 C. 250 = 1924 C. 495 = 84 I. C. 554 = 24 C. W. N. 160.
2. If the pamphlet contains attack on individual members but not on the Committee, the Committee cannot maintain prosecution unless special damage has been caused to it. 1935 R. 108 = 1935 Cr. C. 317 (*English Case Law Referred*).
3. Imputation that Company gives worthless guarantees and avoids its liability under the same is defamatory. 1935 R. 509.

10. Death of complainant.

Death of complainant during the course of criminal proceedings for defamation terminates those proceedings. 10 P. R. 1408 Cr

Defamation—(contd.)

6. Proprietor of newspaper is not responsible for publication of defamatory articles by a competent editor. 12 P. R. 1883 Cr.
12. Election Manifesto.
If an election manifesto contains the words "K. and his son have no property and will not shrink from even committing murder, K. has been making forgeries."...Held, it is defamation. 35 L. W. 753.
13. English law of—
The criminal law of India with regard to defamation depends on the construction of S. 499, I. P. C. and not what may be the English law on the same subject. 22 A. 234, 48 C. 388, 19 B. 340, 49 M. 723, 17 C. W. N. 554 (561).

14. Essentials.—

1. Using obscene and insulting language in speaking of a respectable person after an altercation is over, lowers the reputation of that person and falls under S. 500. 45 I. C. 1005=19 Cr. L. J. 669.
2. When spoken words are alleged to have constituted the offence, a very slight alteration of a word may give quite a different meaning to them. 1925 C. 1121=90 I. C. 387=26 Cr. L. J. 1539=29 C. W. N. 904=42 C. L. J. 178.
3. Accused cannot escape punishment on the ground that the reputation of person attacked was so good or that of the person attacking so bad that serious injury to the reputation was not in fact caused. 1924 A. 566=22 A. L. J. 659.
4. It is necessary to find whether the accused had reason to believe the statement to be true, though there may be finding that it is untrue. 76 I. C. 393=1924 N. 172=25 Cr. L. J. 169.
5. It is not essential part of the offence that harm should be caused to the reputation of the complainant. 59 I. C. 202, 12 Cr. L. J. 129.
6. The offence consists in using language which others knowing the circumstances, would reasonably think to be defamatory of the person complaining of. 1925 C. 1121=90 I. C. 387=26 Cr. L. J. 1539=29 C. W. N. 904=42 C. L. J. 178.
7. Words *prima facie* defamatory when used in the middle of a street quarrel should be regarded as mere vulgar abuse and it does not amount to defamation. 45 I. C. 1005=19 Cr. L. J. 669.
8. In a defamation case the prosecution must prove the libel alleged and should not fill up the gaps by admission of an accused. 36 M. 457, 45 M. L. J. 754.
9. For a number of persons to meet and resolve not to associate with a person is not defamation unless the resolution is published, nor does sending a copy to the person in question make it defamation. 1923 R. 16=1 Bur. L. J. 39.
10. An imputation against an association or collection of persons may amount to defamation but the identity of person or persons against whom imputation is made, must be established. 1922 P. 101=67 I. C. 609.
11. Where accused uttered words to the effect that complainant was turned out by officer at a public auction, such words are defamatory. 1932 N. 158=141 I. C. 438=34 Cr. L. J. 154=1932 Cr. C. 863.
12. Where the accused stated, in answer to interrogatories, that the Chief Reader had friendly relations and influence over the Court which acted dishonestly and imposed a fine of Rs. 40. Held, it was defamatory. 1935 A. 896=36 Cr. L. J. 967.

15. Evidence and Proof.

1. The complainant must satisfy the Court that he is the person aimed at by the defamatory article. 1928 A. 321=117 I. C. 355=30 Cr. L. J. 766.
2. Evidence may be given to show that the plaintiff had a general bad character as a mitigating circumstance. 4 L. 55=1923 L. 225=73 I. C. 805=24 Cr. L. J. 693.
3. A woman cannot be compelled to submit to medical examination for an imputation of illicit pregnancy. Her refusal to do so is no evidence against her. 1930 L. 159=123 I. C. 841=31 Cr. L. J. 584.

Defamation—(contd.)

4. The Court must find out the actual words used and their context. But if instead Court accepts the "impression left on the minds of the witnesses," it will be yielding its duty to witnesses and the accused will have no benefit of the opinion of Court itself. 1929 A. 1=51 A. 313=113 I. C. 213=30 Cr. L. J. 101.
5. If it is proved that the complainant had notoriously bad reputation as bribe taker, the imputation made as to his having taken bribe on the particular occasion, even if false, could not damage his reputation as he had none to lose. 4 L. 55=1923 L. 225=73 I. C. 805=24 Cr. L. J. 693.
6. When the declared printer of a newspaper pleads absence in good faith, he should prove who was in fact printer in his absence. 50 A. 806=1928 A. 403.
7. All circumstances which were apparent to the bye standers at the time the words were uttered should be put in evidence, so as to place the jury as much as possible in the position of such bye-standers. The words are not to be construed as title deeds. 26 Cr. L. J. 1539=1925 C. 1121=90 I. C. 387=29 C. W. N. 904.
8. The question whether upon facts proved malice is established is a question of law. 6 P. 224=1925 P. 499=97 I. C. 354.
9. Where accused wrote a book in reply to one written by the complainant relating to controversial religious matter and used violent expressions without assailing the personal character of complainant, it is no defamation. 1924 M. 898=85 I. C. 144=26 Cr. L. J. 464=47 M. L. J. 664=1924 M. W. N. 768.
10. A newspaper is not a person and therefore it is no offence to defame it. Sometimes it may amount to defamation of those responsible for its publication. 4 R. 462=99 I. C. 347=1927 R. 43=28 Cr. L. J. 139.
11. In case of written defamation, Court must insist on the production of the original and should not easily admit certified copies. 1924 M. 340=25 Cr. L. J. 641.
12. Where A. sends a letter to the complainant, stating that A. had received it from the accused, but A's covering letter is not produced and A. was not examined. Held, there is no sufficient evidence to support conviction. 1924 M. 340=25 Cr. L. J. 641.
13. An editor must not publish a defamatory article unless he makes some enquiry and has cogent ground for believing the information to be true. 1928 A. 321=117 I. C. 355=26 A. L. J. 509.
14. A witness may give the report of the defamatory remarks if he does not remember the exact words. 51 A. 313=1929 A. 1=30 Cr. L. J. 101=113 I. C. 213.
15. Admission as to publication in the written statement of the accused cannot fill up gaps in prosecution. 36 M. 457, 4 L. 55=1923 L. 225=24 Cr. L. J. 693.
- 16. Ex-communication.** See—20.
- 17. Fair comment.**
 1. Every one has a perfect right to criticise a man's public conduct. But a line must be drawn between hostile criticism on a man's conduct and the motives by which that conduct is influenced. 76 I. C. 230=1924 Sind 129=25 Cr. L. J. 134.
 2. The accused complained to the Deputy Commissioner against a Munsiff charging him with conspiracy with the plaintiff to get up a false case in his Court, which he failed to prove. Held, he was guilty of defamation. 21 P. R. 1887 Cr., 6 P. R. 1879 Cr.
 3. B's Pleader asked B the real cause of his quarrel with A, whereupon somebody of B's party said that A's daughter-in-law eloped with somebody. Held, that as the intention was not to harm the reputation of A and the legal relationship also subsisted, the accused was not guilty. 13 C. W. N. 1087.
 4. When criticism is based on mis-statement of facts, it is not a fair comment. 1927 A. 116=98 I. C. 481=27 Cr. L. J. 1361.
 5. Wilful misrepresentation or mis-statement without due enquiry is no fair comment. 1929 Sind 90=116 I. C. 99=30 Cr. L. J. 548.
 6. Where the matter is of public interest, mere exaggeration or even gross exaggeration does not make the comment unfair, provided there is no misrepresentation or suppression of facts. 27 I. C. 205.
 7. A fair comment in a newspaper on a public affair is not defamatory, unless proved to

Defamation—(contd.)

- be the outcome of dishonest or corrupt motive. 23 I. C. 725=15 Cr. L. J. 357.
8. Where in the course of trial the evidence revealed that in writing the libel, the accused had proceeded on a gross mistake of fact, a prompt apology should have been tendered. 41 C. 1023=23 I. C. 661 (P. C.).
9. The Court must not weigh any comment on public affairs in a fine scale. 13 Bom. L. R. 1187=12 Cr. L. J. 595.
10. To say of a person that he makes gifts to certain funds, not out of charity but from self advantage is defamatory if the words incite public contempt and ridicule. 43 I. C. 417.
11. Some allowances for intemperate language should be made if the writer keeps himself within the bounds of substantial truth. 13 Bom. L. R. 1187.
12. An accused justifying his libel on the ground of fair comment cannot both deny as well as justify it. 19 Cr. L. J. 129=43 I. C. 417.
13. Fair comment means expressing an opinions in good faith. 9 Mys. L. J. 12.
- 18. Good faith.**
1. Good faith in the 9th exception to S. 499 requires no logical infallibility but due care and attention. Where an ignorant and timid man apprehending harrassment by complainant presented a petition to Magistrate and was prosecuted for defamation. Held, he was not guilty as he acted more to protect himself than to injure others. 1929 C. 779=34 C. W. N. 1070=51 C. L. J. 472, 1929 M. W. N. 598.
2. A finding of privilege is not a finding of good faith. 1926 A. 287=92 I. C. 429.
3. Communications addressed in good faith for the punishment of crime, redress of grievances or security of public morals are privileged but when not addressed in good faith and unfounded, malice in law must be presumed and the privilege disappears. 79 I. C. 640=1924 A. 445=22 A. L. J. 65.
4. Mere belief in good faith is insufficient. 51 A. 313=1929 A. 1=3 A. 515.
5. A wife made an attempt to murder her husband. Her father-in-law stated to the District Magistrate that she was insane and likely to injure his son and that she was 'man mad.' Held, that the first portion of statement was made in good faith to protect his son's interest but calling her 'man mad' was unjustifiable. 51 A. 313=1929 A. 1=113 I. C. 213=30 Cr. L. J. 101=26 A. L. J. 1334.
6. In a case of defamation, accused has to prove good faith if he pleads it. The question whether he committed mistake of fact or law does not arise. S. 79, I. P. C., does not apply. 50 C. 518=71 I. C. 792=1923 C. 470 (F. B.).
7. Where the creditors seeing a person leave the shop of an adjudicated insolvent with a bundle accused him of receiving stolen property. Held, the imputation was not made in good faith. 25 I. C. 1003=15 Cr. L. J. 675.
8. Putting forward a false claim in a post card to the effect that the addressee should pay the addressor is not defamation. 3 P. W. R. 1909 Cr.=9 Cr. L. J. 154.
9. If one of the rival claimant to the estate of deceased, makes allegations of adultery or bastardy relevant to the claim, there is no defamation. 1925 M. 246.
10. Exception 10, S. 499, does not cover a case where one man says of another that he married a woman, who had been married before. 1930 C. 645=127 I. C. 553=31 Cr. L. J. 1225=34 C. W. N. 380=1930 Cr. C. 1204.
11. The Court in determining the question of good faith, should take into account the intellectual capacity of the person, his predilections and the surrounding facts. 20 C. 1013=1929 C. 344, 4 C. 124, 31 B. 293, 1929 C. 779=1929 Cr. C. 523.
12. The mere absence of ill-will does not prove good faith. (1882) 1 Weir 613.
13. "Opinion in good faith" means opinion expressed after taking care and attention in forming it. 20 C. L. J. 401, 4 C. 124.
14. If a person criticizes the act of a public servant, he should not assert what is true and should not conceal maliciously anything which would go to show that criticism is not well founded. 20 C. L. J. 345, 4 B. 29.
- 19. Harming reputation. See—41.**

Defamation—(contd.)

20. Imputations as to caste, etc.

1. A person falsely publishing that a caste Panchayat has decided upon the ex-communication of a person from caste is guilty of defamation. 9 Cr. L. J. 535=6 A. L. J. 472.
2. Calling a Kaisth, a Chamar with the result that the priests refused to attend the religious ceremonies, is defamatory. 11 Cr. L. J. 413.
3. The term "*Kulabhrishita*" used in a book is defamatory, if it refers to a particular individual. 12 Cr. L. J. 497=12 I. C. 217.
4. To tell a Hindu that he is an outcaste is defamatory and is not covered by S. 95, I. P. C. 1928 A. 213=108 I. C. 690=26 A. L. J. 361=29 Cr. L. J. 451, 28 M. L. J. 58=26 I. C. 460.
5. An imputation which leads to the ex-communication of a person from caste is defamatory. 1930 C. 645=127 I. C. 553=31 Cr. L. J. 1225.
6. Informing caste people about the ex-communication of a person is no offence. '77 I. C. 824=1924 A. 694=22 A. L. J. 79=25 Cr. L. J. 472.
7. Ex-communication by Sabha or community after notice to the complainant is no defamation. 1924 M. 670=83 I. C. 999.
8. Calling a person sweeper by reason of his associating with the sweeper is defamatory. It would be privileged if it had been a decision of a caste Panchayat. 1925 A. 306=92 I. C. 584=24 A. L. J. 171=27 Cr. L. J. 296.
9. A person was put out of caste. A member of the caste told another not to take water from his hand. Held, he was not guilty. 25 Cr. L. J. 327=46 A. 64=1924 A. 299.
10. A person making a statement without cause that a person was ex-communicated or outcasted is defamation. 1927 M. 397=99 I. C. 943, 1932 N. 97=33 Cr. L. J. 835.
11. Words which impute unworthiness to remain a member of caste are defamatory. 33 M. 67. See 17 M. L. T. 369.
12. If at a caste meeting complainant was ex-communicated after an opportunity is given to him to explain, there is no defamation. 1932 A. L. J. 75.
13. A letter written by a Brahmin to his community of the neighbourhood, with a view to obtain their decision on a matter affecting his own religious interest is not defamatory, even when it contained that accused committed adultery. 8 Bom. H. C. (Cr. C) 168.

21 Imputation against any person.

1. It is a question of opinion in each case whether an imputation of ingratitude is defamation. 1924 M. 340=81 I. C. 129=25 Cr. L. J. 641.
2. Calling a person discharged bankrupt and gambler and a convict in an affidavit is defamation. 1927 Sind 54=27 Cr. L. J. 1276=98 I. C. 124.
3. An imputation of insolvency against a person in the way of his trade is *per se* defamatory. 8 I. C. 124=1927 Sind 54=27 Cr. L. J. 1276.
4. An imputation ordinarily implies an accusation or something more than suspicion. Suspecting a person in Police Report with the result that his house is searched, is an imputation under S. 499. 1926 L. 278=96 I. C. 211=27 Cr. L. J. 899.
5. Where at a caste meeting the accused stated that complainant's wife had been married before. Held, that Exception 10 to S. 499 was inapplicable. 34 C. W. N. 580=1930 C. 645=127 I. C. 553=31 Cr. L. J. 1225.
6. A notice in a newspaper contained an imputation of dishonesty against the complainant in management of the affairs of a company and of concealing that dishonesty by dishonest means. It amounts to defamation. 1927 N. 17=27 Cr. L. J. 1119.
7. An imputation that a person changes his opinion to suit circumstances is not defamation. 1931 M. W. N. 714.
8. Accused made a report at the Police Station that some of his property had been stolen and that he suspected the complainant. The complainant prosecuted him for defamation. Held, that the expression of suspicion might have the same effect as

Defamation—(contd.)

an accusation and in this case the suspicion resulted in the Police searching the complainant's house, the accused was guilty of defamation. 8 L. L. J. 97=27 P. L. R. 171=1926 L. 278=27 Cr. L. J. 899.

9. An imputation, even if it be true, is not by itself good ground for making it. (1882) 5 C. P. L. R. 55 Cr.
 10. A newspaper is not a person and cannot be defamed. It may involve sometimes defamation of those responsible for its publication. 4 R. 462=1927 R. 43=99 I. C. 347=28 Cr. L. J. 139.
 11. It is immaterial whether the libel imputes crime, etc., to the complainant, in a direct or indirect manner, by conjecture, irony or feigned names. 26 C. L. J. 345.
 12. If the imputation equally applies to other persons than the complainant, an action will not lie. The identity of the person defamed must be established. 1 P. 414, 29 C. W. N. 904=1925 C. 1121=90 I. C. 387=26 Cr. L. J. 1539.
 13. The words "a coward, dishonest man and something worse than either" are defamatory. 9 A. 420.
 14. An imputation that complainant and others were preparing to bring a false charge against the accused is defamatory. 4 C. 124.
 15. An accusation of anonymous letter writing may amount to defamation. (1872) 7 Mad. Jur. 253.
- 22. Imputation against combination of persons or class.**
1. An imputation against an association or collection of persons may amount to defamation, but the identity of persons or person against whom imputation is made, must be established. 1922 P. 101=67 I. C. 609=1 P. 414=23 Cr. L. J. 433.
 2. Where a defamatory matter appears only to apply to a class of individuals, but it can by innuendo, be shown to apply to any one individual of that class, an action may be maintained. 29 C. W. N. 904=1925 C. 1121=90 I. C. 387=26 Cr. L. J. 1539.
 3. Where a collection of persons is defamed, the defamatory words must apply to all the class. The libel need not name the class as such. 55 C. 1280=1929 C. 191=115 I. C. 35=30 Cr. L. J. 407.
 4. If a person wrote that all lawyers were thieves no particular lawyer could sue him, unless there is something to point to the particular individual. (1732) 2 Barnard (K. B.) 138, 166.
- 23. Imputation against dead man.**
1. A prosecution may be maintained for defamation of a deceased person but no suit for damage will lie in such a case. 5 B. 580.
 2. The essence of the offence of defamation against deceased person consists in its tendency to cause that description of pain which is felt by a person who knows himself to be the object of the unfavourable sentiments of his fellow creatures and the inconveniences to which he is exposed. 41 A. 311, 314).
- 24. Imputation made by a person in authority.**
1. Where a Swami issued a temporary interdict against two members of his caste on the ground of their intermingling with Pariahs, he was not guilty. 45 M. L. J. 116.
 2. Where a spiritual Guru issued a letter that K's wife had been caught intriguing with a man of lower caste and that she should be outcasted, he was not guilty of defamation. 22 C. 46. See 32 C. 1060.
 3. A Magistrate convicted a Police Officer under S. 570 for a statement made by him in a report to his superior officer, which he elicited in the Police inquiry from a person. Held, he was not guilty. 23 P. R. 1880 Cr.
- 25. Imputation made to authorized persons.**
1. Accused in appealing against the levy of assessment by sale of movable property, alleged that the complainant acted towards him unjustly and spitefully and passed the order due to personal ill-will. Held, he was protected under Exceptions 8 and 9. 17 Bom. L. R. 82.
 2. Certain merchants sent a telegram to Railway authorities that a Station Master was

defamation—(contd.).

giving preferential treatment to charcoal dealers. This was found to be false. Accused showed that they had good reasons in support of their allegation. Held, they were protected. 8 L. R. 440.

3. Accused wrote to the superior officer of the complainant that the complainant and E's wife behaved in a way which shows that impropriety took place between them. Held, he was protected, when he wrote it at the instance of E. 11 C. W. N. 390.
4. The creditors of an unadjudicated insolvent suspecting that the complainant was carrying property given to him by their debtors, accused him of being in possession of stolen property, they were guilty. 8 S. L. R. 155.
5. Imputation made to unauthorized person.

Where there was dispute over a plot of land between complainant and the accused, and the latter in a petition presented to Municipal Council made a statement that complainant was sentenced to rigorous imprisonment. Held, that statement though true was not privileged. (1895) 1 Weir 612.

7. Imputation of inconsistency.

An imputation that a person has the evil habit of changing his opinion to suit circumstances does not amount to defamation. 1931 M. W. N. 714.

8. Insult or abuse.

1. Complainant's counsel could not find the book at the time of the argument, who was asked to search for it in the accused's books. Accused resented it and said that he was not in the habit of stealing like him. Held, it is no defamation but akin to abuse and the matter was too petty to be brought in Criminal Court. 1929 L. 234 = 115 I. C. 72 = 30 Cr. L. J. 379.
2. If abuse is calculated to harm the reputation of the complainant, it is defamation. 112 I. C. 772 = 30 Cr. L. J. 4.
3. Calling a person a beast and a pig is defamatory. 1925 C. 1121 = 90 I. C. 387 = 29 C. W. N. 904 = 26 Cr. L. J. 1539.
4. The words '*Pichlag*' and '*Lawaris*' do not amount to defamation. 1922 L. 452 = 67 I. C. 589 = 23 Cr. L. J. 429.
5. Inviting a person to dinner and asking him to leave place when he attends without any sort of imputation is no defamation. 1926 A. 711 = 98 I. C. 606 = 24 A. L. J. 893 = 27 Cr. L. J. 1390.
6. Plaintiff's counsel questioned the authority of the Secretary of Municipal Board to sign and verify adding that his pay is only 10 Rupees. The Chairman of the Board remarked that his Secretary's status is higher than that of plaintiff's Pleader. Held, it amounts to defamation. 43 A. 497 = 1921 A. 30 = 63 I. C. 857.
7. Where defamatory words were used in a street quarrel and were mere vulgar abuses, it was held that there was no deliberate intention of harming the reputation. (1887) 1 Weir 607, 1883 A. W. N. 36, 1883 A. W. N. 167. See 45 I. C. 1005.
8. Where obscene and insulting words are used after the altercation is over, it is defamation. 30 Cr. L. J. 4, 16 Cr. L. J. 498.
9. Using obscene and insulting language after the altercation is over, lowers the reputation of the person and is defamation. 45 I. C. 1005.

29. Joint trial.

1. There was a complaint that all the five accused joined in a plot to defame the complainant. There was no accusation of conspiracy nor was the case tried as conspiracy. The printers were charged under S. 501 and publishers under S. 500. Held, that the joint trial was not illegal under S. 239 (d), Cr. P. C. 1935 A. 769 = 36 Cr. L. J. 1296, 1928 B. 139 = 29 Cr. L. J. 683.
2. Where A and B associate together in circulating on different occasions defamatory statements, they can be tried together. 1930 S. 62, 1935 A. 769.
3. Where A and B file different petitions containing defamatory allegations against the complainant and signed by the same lawyer they can be jointly tried. 1922 C. 76.

Defamation—(contd.)

30. Jurisdiction.

- 1 Where petition containing defamatory statement was presented to a person at Lahore and was published at Amritsar, the latter Court had jurisdiction to try the offence of defamation. 44 P. R. 1885 Cr., 14 P. R. 1889 Cr. See 24 P. R. 1917 Cr.
- 2 A defamatory letter was written and posted at Madras with a view to its being read at Tinnevely, the offence of defamation is triable at either place. 72 I. C. 69=24 Cr. L. J. 309=1923 M. 666.
- 3 A letter is deemed to be published both where it is posted and where it is received. 81 I. C. 129=1924 M. 340=26 Cr. L. J. 641.
- 4 The sending of a newspaper containing defamatory matter by post to a place, gives jurisdiction to the Magistrate of that place. 3 A. 342, 22 B. 112, 33 B. 77. See 1928 R. 276.
- 5 Where a person instigates another by means of letter, the offence is triable at the place where letter is received. 16 A. 389.

31. Miscellaneous.

- 1 Defamatory statement made at the instance of challenge by complainant is not privileged. 1926 A. 237=92 I. C. 694=27 Cr. L. J. 310.
- 2 Statement that public servant worked for money at an election for a candidate is not charging him with bribery, as it is not in the discharge of his official duty. 6 P. 224=1926 P. 499=97 I. C. 354=27 Cr. L. J. 1090.

32. Newspaper.

- 1 Proprietor of a newspaper is not responsible for publication of defamatory articles by a competent editor. 12 P. R. 1883 Cr.
- 2 An editor publishing defamatory matter under the guise of rumour is guilty. 117 I. C. 355=1928 A. 321=26 A. L. J. 509.
- 3 Sending a newspaper from Calcutta, where it is published, to a subscriber at Allahabad, is publication at Allahabad. 15 B. 286, 22 B. 112.
- 4 To prove publication by newspaper, it is sufficient if newspaper is delivered in the Postal area over which the Court had jurisdiction. It is not necessary to prove that it was read by some person in the locality. 26 A. L. J. 196=1928 A. 222.
- 5 No privilege attaches to the profession of press as distinguished from the member of the public. The privilege of a journalist is no higher than that of an ordinary citizen. 16 B. L. R. 544=41 C. 1023 (P. C.)
- 6 Publication of a notice in newspaper conveying an imputation that complainant is dishonest in the management of the affairs of a Company and tries to conceal the dishonesty by methods that are themselves dishonest, is defamation. 27 Cr. L. J. 1119=1929 N. 17=97 I. C. 431.
- 7 The publisher of a newspaper is responsible for defamatory matter published in such paper, whether he knows the contents of such paper or not. 3 A. 342.
- 8 If an editor proves that the libel was published in his absence and without his knowledge and that he had in good faith entrusted the management to a competent person, he is not guilty. 9 M. 387, 12 P. R. 1883 Cr.
- 9 Editor is bound to give evidence as to who the actual printer of the paper in his absence was. 1928 A. 400=26 A. L. J. 746=50 A. 805, 35 C. 945.
- 10 Where libel is printed the sale of each copy is a distinct publication and a fresh offence. A conviction or acquittal for publishing one copy is no bar to prosecution for publishing another copy. 12 P. R. 1883 Cr.
- 11 A newspaper is not responsible for its publication. 4 R. 462=99 I. C.
- 12 An editor must not publish a defamatory article, unless he makes some enquiry or has cogent grounds for believing the information to be true. 1929 Sind 90=30 Cr. L. J. 543, 1925 A. 321=117 I. C. 355, 1933 A. 434=34 Cr. L. J. 926.

Defamation—(contd.)

13. In a prosecution of editor of newspaper for defamation, an attested copy of a declaration made by the editor under S. 5, Act XXV of 1867 to the effect that he was printer or publisher was *prima facie* proof of publication. 9 M. 387.
14. A proprietor cannot be punished as abettor for a defamatory article published by the editor of the newspaper. 12 P. R. 1883 Cr.
15. The fact that the accused was a dummy editor is no ground by itself for reduction of sentence. 1928 Lah. 865=110 I. C. 236=29 Cr. L. J. 684.
16. A newspaper is in no better position regarding defamation than a private individual. 1933 A. 434=34 Cr. L. J. 926.
17. Printer is liable for defamatory matter published. 1933 A. 434.
33. Privilege of counsel, Judge, parties or witnesses. See—46.
34. Privileged occasion.
 1. The question whether a statement was made on a privileged occasion or not must be decided with reference to S. 499, I. P. C. 1931 R. 83=32 Cr. L. J. 934.
 2. Accused in reply to a notice from complainant's Pleader calling upon him to pay money lent to him, wrote a letter containing defamatory statements about the complainant. Held, that he was guilty. 10 P. R. 1910 Cr.
 3. If public money is believed to be defalcated, informing the authorities is privileged. 1934 O. 8=148 I. C. 427.
 4. Words uttered to protect one's own interest in a criminal prosecution and as protest against the conduct of trying Magistrate in compromising the matter are protected by Exception 9. 1934 O. 169=35 Cr. L. J. 703.
 5. Municipal Commissioner and Municipal Engineer reported that road metal was removed by contractor. Held, that the report was privileged under Exception 7 to S. 499. 1934 P. 548.
35. Procedure. Prosecution under S. 211, I. P. C.
 1. Where in a charge of defamation the prosecution is unable to prove that accused made and published the defamatory matter, it is illegal for the Magistrate to examine the accused for purpose of supplying this defect in the prosecution evidence. 27 M. 238, 4 L. 55=1923 Lah. 225=73 I. C. 805=24 Cr. L. J. 693, 39 M. 770.
 2. Where Magistrate made no enquiry before issuing summons to a respectable Pleader to prove good faith, although malice was not alleged and the statement was made under instructions from the client, who accepted full responsibility, the proceedings were quashed. 111 I. C. 569=29 Cr. L. J. 889, 1927 C. 823=55 C. 85.
 3. Magistrate can convict under S. 500, although the complaint was under Ss. 193, 211, I. P. C. 6 L. 375=95 I. C. 305=1925 L. 631, 23 P. R. 1895, 10 A. 39; 27 M. 61; 29 C. 415 Dist.
 4. The ordinary remedy of the person who has had a false case brought against him is to apply to the Court to prosecute plaintiff under S. 209, I. P. C. In a case of defamation arising out of civil suit, the Court must see that the provisions of S. 209, Cr. P. C., are not evaded. 1925 Sind 263=26 Cr. L. J. 941.
 5. Where defendant makes some allegations, the plaintiff must be given opportunity to meet them. 1928 A. 222=115 I. C. 872=26 A. L. J. 196.
 6. If the Court refused sanction under S. 211, a process under S. 500 should not issue, when the real offence is under S. 211. 44 C. 970. See 48 C. 388.
 7. An acquittal on a charge of perjury is no bar to trial under S. 500. 37 C. 604.
 8. Refusal of an application for sanction to prosecute a party under S. 182 or S. 193 is no bar to his prosecution under S. 500. 48 C. 389, 51 A 977.
 9. A woman brought a charge of rape. Accused was not named in F. I. R., but was named in complaint and charge was found to be false. Held, that offence fell under S. 211 and not S. 500. 1935 R. 163=36 Cr. L. J. 970=156 I. C. 598.
 10. A woman made a false report to Police that her modesty was insulted by servants of a person at his instigation. Held, it amounted to defamation. Although offence

Defamation—(contd.)

fell under S. 211, complainant is not precluded from proceeding under S. 500. 19 N. 241, 37 C. 604 and 48 C. 388. Rel. on. 44 C. 970, 1928 R. 254, 1931 M. 702 54 M. 1018 and 11 M. 477 Disting.

36. Publication See—32.

1. A letter is deemed to be published both where it is posted and where it is received. 1924 M. 340=81 I. C. 129=26 Cr. L. J. 641.
2. To prove publication of a libel through newspaper, it is sufficient to prove that the paper was delivered within the postal area over which Court had jurisdiction. 192 A. 222=115 I. C. 872=26 A. L. J. 196.
3. Swearing an affidavit containing libel and using it in Court is sufficient publication. 98 I. C. 124=1927 Sind 54=27 Cr. L. J. 1276.
4. Communication of matter defamatory of client to his Pleader is publication, though communication to the client is not. 10 P. R. 1910 Cr.=6 P. W. R. 1910 Cr.
5. The accused made defamatory statement in a petition to the higher authorities and repeated it to the inquiring officials. Held, there were three separate publications. 16 Cr. L. J. 482=29 I. C. 322.
6. Communication to some person other than the person to whom it is addressed, is publication. (1900) 1 Weir 579.
7. Communicating defamatory matter to the person defamed only is not publication. 7 A. 205, 7 C. W. N. 74.
8. Sending of notice by post in a closed cover to a public officer, containing imputations on his character, is not publication. 7 A. 205, 18 B. 205.
9. If a number of persons meet and resolve not to associate with a person for good reasons there is no defamation, nor does the sending of a copy of resolution would make it defamation. But it would be defamation if it is published. 23 Cr. L. J. 240.
10. Defamatory matter written on a postcard constitutes defamation. 6 M. 381.
11. Sending defamatory matter through printed papers distributed broadcast is publication. 15 M. 214.
12. Filing a petition in Court containing defamatory matter is publication. 3 A. 815, 14 P. R. 1889 Cr.
13. Communication to husband or wife of a charge against the wife or husband is publication. 4 C. L. J. 390.
15. Uttering of a libel by husband to his wife is not publication. 10 P. R. 1910 Cr.
15. Sending a letter in reply to notice for demand, to complainant's Pleader, defamatory matter amounts to publication. 10 P. R. 1910 Cr.
16. Sending a newspaper containing defamatory matter by post from Calcutta, where it is published to a subscriber at Allahabad is publication at Allahabad. 15 B. 286, 22 B. 112.
17. The person who publishes and the person who makes the imputation are equally guilty. 19 B. 703.
18. It is not necessary that accused should himself utter the defamatory words, it is enough if by conduct or words, he adopts the words uttered by some one else. 47 M. L. J. 746=1925 M. 320=85 I. C. 361=26 Cr. L. J. 521.
19. Penal Code makes no distinction between written and spoken defamation. 9 M. 175.
20. If A and B conspire to draw up a document defaming Z and leave it with B, there is no publication. 1931 M. 487=131 I. C. 654=32 Cr. L. J. 767.
21. Where no evidence of publication is produced, statement of accused cannot fill up the gap. 4 L. 55, 27 M. 238, 26 C. 49. Cont. 1935 R. 509. 39 M. 770 Dist.
22. Mere delivery of defamatory letter to complainant is not publication. 1935 C. 736.
23. A defamatory letter was sent to President of Committee. He placed it on record in the course of official routine and it was read by other members. Held, it was sufficient.

Defamation—(contd.)

ent publication. 1933 A. 210=55 A. 253. 7 A. 205 Dist.

37. Public good.

1. Accused must show that he made the imputation in good faith in self-defence or public good. 11 Cr. L. J. 588.
2. If a member of a caste publish a caste resolution about the ex-communication in the discharge of social duty, it is privileged and is for public good. 11 Bom. L. R. 638 =10 Cr. L. J. 372, 46 A. 64.
3. Denunciation of a Brahmin for providing liquor at a wedding party is not for public good. For Exception I, the statement must be true and for public good. 12 Cr. L. J. 129.
4. Accused charged a doctor with conspiracy in dragging a person and to cause him to be taken to cremation, on a flimsy material and without making any inquiries. Held, that as it was not in good faith, it was not necessary to consider if public good was involved. 1924 C. 611=83 I. C. 631=26 Cr. L. J. 71.
5. Order of interdict issued by a religious head against a person for taking part in a caste dinner is no offence. 72 I. C. 155=1923 M. 587=22 Cr. L. J. 325.
6. The person making the imputation cannot escape liability if in addition to statements which would be protracted, he goes further and makes false and uncalled for statements. 3 A. 664.
7. A Court may hold that an imputation is true and for public good but on considering the manner of publication, e.g., newspaper it may hold that publication is not for public good. 19 B. 703.
8. A privilege does not justify publication in excess of the purpose or object which gives rise to it. 6 M. 381.
9. A person can make remarks against a Municipal Councillor, so long as he abstains from attacking his private character. 1914 M. W. N. 351.
10. An editor does not act in good faith for public good, when he publishes a very foul rumour. 1 P. 414, 28 C. W. N. 351.

38 Questions in cross-examination.

1. Where the accused in cross-examination of party's wife asked her whether her husband was not habitual offender restricted under the Act, and which was not true nor necessary for testing the veracity of the witness, but was made, out of malice, held that accused was guilty under S. 500. 1935 R. 293=158 I. C. 91=1935 Cr. C. 989.
2. The mere fact that the Pleader approves of the question is no defence, when he was requested to put such a question. *Ibid.*

39. Repetition of.

1. The Code makes no exception in favour of a second or third publication as compared with first. The person repeating is guilty. 12 B. 167.
2. Accused made certain defamatory statement about an officer in a memorial to the Governor who ordered an enquiry. The accused was called by two officers one after the other, who were appointed to make enquiries and he repeated the same thing. Held, that his conviction on three separate charges for making and publishing was good. 13 A. L. J. 681.
3. If the accused by his conduct or words adopts the words uttered by some one else, he is equally guilty. 1925 M. 320=26 Cr. L. J. 521.
4. Where libel is printed, the sale of each copy is a distinct publication. 12 P. R. 1883. Cr.
5. The fact that the person has in the first instance made a defamatory statement out of Court and then repeated it in Court, committed the offence of perjury, is no bar to prosecution for defamation in respect of the statement made out of Court. (1886) 1 Weir. 580.

40. Report of Proceedings of Court.

An accused, who was the trustee of a temple, was convicted of defamation, the alleged defamatory statement being that the complainant had been convicted of theft of

Defamation—(contd.)

idols. Held, that conviction was illegal, as it was the publication of the result of proceedings in a Court. 26 M. 461.

41. Report of an officer.

Report of an officer in the execution of his duty under his superior's orders, which contains defamatory imputations against others, but not made recklessly or unjustifiably is covered by Exception to S. 499. 23 P. R. 1850, 26 A. L. J. 760=1923 A. 316. See 4 P. W. R. 1910 Cr.

42. Report of proceeding of a caste meeting.

Where the caste leader signed a report of caste meeting that complainant is not to be accorded certain honour and is ex-communicated, there is no defamation. 1931 M. W. N. 407.

43. Reputation—harming of.

1. If it is proved that complainant had notoriously bad reputation as bribe-taker, the imputation made as to his having taken bribe on a particular occasion, even if false, could not damage his reputation as he had none to lose. 4 L. 55=1923 L. 225=73 L. C. 505 24 Cr. L. J. 603.
2. Using obscene and insulting words in speaking of a respectable person after an altercation is over, lowers the reputation of that person. 45 L. C. 1005.
3. Accused cannot escape punishment on the ground that the reputation of person attacked was so good or that of the person attacking so bad that serious injury to the reputation was not in fact caused. 1924 A. 566=83 L. C. 503.
4. It is not essential part of the offence that harm should be caused to the reputation of the complainant. 59 L. C. 202=12 Cr. L. J. 129.
5. It is not necessary that there should be intention to harm the reputation. It is sufficient if there was reason to believe that imputation made would harm the reputation. 34 P. W. R. 1913 Cr.
6. Where defamatory words were used in a street quarrel and were mere vulgar abuses, it was held that there was no deliberate intention to harm the reputation of the person defamed. (1887) 1 Weir 607, 1883 A. W. N. 36=167.
7. In reply to a book written by the complainant att the accused retorted by a similar publication. The Held, that personal character of the complainant =1924 M. W. N. 768=1924 M. 898.
8. Complainant was invited to dinner and was asked by the host to leave the place without giving any reason. Held, that his reputation was not harmed. 24 A. L. J. 893=1926 A. 711=98 L. C. 606=27 Cr. L. J. 1390.
9. Where accused declared in a feast of brotherhood that the complainant was out-casted and could not take part in the feast, which was wrong, he was guilty of defamation. 1928 A. 213=26 A. L. J. 361=29 Cr. L. J. 451, 11 Cr. L. J. 413.
10. Where a complainant was described as a man with whom not even Turks, let alone Brahmans, could associate and the wedding of his daughter was described as a sinful carnival worthy of perdition, the accused was guilty. 12 Cr. L. J. 129.
11. Anything that lowers a man in his own estimation only is not defamation. 7 A. 205 (220).
12. A corporation cannot suffer in body or mind, although it may have a good reputation. 51 C. 250=1924 C. 495=28 C. W. N. 160=84 L. C. 554.
13. Reputation to be harmed must be of the very person against whom imputation is made and not of some other person. 22 P. R. 1884 Cr.

44. Sentence.

1. When defamatory words are used in the heat of a passion, it does not call for a severe penalty. 1923 R. 148=2 Bur. L. J. 10.
2. An editor of newspaper, who publishes a false and fabricated account of an innocent social function to stir up communal feelings and gives out that it was on the information of somebody who in fact never supplied him cannot be lightly dealt with.

Defamation—(contd.)

1928 L. 865=110 I. C. 236=29 Cr. L. J. 684.

3. Where an Editor publishes defamatory matter under the guise of rumour and when asked by the complainant to express regret, wrote a letter aggravating the magnitude of the offence. Held, that the sentence of 6 months imprisonment was light and inadequate. 1928 A. 321=117 I. C. 355=26 A. L. J. 509.
4. Where editor was a mere tool in the hand of the proprietor who wrote the defamatory article and who bore ill-will against the complainant, he should be dealt with leniently. But being dummy editor is no ground by itself for reduction of sentence. 1928 L. 865=110 I. C. 236=29 Cr. L. J. 684.
5. An immediate apology in the widest and most unreserved terms may lessen the punishment. 26 A. L. J. 509=1928 A. 321.
6. The fact that accused was a mere dummy editor is no ground by itself for reduction of sentence. 29 Cr. L. J. 684=1928 L. 865=110 I. C. 236.
7. If in the course of trial evidence revealed that in writing the libel, the accused proceeded on a gross mistake of fact, a prompt apology should be tendered. 41 I. C. 1023.

45. Similar acts of.— Admissibility

In a defamation case, evidence of instances of plaintiff's acts, more or less resembling the particular acts of misconduct imputed to him in the libellous statement is inadmissible, unless those acts were parts of the habitual and intentional and not accidental conduct of the plaintiff. 15 Bom. L. R. 130=19 I. C. 98.

46. Statement in Court or proceedings by counsel, Judge or Magistrate, parties and witnesses.**A. By Counsel.**

1. Court should ordinarily presume that the remark or question by counsel was made on instructions and in entire good faith. 111 I. C. 569=29 Cr. L. J. 889, 55 C. 85, 41 C. 514, 1932 B. 490=34 Bom. L. R. 910, 48 C. 388, 3 R. 524=1925 R. 345, 19 B. 340, 9 Bom. L. R. 1287, 1927 M. 379, 1926 P. 499.
2. Where the questions were asked with utter wrecklessness and not for the good of the case but to injure the reputation of the witness. Held, the counsel is guilty as there was no good faith. 54 C. 137.
3. When a lawyer makes a defamatory statement, good faith is to be presumed and bad faith is not to be assumed unless there is independent allegation or proof of private malice. 19 B. 340, 41 C. 514, 1925 R. 345, 36 C. 375.
4. Where the statement made was necessary for the interest of client, the presence of malice will not override the presumption of good faith. 50 M. 667=1927 M. 379.
5. The English law of absolute privilege does not apply in India to statements of Advocates in judicial proceedings. An opportunity should be given to Advocate before summons is issued. 3 R. 524=1925 R. 345, 55 C. 85, 29 Cr. L. J. 889.
6. The burden is on the prosecution to prove absence of good faith. The Court should not hold an Advocate criminally liable unless actual malice is established and it is proved that he took unfair advantage as a Pleader for an indirect purpose. 6 P. 224=27 Cr. L. J. 1090=97 I. C. 354, 19 B. 340, 9 Bom. L. R. 1287.
7. A Pleader in addressing the Court called the prosecution witnesses *loafers* and was prosecuted for defamation. Held, that in the absence of express malice, he was protected. 19 B. 340.
8. Where a Pleader after the close of trial, wrote a letter to the client that Judge had received a bribe and the complainant who conveyed it received a portion of the same. Held, that if a rumour really existed, he was protected. (1894) 1 Weir 594.
9. Where an Advocate makes a statement as a party in a departmental inquiry, before the Deputy Commissioner and bases his opinion on a letter written by him to the Magistrate that he had accepted the bribe, the burden is on him to

Defamation—(contd.)

- prove that it falls under any exception. 132 I. C. 553=1931 R. 83=1921 C. 1
10. Where a counsel asks a question under instructions from the client, he is guilty under S. 500 when no malice is admitted to have existed. 1933 C. 34 Cr. L. J. 856.
 11. It is not enough to plead instructions, the counsel must be personally satisfied that there are reasonable grounds for putting forward a charge against a witness. 40 C. 898, 47 A. 729=1925 A. 641, 40 C. 898.
 12. A member of Bar in India has no absolute privilege. He has to bring his within the terms of Exception IX to S. 499. 1932 B. 490=139 I. C. 275.
- B. By Judge or Magistrate.**
1. An action for defamation cannot be maintained against a Judge for words by him in Court, even though false and malicious. 17 M. 87, 10 M. 28, 19 B.
 2. If the Judge in rejecting an application wrote that it was so badly written Gupta could be read as *Kutta* (dog), etc., the complaint under S. 500 should be dismissed under S. 95. 132 I. C. 783=1931 O. 392.
 3. If a Judge used defamatory language to a witness during the trial of a suit, a complaint against the Judge could not be entertained without a sanction under S. 197, Cr. P. C., as the Judge was acting in his official capacity. 9 M. 431 P. R. 1904 Cr., 13 C.P. L. R. 126. See 26 C. 852, 2 B. 481.
- C. By parties.**
1. A defamatory statement on oath or otherwise, by a party to judicial proceedings falls within S. 499, I. P. C., and is not absolutely privileged. The provisions of common law of England do not apply. 50 B. 162=1926 B. 141=93 I. 151, 48 C. 388, 49 I. C. 109, 59 I. C. 143, 34 P. R. 1889 Cr., 14 P. 1893, 5 P. R. 1913 Cr., 84 I. C. 977=1925 R. 15=2 R. 333. 17 B. and 17 B. 573 overruled.
 2. Where the accused's answer alleged to be defamatory was relevant to the matter in issue. Held, that the provisions of S. 342 (2) applied and the accused was not at any rate punishable for this statement. 1927 A. 707=25 A. L. J. 836 M. 216. 1921 C. 1, Ref. 1926 A. 287 Dist., 1926 B. 141 Diss. from.
 3. Where it is found that accused acted with a desire to protect himself by appeal to Magistrate, rather than to injure others, he is protected by Exception 8 and 9 of S. 499. 56 C. 1013=1929 C. 346, 4 C. 124.
 4. Party stating that his witness is won over and hence not examined is not defamatory. 1925 R. 360=94 I. C. 603=27 Cr. L. J. 648.
 5. Plaintiff is not privileged unless the allegations in the plaint were made in good faith. 98 I. C. 392=1926 P. 425, 11 Cr. L. J. 594, 22 A. 134 Dist.
 6. Calling a complainant with previous conviction a rogue, for the bona fide protection of one's own interest in the course of a Police enquiry falls within the exception. 46 I. C. 411=20 Bom. L. R. 601.
 7. First information report to Police is privileged. 41 A. 311=49 I. C. 855, 40 A. 41
 8. A written statement filed by a respondent in maintenance proceedings is not privileged. 42 I. C. 763=18 Cr. L. J. 1019, 38 C. 880 and 36 M. 216 Dist.
 9. Statements made in bad faith in an application for transfer of a case are not protected. 40 C. 433, 40 C. 441, 23 C. 867, 32 C. 756, 38 C. 880 Dist.
 10. A party or witness is liable under S. 500 for a defamatory statement, irrespective of the question of perjury. He can be protected if he brings the statement within the exceptions under S. 499. 7 P. W. R. 1911 Cr.=12 Cr. L. J. 193.
 11. Statement of an accused in answer to a question put by Court is absolutely privileged. 36 M. 216, 29 A. 685, 9 Cr. L. J. 276.
 12. A defamatory statement contained in a complaint is privileged and no prosecution lies under S. 500. 37 M. 110, 38 C. 890, 1925 A. 316, 40 A. 41.
 13. Accused making a statement in his interest is protected. 20 Bom. L. R. 601.
 14. The protection which is given to a witness on the ground of public policy, cannot

Defamation—(contd.)

- be given to a complainant, who deliberately makes a defamatory statement without the slightest justification. 47 B. 15, 17 B. 573.
15. Objectionable remarks about the character of complainant while showing cause against prosecution under S. 188 are privileged if made in good faith and for one's own protection. 1922 C. 76=69 I. C. 269=23 Cr. L. J. 685.
 16. Imputation of bad character in a statement to Magistrate is covered by Exception 1 to S. 499, I. P. C., if it is true. 1934 A. 904.
 17. S. 499, Exception 9, would be applicable to the case of an applicant making defamatory statement in proceedings before Revenue Officer in order to support his application. 1923 L. 452=67 I. C. 589=23 Cr. L. J. 429.
 18. There is no absolute privilege in respect of defamatory statements in pleadings in India. 65 I. C. 204, 23 C. 867, 38 C. 880, 14 B. 97, 3 A. 815, 48 C. 388.
 19. A complainant making libellous statements in his complaint is not absolutely protected. Under S. 499, Exception 8th they are privileged if made in good faith. 49 M. 725=1925 M. 906=95 I. C. 978=27 Cr. L. J. 1025=51 M. L. J. 112, 36 M. 216 and 37 M. 110 overruled, 44 M. 913 Dist.
 20. If a counsel or accused asked a question from a witness whether in consequence of cheating he had not been turned out of the ministry, it is no defamation. 15 M. 414.
 21. Defendant charging a Munsif with conspiracy with plaintiff in getting up a false case, in a petition to Deputy Commissioner is guilty. 21 P. R. 1887 Cr.
 22. Imputation by a party in good faith, with due care and caution is protected. 34 P. R. 1889 Cr., 14 P. R. 1893 Cr.
 23. If a defendant files a false affidavit, a complaint under S. 500 is competent but it should be stayed till disposal of civil suit. 1935 Sind 81=1935 Cr. C. 367, 1925 B. 141=50 B. 162, 48 C. 388, 17 B. 573 Rel. on. 1927 Sind 10=27 Cr. L. J. 1105, 29 A. 685 Ref.

D. By witness.

1. If the statement of a witness is true and relevant to the case it is for the public good that it should be made. 40 A. 271, 244 P. L. R. 1912, 14 P. R. 1893 Cr., 7 P. W. R. 1911 Cr.
 2. A witness who makes a defamatory statement in a judicial proceeding, is not exempted from criminal liability under S. 499 unless it comes within the exceptions. 5 P. R. 1913 Cr. 34 P. R. 1839, 14 P. R. 1893, 26 A. 685, 59 I. C. 863 Foll. 11 M. 477, 16 M. 235, 30 M. 222, 17 B. 127, 17 B. 573, 27 C. 252, 52 M. 432=1929 M. 236=116 I. C. 337=30 Cr. L. J. 613.
 3. Imputation of miscarriage without any knowledge whether the woman was married or not is defamation. When the character of woman is not in issue, the witness is not protected by S. 132, Evidence Act, unless Judge himself put the question. 1930 A. 493=129 I. C. 707, 1926 B. 141=50 B. 162, 32 C. 756, 18 A. L. J. 112, 3 M. 271, 29 A. 685.
 4. A witness, who being actuated by malicious motives makes a voluntary irrelevant defamatory statement, is guilty under S. 500 and cannot claim privilege under S. 132, Evidence Act. 105 I. C. 820=1928 N. 58, 21 C. 392, 33 C. 756, 40 C. 433.
 5. If the statements are relevant to the issue in the case under inquiry no prosecution for defamation would lie. 27 C. 262, 11 M. 477.
 6. Statements made by a witness are entitled not to an absolute but qualified privilege. 52 M. 432=1929 M. 235=116 I. C. 337=30 Cr. L. J. 613.
- 47. Statement to Public Servant (Police, etc.).**
1. Report to the Police that a lost buffalo was in accused's house is not defamatory. 95 I. C. 480=27 Cr. L. J. 816.
 2. The person charged with making a defamatory report to the Police must prove that he used the privilege honestly and the onus of establishing that lies upon him. 1923 A. 167=77 I. C. 913.

Defence—(contd.)

8. Accused should be enabled to prepare defence rather than hampered. An order to live in Police lines to a Police Officer who is accused is improper. 1932 C. 235 = 55 C. 1132, 49 I. C. 851 = 20 Cr. L. J. 230.
9. If new witnesses are to be examined in the Sessions Court, the summary of their evidence should be supplied to the prisoner free of cost. 1934 B. 487.

3. False.

1. False defence of accused person should be ignored. 21 P. R. 1890 Cr., 22 P. R. 1868, 5 P. R. 1872 Cr.
2. Innocent persons not unusually deny presence or other circumstances supposed to tell against them. 37 P. R. 1867 Cr.
3. Different persons are differently constituted and some though innocent deliberately abscond rather than face a trial or deposit the alleged embezzled money to be let off with a small punishment. 1930 O. 324 = 31 Cr. L. J. 1081.
4. Ill advised defence by accused person should be ignored. 28 P. L. R. 1905 Cr.
5. Innocent persons not usually raise false plea of *alibi*. 22 P. R. 1868 Cr., 57 P. R. 1866 Cr., 1925 L. 42 = 26 Cr. L. J. 393.
6. Defence being false is no corroboration of approver. 3 L. 144 = 23 Cr. L. J. 513.
7. Merely because accused makes a false defence or uses false testimony, he is not deprived of the presumption of innocence. 1934 Sind 22
8. Falseness of defence does not help prosecution. 1923 M. 365, 57 P. R. 1866, 21 P. R. 1890, 3 L. 144, 1921 L. 89, 12 Cr. L. J. 584, 21 P. R. 1890, 1933 L. 946, 1925 L. 42, 1921 C. 531, 17 Cr. L. J. 23.

4. Ignorance of Law. See Ignorance of Law

Ignorance of law cannot be pleaded as defence. In a prosecution under S. 19, Arms Act, the accused were not defended by counsel and they did not plead the exceptions under S. 2 (7) (a), though circumstances showed it could have been pleaded. Held, the Magistrate ought to have questioned them regarding the possible defence and that accused should plead the exception in revision. 1930 R. 349 = 1930 Cr. C. 1177 = 128 I. C. 845.

5. Imputing unchastity to complainant's wife or throwing mud at witness.

See Conduct—2. Sentence,—3.

6. New—at late stage

New defence raised at late stage may be ignored unless it could not be raised earlier. 1933 P. 481 = 144 I. C. 872.

7. Pleas—Inconsistent or alternative.

1. Accused cannot be barred from setting up inconsistent pleas. 1927 L. 710.
2. By setting up inconsistent defences, there can be no doubt that the case for the accused becomes considerably weaker but there is nothing illegal in setting up alternative and inconsistent defence. 1923 C. 717, 1933 P. 481.
3. Accused can set up alternative defence of *alibi* or right of private defence. 40 A. 284, 32 A. 451, 58 I. C. 527, 52 I. C. 485.
4. Magistrate, in dealing with ignorant individuals accused of technical offences, should assist them in putting up defensive pleas if they are not defended by Advocates. 1930 R. 349, 128 I. C. 845 = 1930 Cr. C. 1177.
5. Plea of private defence can be taken for the first time in appeal. 1925 A. 664 = 87 I. C. 597 = 28 Cr. L. J. 997.
6. Right of private defence can be found, though not pleaded. 1924 A. 645 = 85 I. C. 245 = 26 Cr. L. J. 501.
7. In case of general fight between two parties, right of private defence cannot be pleaded. 47 M. 232 = 1924 M. 379 = 25 Cr. L. J. 715.
8. Contributory negligence cannot be pleaded in a criminal trial. 1925 Sind 233 = 92 I. C. 433 = 27 Cr. L. J. 257.

Defamation—(concl'd.)

3. Where a person makes a report to the Police and suspects certain person which results in the search of that person's house, it is an imputation within S. 499. 1926 L. 278=96 I. C. 211=27 P. L. R. 171=27 Cr. L. J. 899.
4. Defamatory statement contained in a complaint to Magistrate cannot form the basis of a suit for damages in a Civil Court. 1923 A. 316, 40 A. 41.
5. Petition to a Magistrate containing defamatory words about complainant is governed by Exception I to S. 499 when it was substantially true. 1934-A. 904.
6. If a person receives information that other persons are about to him, he is entitled to ask Police protection without himself making inquiry. It cannot be said that he did not act in good faith. 1935 R. 297=158 I. C. 93.

48. Truth as defence.

1. The accused is entitled to call evidence to prove that allegations are true, even though he denied making such allegations. 30 Cr. L. J. 239=1923 R. 167.
2. Where the accused intends to bring evidence to prove the truth of the defamatory matter, his Advocate should cross-examine the complainant upon every matter upon which he intends to lead evidence. If he does not do so, he may not be allowed to lead such evidence. 6 A. 220, 10 A. 425.
3. Where the accused charged a woman with being pregnant with adultery, requested the Court to have her medically examined. Held, that there was no law empowering the Court to order such examination and her refusal to do so is no evidence against her. 1930 L. 159=123 I. C. 841=31 Cr. L. J. 534=12 L. L. J. 5.
4. Where there was a dispute over a plot of land between the complainant and the accused and the latter in a petition presented to the Municipal Council made a statement that complainant was sentenced to rigorous imprisonment. Held, that statement though true was not privileged. (1895) 1 Weir 612.
5. Questions as to whether accused had good reasons to believe imputations to be true is relevant. 1933 Sind 403=34 Cr. L. J. 667.
6. Accused must prove that imputation made was true. 1933 Sind 403.

DEFAULT OF APPEARANCE. See Absence of Complainant, Appeal—15.

DEFENCE See Explanation by accused, Duty of Prosecution.

1. Anticipating of—.

Evidence can be led to meet the anticipated defence. Evidence of defalcation prior or subsequent whether such defalcation found the basis of other charge or not is admissible to prove the criminal intent, as also to anticipate the defence of non-existence of such intent. 27 Cr. L. J. 1217=1927 Sind 23=97 I. C. 1041, 1923 L. 880=111 I. C. 387=29 Cr. L. J. 835.

2. Fair opportunity for—.

1. Accused should not be punished without being allowed an opportunity for defence. 62 P. R., 1866 Cr., 23 Cr. L. J. 167, 1925 A. 318, 15 Cr. L. J. 521.
2. Before taking an action against a person fabricating false evidence, it is necessary that he should be given an opportunity to substantiate his allegations. 1925 M. 1157=90 I. C. 661=26 Cr. L. J. 1589
3. An order directing accused to be ready with his defence on a certain date after examination of remaining prosecution witnesses is improper. 1924 A. 320=25 Cr. L. J. 1003.
4. Sometimes the real principle is reversed. No sooner an accused is brought before a Court by the Police, he is readily presumed to be guilty and every attempt on his part to prove his innocence is taken as vexatious by the Court. 23 C. 594.
5. Defence witnesses were not given up. High Court gave opportunity for calling them, although further process were not asked for. 1924 C. 196=25 Cr. L. J. 293.
6. Accused should be given fair opportunity to consult legal adviser. 20 Cr. L. J. 675.
7. Accused should not be tried in a hasty manner without giving him an opportunity to produce whole evidence in support of his defence. 113 P. L. R. 1914, 14 P. W. R. 1914 Cr., 1 C. W. N. 313.

Defence Witnesses—(contd.)

6. Where after the close of case, the Magistrate summoned a witness, the accused should be given opportunity for summoning witnesses to rebut the evidence of the Court witness. 6 C. 714, or of prosecution witness. 1925 L. 531.
7. If a witness is unable to attend the Court owing to illness the Court should ascertain whether it will be possible for the witness to attend within a reasonable time, if not, then his evidence should be taken on commission. 3 P. 591=1925 P. 55.
8. Statement of defence witness that a prosecution witness was at a particular place at a particular time is admissible even though he was not cross-examined on the point. 11 B. II. C. R. 166.
9. Accused cannot be convicted because he failed to produce defence. (1896) Rat. 354.
- 7. Expenses of—** See—3, Expenses of witnesses—2.
- 8. In commitment proceedings.** S. 208, Ss. 212—216, Cr. P. C.
 1. When accused are tried for offences under Ss. 363—367, I. P. C., every opportunity should be given to them to adduce oral or documentary evidence. 1930 C. 362=126 I. C. 720=31 Cr. L. J. 1077=1930 Cr. C. 538.
 2. If witnesses fail to appear, the Magistrate must make a second attempt to secure the attendance of absent witnesses. 4 A. 53.
 3. Magistrate can require the accused to satisfy him that the evidence of witnesses is material only when he thinks that the witnesses were included for the purpose of vexation or delay, otherwise not. 8 A. 668.
 4. The fact that accused declined to examine witnesses at the close of the case would be no reason for refusing to summon them to meet fresh evidence, taken afterwards. 6 C. 714.
 5. An order refusing to issue process should be sparingly used. 7 P. R. 1898 Cr.
 6. When defence witnesses were not examined by Committing Magistrate, commitment must be quashed. 1934 L. 610 (1).
 7. Accused is entitled to have his witnesses summoned in the absence of finding of vexation, delay, etc. 1935 S. 69, 19 A. 502.
- 9. List of—** S. 211, Cr. P. C.
 1. Magistrate is bound to require the accused to give a list, if he desires to call witnesses. 7 Bom. L. R. 723.
 2. If accused when called upon to give a list, refuses to do so, he cannot afterwards compel the Magistrate to summon witnesses. 19 A. 502
 3. The accused is entitled to refuse to disclose the names of the witnesses he wishes to call at the trial as well as the nature of their evidence. 14 A. 242.
 4. Magistrate should not reject the application on the ground that the number of witnesses is very large. 11 C. 762, 15 W. R. 15.
 5. The Magistrate has no right arbitrarily to limit the number of witnesses to be produced by an accused. 1926 L. 454=27 Cr. L. J. 543=93 I. C. 1039.
 6. Accused must be informed of his right to give list of witnesses. 1934 L. 23 (1)=35 Cr. L. J. 616=148 I. C. 159.
- 10. Prosecution witnesses called as—** See Cross-examination—18.
- 11. Refusal to summon—** See—2.
 1. A Magistrate cannot refuse to summon witnesses on the ground that they are implicated in the charge. 15 W. R. 7.
 2. A Magistrate cannot refuse to summon witnesses on the ground that he refuses or is unable to pay the expenses of witnesses. 24 Cr. L. J. 831.
 3. That the witnesses are living at a great distance is no ground for refusing to summon. 45 M. L. J. 305=1924 M. 243=74 I. C. 952=24 Cr. L. J. 840.
 4. Magistrate cannot refuse to summon witnesses on the ground that no useful purpose will be served by summoning. 24 Cr. L. J. 685=1923 L. 420, 12 Cr. L. J. 545.

Defence Witnesses—(contd.)

6. Magistrate cannot arbitrarily limit number of defence witnesses. 1934 A. 735, 1935 L. 454, 20 Cr. L. J. 201, 17 M. L. J. 62.
 7. Non-compliance amounts to illegality vitiating trial. 1925 C. 80=25 Cr. L. J. 310, 1929 A. 914, 51 C. 1044, 31 M. 131, 12 Cr. L. J. 518.
 8. If a Magistrate summons a number of witnesses he cannot afterwards limit the number arbitrarily. 1935 A. 638=36 Cr. L. J. 1142.
3. Cost of summoning. See Expenses of witnesses—2.
1. The inability or even refusal to pay the costs of witnesses in a warrant case is no ground for refusing to summon the witnesses. 1924 P. 142=74 I. C. 863=25 Cr. L. J. 531, 7 P. R. 1898. See 24 Cr. L. J. 686.
 2. If the Magistrate has once allowed witnesses to be summoned without demanding expenses from the accused and the witnesses are not examined on that date, the Magistrate has no power to say afterwards that witnesses shall not be summoned except on payment of expenses by accused. 22 Cr. L. J. 711.
 3. If the witnesses are summoned on Government expenses, the Magistrate is not justified in refusing to allow them to be cross-examined unless the accused paid their expenses. 1929 L. 578=115 I. C. 76=30 Cr. L. J. 380=1929 Cr. C. 152.
 4. The ordinary procedure in warrant case is that expenses of witnesses are usually borne by Government. 1929 L. 23=30 Cr. L. J. 814, 1932 L. 481, 7 P. R. 1898, 1924 P. 142, 29 Cr. L. J. 459, 1932 L. 577. See 1923 L. 420.
 5. The Court should state the amount of travelling expenses. 1925 P. 533.
 6. In exceptional cases when Magistrate doubts the *bona fides* of the application, Magistrate may require the expenses to be deposited. 1933 P. 242=12 P. 234.
 7. Reasons for demanding deposit may not be recorded. 1929 L. 23.
4. Delay in summoning—
1. Trifling delay in summoning defence witnesses just after the first application is granted, is immaterial. 1923 P. 536=24 Cr. L. J. 835, 12 Cr. L. J. 150.
 2. Court should be given reasonable interval for considering what evidence he should produce. 1920 P. 25.
 3. An unduly belated application for process is liable to be construed for purpose of delay or vexation. 13 Cr. L. J. 218, 12 Cr. L. J. 150.
5. Examination of—in commitment proceeding. S. 212, Cr. P. C.
1. The Magistrate is not bound to examine any witness named in the list given under S. 211, Cr. P. C. 36 M. 321.
 2. The Magistrate is not bound to record reasons for refusing to examine defence witnesses. 18 A. 380.
 3. When the Magistrate intended to summon some witnesses for the accused and to make a local inspection but committed the case at the direction of Sessions Judge, Held, that the order of Sessions Judge was *ultra vires*. 1906 A. W. N. 306.
6. Examination of—in warrant case. S. 257, Cr. P. C.
1. A Magistrate cannot refuse to examine a defence witness who is present in Court, if he is requested to do so. 4 Bom. L. R. 461. See 1934 M. W. N. 97.
 2. Magistrate cannot refuse to examine the defence witnesses on the ground that their evidence is unnecessary. 14 Bom. L. R. 350=13 Cr. L. J. 523.
 3. Magistrate cannot dictate terms that witnesses cannot be examined until accused paid their expenses. 1929 L. 578=30 Cr. L. J. 380=115 I. C. 76.
 4. Magistrate cannot dictate terms upon which the examination of the witnesses shall be conducted. 1928 P. 253=107 I. C. 846=29 Cr. L. J. 308.
 5. The Court cannot refuse to examine witnesses from Coimbatore to Calcutta for vexation or delay. Their examination, although accused sent interrogatories, is valid. 1934 L. J. 840.

Defiling Place of Worship—(concl'd.)

5. Accused, when rebuilding his house placed the ends of his rafters in the walls of a mosque. Held, he is not guilty. 67 I. C. 586=3 L. L. J. 247.
6. Accused removed the material of an old mosque which had fallen into ruin. He is not guilty. (1883) 3 A. W. N. 39.
7. Tomb of a Mohammadan Faqir is an object of veneration but he is not a sacred object. 10 M. 126.
8. The object mentioned in the section must be inanimate one like church, mosque, temple, etc. 17 C. 852, 10 A. 150, 10 P. R. 1918 Cr. overruling, 27 P. R. 1884.
9. S. 295 equally applies whether the offence is committed by persons of same religion or different one. 10 A. 150.
10. Killing fowls by *jahatka* near a mosque is no offence. 10 P. R. 1918 Cr.
11. S. 295 applies to places of worship while S. 297 refers to sepulture and graves, etc. 10 M. 126.
12. No particular period is required by law to establish an object as one of religious reverence. The tomb of a saint becomes an object of veneration from the date it was built. (1885) 1 Weir 253.

3. Sentence.

Where the accused entered a Hindu temple and damaged its property, the offence under S. 447 is inseparable from that under S. 295 and it is improper to pass consecutive sentences for each of the offences, for both are really one and the same offence. 1925 O. 50=82 I. C. 37=25 Cr. L. J. 1173.

DELAY.

1. As ground of transfer. See Transfer (Grounds)—28.

2. Evidence given after long—

1. The memory of a witness as to actual words used by the accused is not to be relied upon after a considerable time. 1930 L. 371=120 I. C. 798=31 Cr. L. J. 168.
2. Where a witness keeps quiet for many days after the occurrence and comes forward when the Police had made discovery, he is not reliable. 1923 L. 438 (2)=84 I. C. 321=26 Cr. L. J. 257.
3. If the principal witness was not examined by Police for a long time, his evidence should be discarded, as there was opportunity for being tutored. 1922 P. 348=67 I. C. 581=23 Cr. L. J. 421.
4. If there are slight mistakes or discrepancies in evidence of a young witness, who is giving evidence three years after the occurrence, he should not be disbelieved. 1931 L. 38=130 I. C. 410=32 Cr. L. J. 522.
5. Where a witness admits that he disclosed his knowledge of crime to Police at a very late date and gives no explanation of this delay, his evidence is of no value. 99 I. C. 857=3 L. L. J. 147=28 Cr. L. J. 185.
6. Where the story of confession was not told by the witness until after a fortnight of the occurrence, the evidence is unreliable. 1 P. 630=1922 P. 582=71 I. C. 219=24 Cr. L. J. 91.
7. If the witness did not come forward immediately when the investigation began, it is no ground for rejecting his evidence. 32 Cr. L. J. 1032=1931 L. 529.
8. Statement to the Police made on the third day of investigation is suspicious. 4 P. L. R. 1915.
9. If the Police did not take the statements of witnesses named by approver for over two months, their testimony should be discredited. 1934 L. 346.

In appearance in Court. See Absence of complainant.

1. Where the case was fixed at 7 A. M. and the Pleader for the complainant was present but the complainant arrived late, the order dismissing the complaint was improper. 1927 M. 139=98 I. C. 607=27 Cr. L. J. 1391.
2. Court is not bound to wait till the close of day before proceeding under S. 247, Cr. P. C., whether the complainant appears or not. 49 M. 833=1926 M. 949.

Defence Witnesses—(concl.)

5. Even if the Magistrate thinks that witnesses will not be able to give reliable evidence one way or the other, it is no ground for refusing to summon. 2 M. W. N. 192.
6. When after the close of the case, Magistrate examines Court witnesses, he should not refuse to summon witnesses cited by the accused to rebut that evidence, although he had stated before that he would not examine any witness. 6 C. 714.
7. If a Magistrate refuses to summon the witnesses, he must specify reasons for such refusal, otherwise the conviction will be set aside. 51 C. 1044, 3 A. 392, 24 Cr. L. J. 831, 25 Cr. L. J. 310, 10 Cr. L. J. 207, 26 B. 418, 1929 A. 914.
8. Where a Magistrate rejects an application after recording on it "too late" there is a sufficient compliance with S. 257. 39 C. 781. *Cont.* 1923 P. 536, 12 Cr. L. J. 150.
9. If a good case was made out that the Magistrate's refusal was outside the limits of reasonable discretion, the High Court should and would interfere. 92 I. C. 865.
10. Where accused did not apply for further process but did not expressly give up witnesses nor argued the case, the High Court ordered further opportunity to be given. 1924 C. 196=76 I. C. 965=25 Cr. L. J. 293.
11. Magistrate cannot take upon himself responsibility of selecting witnesses for the defence. 1928 L. 125=29 Cr. L. J. 212.
12. Magistrate cannot arbitrarily limit the number of defence witnesses. 1934 A. 735, 1926 L. 454, 20 Cr. L. J. 201, 17 M. L. J. 62.
13. Magistrate can ask the accused whether the witnesses mentioned in the list can give any material evidence, and refuse to summon if the accused declines to say anything. 4 M. H. C. R. App. 81.
14. Accused is entitled to have his witnesses summoned in the absence of finding that they are included for purposes of vexation or delay or defeating the ends of justice. 1935 S. 69=1935 Cr. C. 274, 6 C. W. N. 548 and 19 A. 502. *Ref.* 1931 L. 56, 26 B. 418, 1933 L. 1020, 3 A. 392, 6 C. 714, 1925 C. 80, 1929 A. 914, 1933 R. 29, 1931 O. 386.
15. Where accused stated to the Committing Magistrate that he would summon the witnesses in Sessions Court, Sessions Judge has discretion to grant application of accused. 1935 S. 216.
16. An order that accused must be ready with his witnesses on a certain date is improper. 1924 A. 320=25 Cr. L. J. 1003.

12. Using evidence of—against co-accused.

The evidence of a defence witness produced by one accused cannot be taken to be as evidence for prosecution against other accused. 1925 A. 769=26 Cr. L. J. 1018.

DEFILING PLACE OF WORSHIP. S. 295, I. P. C.

1. Defilement.

1. The word 'defile' is not confined to the idea of making dirty but must be extended to ceremonial pollution. 41 M. 980, 10 M. 126, 1924 N. 121, (1891) 1 Weir 256.
2. Entering a Hindu Temple with boots on is defiling it. 1 Weir 253 (1885).
3. S. 295 does not apply to inanimate objects, but refers only to inanimate objects like churches, mosques, temples, and marbles and stone figures representing gods. 11 A. 150, 17 C. 852, 10 P. R. 1918 overruling 27 P. R. 1884.

2. Essentials and Evidence.

1. Killing of a dedicated bull for the sake of meat is not an offence under S. 295. 56 I. C. 437=21 Cr. L. J. 453, 17 C. 852, 10 P. R. 1918 Cr.
2. Killing a cow with the intention of offending religious susceptibilities of others is no offence under S. 295. 10 P. R. 1918 Cr., 10 A. 150, 17 C. 852.
3. Slaughter of kine is punishable if rules framed by the Government are extended to the district. 20 P. R. 1888 Cr.
4. When by centuries old custom untouchable are not allowed in the precincts of a temple and if he deliberately enters and defiles the idol, he is guilty under S. 295. 1924 N. 121=76 I. C. 249=25 Cr. L. J. 155.

Defiling Place of Worship—(concl'd.)

5. Accused, when rebuilding his house placed the ends of his rafters in the walls of a mosque. Held, he is not guilty. 67 I. C. 586=3 L. L. J. 247.
6. Accused removed the material of an old mosque which had fallen into ruin. He is not guilty. (1883) 3 A. W. N. 39.
7. Tomb of a Mohammadan Faqir is an object of veneration but he is not a sacred object. 10 M. 126.
8. The object mentioned in the section must be inanimate one like church, mosque, temple, etc. 17 C. 852, 10 A. 150, 10 P. R. 1918 Cr. overruling, 27 P. R. 1884.
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5. Where a witness admits that he disclosed his knowledge of crime to Police at a very late date and gives no explanation of this delay, his evidence is of no value. 99 I. C. 857=3 L. L. J. 147=28 Cr. L. J. 185.
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2. Court is not bound to wait till the close of day before proceeding under S. 247, Cr. P. C., whether the complainant appears or not. 49 M. 833=1926 M. 949.

Delay—(contd.)

4. In arresting accused.

When delay in formally arresting the accused is explained, prosecution should not be disbelieved as being fabricated on that ground. 1934 L. 158=1934 Cr. C. 343.

5. In bringing fresh complaint.

Five months after the dismissal of a complaint, a fresh complaint was preferred. Held, that the proceedings should be quashed. 11 Cr. L. J. 582=8 I. C. 203.

6. In confirming death sentence. See Sentence—16.

7. In disposal of appeal.

1. A delay of over 4½ months in hearing appeal would amount to denial of justice in a majority of cases. 1925 O. 501=85 I. C. 370=26 Cr. L. J. 530.

2. When there was a delay in hearing appeal in a murder case, the sentence was commuted into one for transportation, as the capital sentence hung over the accused for six months. 17 C. W. N. 1213.

8. In disposal of cases. See Transfer (Grounds)—28.

1. The case of an accident to a motor due to the negligent and reckless driving of another motor car ought to be tried within a week. 1929 C. 776=31 Cr. L. J. 614.

2. Where there was a long delay in disposal of a murder case, a sentence of transportation instead of hanging was awarded. 126 P. R. 1866.

3. Unnecessary delay in the disposal of a case is a good ground for transfer. 2 Weir 679=692, 12 A. L. J. 262, 1926 L. 78, 8 M. L. T. 222, 56 I. C. 664.

4. As soon as accused is brought before a Magistrate, he has a right to have the evidence against him recorded at as early a period as possible. The fact that there is a great body of evidence forthcoming against him, is no ground for his detention for an inordinate length of time. 6 M. 63.

5. Petty case must be finished in one hearing and both parties should be ready with their evidence. 9 P. 113=1930 P. 241=31 Cr. L. J. 789.

6. Where the record in a criminal case were untidy and the proceedings were allowed to drag on indefinitely, the parties appearing or not as suited their convenience, the conduct of Magistrate was held reprehensible. 58 C. 1293=1932 C. 63.

7. If delay in disposal was due to complainant's default the proceedings should not be quashed. 1927 L. 66 (1)=28 Cr. L. J. 164=99 I. C. 596.

9. In filing Revision.

1. Revision to High Court against an order under S. 107, Cr. P. C., should be filed with the utmost promptitude and certainly within the thirty days of the order complained against. 1926 A. 767=49 A. 228=27 Cr. L. J. 1132.

2. There is no time limit for filing revision in High Court. 1930 O. 401.

3. If in a case under S. 408, I. P. C., accused is let off under S. 562, Cr. P. C., although imprisonment is necessary, High Court refused to interfere when the revision was filed after a long delay. 1928 L. 926=107 I. C. 755=29 Cr. L. J. 291, 19 P. W. R. 1910 Cr., 1925 Bom. 192=86 I. C. 70=26 Cr. L. J. 694.

4. According to the practice of the Calcutta High Court an application for revision should be made within 60 days from the date of the order. The mistake of petitioner's legal adviser is no ground for departing from the settled practice. 43 C. 1029, 40 I. C. 694, 1927 C. 574=28 Cr. L. J. 639=54 C. 394.

5. The revision application should be filed within a reasonable time. 1926 A. 577.

6. In case of delay in filing revision, the High Court should ask petitioner to give reasons for delay and after considering those reasons may admit or reject the application. 1930 O. 401=126 I. C. 395=31 Cr. L. J. 1012.

7. According to Rule 3, Chapter XV of Sind Judicial Commissioner Court Rules, the application should be made to that Court within 60 days. 13 Cr. L. J. 531.

8. Delay in filing revision against order under S. 144 is fatal. 38 M. 489.

9. Delay of nine months is fatal. 8 A. 514.

Delay—(contd.)

10. In First information report. See First information report—7.

11. In forfeiting bond.

Delay in forfeiture of bond under S. 107 is prejudicial. 44 A. 657.

12. In giving information of crime.

1. When the story of confession was not told by the witness until after a fortnight of occurrence, the evidence is unreliable. 1 P. 630=1922 P. 582=24 Cr. L. J. 91.
2. When witness admits that he disclosed his knowledge of crime to Police at a very late date and gives no explanation of this delay, his evidence is of no value. 99 I. C. 857, 3 L. L. J. 147=28 Cr. L. J. 185.
3. If the principal witness was not examined for a long time, his evidence should be discarded as there was opportunity for being tutored. 1922 P. 348=23 Cr. L. J. 421.
4. If the c.e. witness did not come forward immediately the investigation began, his testimony should not be rejected on that ground alone. 1931 L. 529=32 Cr. L. J. 1032=133 I. C. 446=32 P. L. R. 461=1931 Cr. C. 769.

13. In giving sanction to prosecute—Directing prosecution. Ss 195, 476, Cr. P. C.

1. Delay may under certain circumstances be almost a sufficient ground in itself for setting aside order for prosecution. 46 A. 851, 1924 L. 569, 1921 P. 422.
2. Long lapse of time after the commission of offence under S. 193 justifies the Court in not granting sanction. 67 I. C. 204, 56 I. C. 853, 57 I. C. 457.
3. An order directing prosecution under S. 476, Cr. P. C., five months after the trial is without jurisdiction. 23 I. C. 491=15 Cr. L. J. 283.

14. In identification. See Identification—22.

15. In judgment.

The judgment in criminal cases must be passed without undue delay, as it prevents accused from appealing at once. 5 C. P. L. R. 24.

16. In litigation.

The Privy Council condemned the inordinate delay in protracted Indian litigation. 38 A. 570, 39 A. 173, 36 I. C. 420.

17. In prosecution. See Directing prosecution—12

1. Accused was convicted under S. 149, I. P. C., and his conviction was set aside by High Court after a year. He was again prosecuted under S. 121 and was acquitted by Sessions Judge. Held, on appeal from Government, that as there was delay in prosecution, the accused should not be pursued under the new charge. 1924 M. 768=84 I. C. 547=26 Cr. L. J. 323.
2. If both Courts are doubtful as to who caused the injury and complaint was made after long delay, the conviction is improper. 1923 L. 447.

18. In remittance of money to Head Office. See Criminal breach of trust—35.

Delay in making remittance to the Head Office is no conversion to one's use and does not amount to criminal breach of trust. 106 I. C. 862

19. In retrial.

An order of retrial in a case of discharge under Ss. 342—355 and 506, Penal Code, after two years, amounts to travesty of justice. 1928 L. 178=29 Cr. L. J. 895.

20. In reviving complaint.

1. A complainant who allows a long period to elapse before resurrecting a case under S. 408, I. P. C., cannot possibly be allowed to re-agitate it, as a sort of retaliation. 1926 L. 213=96 I. C. 388=27 Cr. L. 932.
2. A complaint was filed in March 1920 and summons were issued. The proceedings were stayed for six weeks as the Food Inspector was on leave. The case was revived in January 1923. Held, that the procedure is defective though not illegal. 1923 C. 725=77 I. C. 892=25 Cr. L. J. 492.
3. If there is a delay of 3 months in preferring a fresh complaint after the dismissal of a complaint, the proceedings should be quashed. 1924 M. 768=26 Cr. L. J. 333.

Delay—(concl'd.)

21. In summoning defence witnesses. See Defence witnesses—1.

22. In writing Police diary or Statement.

1. Omission to record in a case diary on the same day on which examination of witness is made and no explanation for delay is offered, the circumstance is very suspicious. 1935 N. 69=17 N. L. J. 189.

2. Delay in recording statement of witness makes it very suspicious. 16 Cr. L. J. 155

23. Recovery of stolen property after long. See Receiving stolen property—16.

DELEGATION

1. By District Magistrate. Ss. 17 (1), 195, 197, Cr. P. C.

1. Clause (1) of S. 17 empowers only a District Magistrate to make Rules or pass orders as to the distribution of work. Such powers cannot be delegated by District Magistrate to a Sub Divisional Magistrate or to a Senior Honorary Magistrate. 36 A. 468.
2. The power to make complaint under S. 195, Cr. P. C., must be exercised by the Court before which the offence was committed, the Court cannot delegate the powers even to Public Prosecutor. The filing of complaint by him is not equivalent to a complaint by the Court. 19 P. R. 1917 Cr., 13 P. R. 1915 Cr.
3. The authority empowered to grant sanction under S. 197, for the prosecution of Judge and public servants, cannot delegate to another the task of determining which offence the sanction should relate to. 16 M. 468.

2. By District Magistrate to hear appeals. S. 407 (2), Cr. P. C.

The District Magistrate may delegate his work of hearing appeal but not any revisional work. 2 Bom. L. R. 536.

3. Of powers by officer to whom commission is issued. S. 503 (4), Cr. P. C.

When a commission was issued to an officer representing the British Indian Government for the examination of a witness residing in a Native State, he could not delegate his powers under the commission to his subordinate, but had to personally execute such commission 1896 A. W. N. 106. (Old law).

DELIVERY.

1. Signs of.

1. The signs of recent delivery in the three last months of pregnancy, are observable by sexual organs, uterus, abdomen, the lochial discharge, state of the breasts, and secretion of milk. In the first day after delivery the labia major et minora are dilated, red, tumefied and sometimes inflamed, the vulva is open, the fourchette is partially or completely torn; the orifice of the womb is so dilated, as to admit the introduction of one or two fingers into the cavity of the organ, the posterior lip is elongated and thickened, and both lips are much thicker than during pregnancy.—*Ryan's Med. Jur.* 1836, P. 273.
2. The womb itself is more voluminous, can be felt above the pubis, or may be felt enlarged by placing one hand on the hypogastrium and a finger in the vagina. The size and flaccidity of the abdomen, its wrinkled condition, the lochia and milk, are signs of recent delivery, but all may be present after the expulsion of a mole or other morbid growth in the uterus. A woman may be delivered without her knowledge, if completely intoxicated; if stupified by narcotics; if attacked with apoplexy, syncope, delirium, idiocy, insanity or during sleep. *Ryan's Med. Jur.* 1836, P. 274.

2. Death of child before delivery.

A woman may suppose she feels the motion of the infant during delivery, yet a putrefied infant may be produced. Various causes may act on the mother and destroy the infant, as unhealthiness of habitation, mode of dress, violent exercise, venereal excesses, intemperance, convulsions, syphilis, smallpox, falls, wounds, accidents etc. Pressure in difficult labour may destroy the infant; improper use of instruments, flogging, and diseases of the placenta will produce the same effect. But the infant may be born alive in despite of most of these causes. The following signs occurring during pregnancy are indicative of the death of infant—want of motion

Delivery—(concl'd.)

in the foetus; the womb feels as if it contained a dead weight, which roll according to the position of the woman, the naval is less prominent, the milk disappears, the breasts are brown, flaccid, the mother experiences a sense of lassitude and coldness, accompanied with headache and nausea. If it is actually dead and long retained in the womb, putrefaction sets in, the membranes become black, and foetid discharge take place. *Ryan's Med. Jur. 1836. P. 276.*

3. Death of child after delivery.

If the death takes place after birth, there will be the characters of viability and complete development, signs of external violence fractures, bruises, perhaps omission of ligature on the cord; lungs spongy, rose colour, swimming in water, even after compression of them *Ryan's Med. Jur. 1836. P. 277.*

DELUSIONS. See Insanity—4.**DEMOLITION OF GRAVES. See Trespass on burial places—2.****DEMEANOUR. S. 363, Cr. P. C.**

1. Where the evidence is all oral and its credibility is only a matter of opinion, the opinion of the trial Court which noticed the demeanour of witnesses, must be treated as almost conclusive. 125 P. L. R. 1914, 1927 R. 200, 1926 P. C. 29.
2. Unless the evidence given by witnesses is shaken in cross-examination or their demeanour is such as to lead one to the inevitable conclusion that they have perjured themselves, their evidence cannot be discarded merely because they are tenants of a party. 1930 P. 58=123 I. C. 637.
3. Though the Appellate Court should be guarded by the remarks made about the demeanour of witnesses, yet it is bound to independently consider the facts of the case. 6 P. R. 1896 Cr.
4. Demeanour of a witness which under examination is a most important test of his credibility. 39 A. 426, 39 B. 386, 130 P. C. 170.
5. It is one thing to record remark about the demeanour of witness and quite another to make or record remark or opinion about substance of deposition of witness. S. 363, Cr. P. C., makes it incumbent on Magistrate to do the former only. 1923 L. 975=113 I. C. 321=10 L. 778 (1883), 2 Weir 435.
6. Amount of corroboration of an approver's evidence depends upon the view which the Court takes of his character and his general demeanour in the witness box. 1929 P. 232=93 I. C. 884=5 P. 63=27 Cr. L. J. 484.
7. When the question is whether a witness is speaking the truth or not, light is thrown upon it by the demeanour of that witness in the box by the manner in which he answers questions and by how he seems to be affected by the questions that are put to him and so on. 1922 P. C. 315=70 I. C. 949=27 C. W. N. 414.
8. If a Sub Inspector does not remember what witnesses stated at the investigation and refuses to refresh his memory by looking at the diary, he should be compelled. 1924 P. 829=2 P. L. R. Cr. 202.
9. Redness of the eye of a person may be due to several causes and with absence of evidence, it cannot be held, that he is an habitual smoker of *bhang*. 1925 O. 480=89 I. C. 145=26 Cr. L. J. 1281.
10. A trial Judge in India has not the same opportunity of observing the demeanour of a witness as a trial Judge in England. 39 A. 426=32 I. C. 699.
11. Few men are really good actors, and there is a remarkable difference between the demeanour of a witness who is describing a scene or occurrence which he actually saw, and that of a witness who repeats from memory a story which has been taught to him. In the case of former, his eyes are lit with intelligence, his features are all in motion and his hands make unconscious indications. The latter stands motionless or is fidgety and restless, his features are impassive, the pupil of his eye is fixed, he gazes at empty space, he hurries on with his story lest he should lose the thread of it and is impatient of interruption. Occasionally as he forgets the cue, he thrusts out his tongue and hurriedly withdraws it and the apple in his throat rises and as suddenly falls. *Fitch's Law of Evidence in Br. India, 8th Ed. P. XXXIII.*
12. When we find a witness over-zealous on behalf of his party, exaggerating circum-

Delay—(concl'd.)

21. In summoning defence witnesses. See Defence witnesses—1.

22. In writing Police diary or Statement.

1. Omission to record in a case diary on the same day on which examination of witness is made and no explanation for delay is offered, the circumstance is very suspicious. 1935 N. 69=17 N. L. J. 189.

2. Delay in recording statement of witness makes it very suspicious. 16 Cr. L. J. 155.

23. Recovery of stolen property after long. See Receiving stolen property—16.

DELEGATION.

1. By District Magistrate. Ss. 17 (1), 195, 197, Cr. P. C.

1. Clause (1) of S. 17 empowers only a District Magistrate to make Rules or pass orders as to the distribution of work. Such powers cannot be delegated by District Magistrate to a Sub Divisional Magistrate or to a Senior Honorary Magistrate 36 A. 468.

2. The power to make complaint under S. 195, Cr. P. C., must be exercised by the Court before which the offence was committed, the Court cannot delegate the powers even to Public Prosecutor. The filing of complaint by him is not equivalent to a complaint by the Court. 19 P. R. 1917 Cr., 13 P. R. 1915 Cr.

3. The authority empowered to grant sanction under S. 197, for the prosecution of Judge and public servants, cannot delegate to another the task of determining which offence the sanction should relate to. 16 M. 468.

2. By District Magistrate to hear appeals. S. 407 (2), Cr. P. C.

The District Magistrate may delegate his work of hearing appeal but not any revisional work. 2 Bom. L. R. 536.

3. Of powers by officer to whom commission is issued. S. 503 (4), Cr. P. C.

When a commission was issued to an officer representing the British Indian Government for the examination of a witness residing in a Native State, he could not delegate his powers under the commission to his subordinate, but had to personally execute such commission. 1896 A. W. N. 106. (Old law).

DELIVERY.

1. Signs of.

1. The signs of recent delivery in the three last months of pregnancy, are observable by sexual organs, uterus, abdomen, the lochial discharge, state of the breasts, and secretion of milk. In the first day after delivery the labia major et minora are dilated, red, tumefied and sometimes inflamed, the vulva is open, the fourchette is partially or completely torn; the orifice of the womb is so dilated, as to admit the introduction of one or two fingers into the cavity of the organ, the posterior lip is elongated and thickened, and both lips are much thicker than during pregnancy.—*Ryan's Med. Jur.* 1836, P. 273.

2. The womb itself is more voluminous, can be felt above the pubis, or may be felt enlarged by placing one hand on the hypogastrium and a finger in the vagina. The size and flaccidity of the abdomen, its wrinkled condition, the lochia and milk, are signs of recent delivery, but all may be present after the expulsion of a mole or other morbid growth in the uterus. A woman may be delivered without her knowledge, if completely intoxicated; if stupified by narcotics; if attacked with apoplexy, syncope, delirium, idiocy, insanity or during sleep. *Ryan's Med. Jur.* 1836, P. 274.

2. Death of child before delivery.

A woman may suppose she feels the motion of the infant during delivery, yet a putrid infant may be produced. Various causes may act on the mother and destroy the infant, as unhealthiness of habitation, mode of dress, violent exercise, venereal excesses, intemperance, convulsions, syphilis, smallpox, falls, wounds, accidents, etc. Pressure in difficult labour may destroy the infant; improper use of instruments, fainting, and diseases of the placenta will produce the same effect. But the infant may be born alive in despite of most of these causes. The following signs occurring during pregnancy are indicative of the death of infant—want of motion

Delivery—(concl'd.)

in the foetus; the womb feels as if it contained a dead weight, which roll according to the position of the woman, the naval is less prominent, the milk disappears, the breasts are brown, flaccid, the mother experiences a sense of lassitude and coldness, accompanied with headache and nausea. If it is actually dead and long retained in the womb, putrefaction sets in, the membranes become black, and foetid discharge: take place. *Ryan's Med. Jur. 1836. P. 276.*

3. Death of child after delivery.

If the death takes place after birth, there will be the characters of viability and complete development, signs of external violence fractures, bruises, perhaps omission of ligature on the cord; lungs spongy, rose colour, swimming in water, even after compression of them. *Ryan's Med. Jur. 1836. P. 277.*

DELUSIONS. See Insanity—4.

DEMOLITION OF GRAVES. See Trespass on burial places—2.

DEMEANOUR. S. 363, Cr. P. C.

1. Where the evidence is all oral and its credibility, is only a matter of opinion, the opinion of the trial Court which noticed the demeanour of witnesses, must be treated as almost conclusive. 125 P. L. R. 1914, 1927 R. 200, 1926 P. C. 29.
2. Unless the evidence given by witnesses is shaken in cross-examination or their demeanour is such as to lead one to the inevitable conclusion that they have perjured themselves, their evidence cannot be discarded merely because they are tainted of a party. 1930 P. 58=123 I. C. 637.
3. Though the Appellate Court should be guarded by the remarks made about the demeanour of witnesses, yet it is bound to independently consider the facts of the case. 6 P. R. 1896 Cr.
4. Demeanour of a witness which under examination is a most important test of his credibility. 35 A. 426, 39 B. 386, 130 P. C. 170.
5. It is one thing to record remark about the demeanour of witness and quite another to make or record remark or opinion about substance of deposition of witness S. 363, Cr. P. C., makes it incumbent on Magistrate to do the former only. 1923 L. 975=113 I. C. 321=10 L. 778 (1883), 2 Weir 435
6. Amount of corroboration of an approver's evidence depends upon the view which the Court takes of his character and his general demeanour in the witness box. 1925 P. 232=93 I. C. 884=5 P. 63=27 Cr. L. J. 484.
7. When the question is whether a witness is speaking the truth or not, light is thrown upon it by the demeanour of that witness in the box by the manner in which he answers questions and by how he seems to be affected by the questions that are put to him and so on 1922 P. C. 315=70 I. C. 949=27 C. W. N. 414.
8. If a Sub-Inspector does not remember what witnesses stated at the investigation and refuses to refresh his memory by looking at the diary, he should be compelled. 1924 P. 829=2 P. L. R. Cr. 202
9. Redness of the eye of a person may be due to several causes and with absence of evidence, it cannot be held, that he is an habitual smoker of *bang*. 1925 O. 480=89 I. C. 145=26 Cr. L. J. 1281.
10. A trial Judge in India has not the same opportunity of observing the demeanour of a witness as a trial Judge in England. 39 A. 426=39 I. C. 666.
11. Few men are really good actors, and there is a remarkable difference between the demeanour of a witness who is describing a scene or occurrence which he actually saw, and that of a witness who repeats from memory a story which has been taught to him. In the case of former, his eyes are lit with intelligence, his features are all in motion and his hands make unconscious indications. The latter stands motionless or is fidgety and restless, his features are impassive, the pupil of his eye is fixed, he gazes at empty space, he hurries on with his story lest he should lose the thread of it and is impatient of interruption. occasionally as he forgets the cue, he thrusts out his tongue and hurriedly withdraws it and the apple in his throat rises and as suddenly falls. *Field's Law of Evidence in Br. India, 8th Ed. P. XXXIII.*
12. When we find a witness over-zealous on behalf of his party, exaggerating circum-

Demeanour—(concl'd.)

stances, answering without waiting to hear the question, forgetting facts where he would be open to contradiction, minutely remembering others, which he knows cannot be disputed, reluctant in giving adverse testimony, replying evasively or flippantly, pretending not to hear the question for the purpose of gaining time to consider the effect of his answer, affecting indifference or often avowing to God and protesting his honesty—we have indications, more or less conclusive of insincerity and falsehood. On the other hand in the evidence of truthful witness there is calmness and simplicity, a naturalness of manner, an unaffected readiness and copiousness of detail, as well in one part of the narrative as another; and an evident disregard of either the facility or difficulty of vindication or detection. *Taylor on Evidence, 8th Ed. Vol. I S. 44, S. 52. See Field's Law of Evidence in Br. India 8th Ed. at Pp. XXXIII—XXXIV.*

13. In connection with demeanour, it is very important to consider the ability of the witness, as well as his intellectual capacity as his power of perception, judgment, memory and description. *Bentham P. 126, Starkie. P. 824. Field's Law of Evidence in Br. India, 8th Ed., P. XXXV.*
14. The fact that accused shortly after the crime was in agitated state of mind and pointed out places where weapons were discovered, makes the crime highly probable. 1925 M. 574 (2)=26 Cr. L. J. 840.
15. Demeanour of an accomplice is no corroboration of his evidence. 25 Cr. L. J. 49.
16. Where the Judge while recording evidence made a note not only about his demeanour, but also that he had not spoken the truth, it was held that it was sufficient ground for the transfer of case. 1925 C. 480=26 Cr. L. J. 852.

De NOVO TRIAL. S. 350, Cr. P. C.

1. Applicability of S. 350, Cr. P. C.

1. A person against whom proceedings under S. 107, Cr. P. C., are pending, can claim that upon the first Magistrate ceasing to have jurisdiction, the second Magistrate should hear the witnesses afresh. S. 350 is applicable to summons cases as well as warrant cases. 1925 O. 228=25 Cr. L. J. 380, 43 M. 511.
2. S. 350 is applicable to proceedings under S. 145, Cr. P. C. 37 C. 812, 13 C. W. N. 420. *See* 37 C. L. J. 128 and 1924 P. 786=25 Cr. L. J. 89, 73 I. C. 265.
3. S. 350 (a) applies every time a new Magistrate takes cognizance of the matter continued by his predecessor. 47 M. 245=1924 M. 247=25 Cr. L. J. 566.
4. S. 350 (1) (a) cannot be applied to proceedings in a warrant case before the charge has been framed. At that stage the proceeding is not a trial but an enquiry. 46 M. 719=1923 M. 660=71 I. C. 638=24 Cr. L. J. 192. *See* 25 C. 863, 32 M. 218.
5. S. 350 does not apply to cases tried by Benches of Magistrates. 1922 L. 137=62 I. C. 335, 1921 L. 135=2 L. 237=64 I. C. 132, 37 C. 754, 12 C. 558, 20 C. 870, 23 C. 194, 18 M. 394, 38 M. 304, 41 A. 116, 50 I. C. 677, 15 A. L. J. 237, 13 C. L. R. 212.
6. S. 350 applies to summon cases and summary trials. 3 L. 115 *Cont.* 1936 S. 40.
7. S. 350 applies when a S. 30 Magistrate dies and is succeeded by the District Magistrate. 46 I. C. 289, 35 C. 457, 32 M. 218, 40 A. 307.
8. S. 350 does not apply to the proceedings of a second class Magistrate to whom a case is transferred by a first class Bench trying a case summarily. 55 M. 795.
9. Where two Magistrates heard a case and the Bench was dissolved and the Magistrate who recorded the depositions proceeded with the case, S. 350 does not apply and no retrial can be claimed. 1935 C. 257=39 C. W. N. 57, 22 M. 47 *Ref.*
10. In an appeal against an order under S. 167, Cr. P. C., de novo trial cannot be ordered by appellate Court. 1934 M. 302 (1)=34 Cr. L. J. 947.
11. In petty cases de novo trial is not necessary. 1934 L. 415.
12. S. 350 does not apply to proceeding when further inquiry is ordered. 1936 S. 147.
13. S. 350 does not apply to revision. 43 M. 511, 1923 C. 443, 1924 P. 777, 24 M. 311, 1924 C. 443, 32 M. 218, 46 M. 719, 1934 S. 106 *Cont.* 3 L. 115.

De Novo Trial—(contd.)

2. Change in the constitution of Bench of Magistrates. See Bench of Magistrate—2.

3. Commitment.

1. When the proceedings are in the nature not of a trial but merely of an enquiry preparatory to commitment the necessity of any provision for *de novo* trial does not exist. 32 Cr. L. J. 243=1930 C. 666, 32 M. 218, 14 P. R. 1903.
2. Where the Magistrate who recorded the statement of the accused, was transferred and the case was eventually committed to the Court of Sessions by his successor. Held, that statement was admissible in evidence under S. 237 in view of S. 350. Cr. P. C. 7 L. 70=1926 L. 271=94 I. C. 403, 31 M. 40, 36 A. 315.
3. If a Magistrate trying a case finds that accused should be committed to the Court of Sessions, the proceedings are not to be commenced *de novo*. 2 A. 190, 31 M. 40.

4. Demand of—.

1. Accused has a right to demand that witnesses should be resummoned and their evidence should be recorded anew. To read out to them their previous statement and getting admission from them that they are correct is not sufficient compliance of the section. 59 I. C. 551=16 P. W. R. 1919 Cr.=22 Cr. L. J. 119.
2. Accused has right to demand that witnesses shall be resummoned and reheard not only in warrant cases but also in cases of summary trial and trial of summon cases and at the time when second class Magistrate commences his proceedings and not when a charge is framed. 1922 L. 49=3 L. 115=66 I. C. 826=23 Cr. L. J. 330.
3. The complainant cannot claim that accused must demand *de novo* trial from the beginning. 1925 M. 317=5 I. C. 366=26 Cr. L. J. 526.
4. Notwithstanding the demand of the accused to recall and rehear the witnesses, the Magistrate did not call them and acquitted the accused. The acquittal is illegal. 1921 A. 35=63 I. C. 460=22 Cr. L. J. 668.
5. When accused does not insist on *de novo*, there is no illegality. 1921 P. 472, 40 A. 307.
6. Magistrate is not bound to ask accused if he demands *de novo* trial. 6 P. R. 1884. See 35 I. C. 961.
7. Accused cannot demand *de novo* trial. He can only ask that certain witnesses should be reheard. Magistrate can also recommence trial and in that case accused cannot object to the examination of witnesses afresh. 1935 M. 318 (2)=1935 M. W. N. 179.

5. Effect of—.

1. Where accused exercise the right under S. 350 (a) and prosecution witnesses retract their former statements made before the first Magistrate, they are not evidence. 3 L. 115=1922 L. 49=66 I. C. 826=23 Cr. L. J. 330.
2. Where accused exercises his right under proviso (a) S. 350, he has the option of withdrawing from the exercise of that right. 1925 M. 317=26 Cr. L. J. 526.
3. Magistrate cannot deliver a judgment written by his predecessor without considering the evidence on the record and without hearing arguments. 1926 C. 537=27 Cr. L. J. 406, 50 C. 664=1924 C. 55=24 Cr. L. J. 489, 3 A 563.
4. The accused demanded that prosecution witnesses should be resummoned and reheard. When they appeared, he said, he would be content to cross-examine them. Held, that accused could change his mind. 1926 M. 815=27 Cr. L. J. 659.
5. When a case is transferred after charge and *de novo* trial is demanded, the Magistrate should recommence the trial and not merely allow further cross-examination of witnesses and proceed with the stage of charge. 1926 S. 158=92 I. C. 748=27 Cr. L. J. 332=16 P. W. R. 1919 Cr., 38 M. 585 Dist.
6. If a *de novo* trial is held by Magistrate after the charge, the accused cannot have further opportunity for resummoning witnesses for further cross-examination. 1935 M. 258.
7. If no new matter in evidence is introduced in fresh trial, omission to examine the accused for second time at such trial does not vitiate trial. 1935 M. 22 (1)=58

De Novo Trial—(contd.)

M. 427=153 I. C. 297=36 Cr. L. J. 307. 46 M. 449 Ref.

8. Grant of *de novo* trial wipes out prior proceedings even if the case is transferred to the old Magistrate. 1934 M. 475, 1927 M. 81, 1925 M. 174 and 22 M. 47 Dist.

6. Procedure.

1. District Magistrate can under provision (b) S. 350 set aside a conviction by a first class Magistrate, though no appeal lies to him. 9 B. 109, 12 C. 473, 7 A. 553, 8 M. 18.
2. As soon as a case is transferred from one Magistrate to another, the former ceases to exercise jurisdiction in the case. 35 C. 457, 39 C. 781, 32 M. 218, 40 A. 307, 36 A. 315.
3. It is usually desirable that the Court to which the case is transferred should commence hearing *de novo*. 51 I. C. 480, 41 A. 307, 32 M. 218, 39 C. 781, 35 C. 457.
4. Witnesses should be summoned without payment of fees. 15 Cr. L. J. 687.

7. Remand.

When case is remanded for taking further evidence to the trial Court, and the Magistrate or the trying officer is transferred and a new officer has taken his place the latter is bound to accede to the request of accused to try the case *de novo*. 1927 P. 5=97 I. C. 645=27 Cr. L. J. 1125.

8. Retrial.

1. Accused cannot demand retrial on transfer of trying Magistrate on the ground that he had not heard his counsel. 1925 O. 62=81 I. C. 899=25 Cr. L. J. 1075.
 2. The trying Magistrate was succeeded by another, who granted *de novo* trial. The District Magistrate transferred the case to the original Magistrate. Held, that the original Magistrate could not take up the case from the point from which he left and must start *de novo*. 1925 M. 174=85 I. C. 254=26 Cr. L. J. 510, 1927 M. 81=99 I. C. 55, 52 I. C. 398, 53 I. C. 820=20 Cr. L. J. 820.
 3. The District Magistrate cannot impose without the consent of the accused, while transferring a case, a condition that there would be no *de novo* trial. 1930 L. 108=121 I. C. 374=31 Cr. L. J. 257.
 4. Sessions Judge directed further enquiry by the same Magistrate. The District Magistrate transferred the case from him. Held, that the Magistrate to whom the case was transferred could summon the witnesses afresh. 1930 M. 983=32 Cr. L. J. 226.
 5. *De novo* trial means a new trial. Permitting cross-examination alone is illegal. 1925 M. 1280=90 I. C. 668=26 Cr. L. J. 1596.
 6. Magistrate cannot pronounce judgment written by his predecessor without a *de novo* trial. 40 M. 108=33 I. C. 646.
 7. New trial does not mean the cancellation of charge and if the accused is let off, he is acquitted and not discharged. 32 I. C. 129, 38 M. 585.
 8. A Magistrate dismissed a complaint when the complainant failed to deposit process fee for summoning witnesses, although a charge was framed by his predecessor. Held, it did not amount to acquittal. 32 Cr. L. J. 603=1931 N. 39.
 9. Trial for the purpose of S. 350 does not commence at charge but when accused appears before Court. 1934 Sind 106=35 Cr. L. J. 1261. (*Case Law discussed*).
- ### 9. Right of accused and complainant.
1. Where accused did not exercise his right of demanding *de novo* trial, the conviction is not illegal. 59 I. C. 370=22 Cr. L. J. 82.
 2. Where accused does not insist upon a *de novo* trial, a Magistrate succeeding another is entitled to act on evidence already recorded. 1921 P. 472, 40 A. 307.
 3. The accused has a right to demand that witnesses or any of them be recalled and reheard. 3 L. 115, 107 I. C. 162=29 Cr. L. J. 229.
 4. Accused demanded that witnesses should be reheard. When they appeared, he said, he would only cross examine them. Held, that accused could change his mind and only cross-examine the witnesses. 1935 M. 815=94 I. C. 707.

De Novo Trial—(concl'd.)

5. Right of accused under the proviso to S. 350 of resummoning witnesses is confined to trials and does not extend to inquiries. 54 M. 512=1931 M. 488 (2).
6. After the accused has demanded that witnesses should be re-heard, if he does not want any witness to be re-heard, the Court cannot order that his evidence should be taken afresh. 1935 M. 318 (2)=1935 M. W. N. 179.
7. Accused has absolute right to demand *de novo* trial. It cannot be limited by imposing conditions that accused should pay process fee. 1935 R. 108.
8. Accused, after demanding *de novo* trial, can waive examination or part of it, of witness called under S. 350 and can say that examination in chief of a particular witness be treated as evidence. 1934 N. 209, 12 C. W. N. 138, 1924 L. 104=4 L. 376 and 1925 M. 1280 Dist.
9. Where a judgment signed by a Magistrate was pronounced by his successor. Held, that accused was not entitled to *de novo* trial. 1933 M. 251 (1)=34 Cr. L. J. 117, 1929 M. 201 and 18 M. L. J. 197 Rel. on. 40 M. 108, 1920 M. 337 and 27 M. 510 Ref.
10. Complainant has no privilege to demand *de novo* trial. 1925 M. 317, 1926 M. 815.

10. Use of record of former trial.

1. Magistrate retrying the whole case transferred to him cannot use both his own record and that of his predecessor. 1927 L. 238=100 I. C. 382=28 Cr. L. J. 302.
2. If in a *de novo* trial, the witnesses retract their previous statements made before the first Magistrate, their former statements are not evidence in the case, as the trial commences only when the new Magistrate starts the proceedings. 3 L. 115=1922 L. 49.

11. Waiver.

1. Where accused does not exercise his right of demanding *de novo* trial, the conviction is not illegal. 59 I. C. 370=22 Cr. L. J. 82.
2. Only the accused can claim or waive the right. A Pleader during arguments on the transfer application, stated his intention not to have a *de novo* trial in the Court to which the case was transferred and subsequently accused demanded a trial *de novo*. Held, there was no waiver of right. 19 Cr. L. J. 637.
3. Where a case is transferred to a Magistrate not competent to try it. In such a case there should be *de novo* trial and accused cannot waive his right. 45 I. C. 673.
4. A general allegation that a request for *de novo* trial was refused without any date or without any specific allegation as to date when and to whom the application was made is insufficient to show that a *de novo* trial was refused. 1923 C. 320=23 Cr. L. J. 502=68 I. C. 38.

12. Which Magistrate should try a case de novo. See Retrial—14.**13. When charge framed.**

Where a Magistrate who framed a charge is transferred, his successor cannot ignore charge. Accused has a right to recall an witness. 1933 M. 841=35 Cr. L. J. 79, 38 M. 585 Rel. on.

14. When further inquiry is ordered.

There is no distinction so far as the applicability of S. 350 is concerned between an enquiry in the original Court and further inquiry ordered by Sessions Judge after discharge of accused. In either case the succeeding Magistrate has a discretion of acting on the evidence already recorded and frame a charge without commencing the enquiry afresh. 54 M. 512, 32 M. 218, 35 C. 437, 14 M. 334.

15. When case comes back to original Magistrate.

When a Magistrate is transferred and is succeeded by his successor and there he is retransferred and case comes back to him, he cannot proceed from the point he left it. 1934 M. 475=57 M. 1010, 1925 M. 174, 1927 M. 81, 20 Cr. L. J. 635=520.

DEPARTMENTAL INQUIRY.

1. False evidence in—. See False evidence.

Departmental Inquiry—(concl'd.)

2. Punishments in—. *See* Sentence.

3. Statements in—. *See* Privilege—13.

4. Whether Judicial Proceedings. *See* Judicial Proceedings—2.

DEPOSITION. S. 288, Cr. P. C.

1. Before Committing Magistrate. S. 288, Cr. P. C.

A Value and use of—.

1. Deposition of witness recorded by Committing Magistrate can be basis of conviction if admitted under S. 288. 53 C. 181=1926 C. 235=90 I. C. 537=26 Cr. L. J. 1577.
2. Unless there be evidence to show that evidence given before the Magistrate should be preferred and substituted for that given before the Sessions Judge, the evidence given before the Committing Magistrate cannot be utilized in support of conviction. 3 P. 781=1925 P. 51=84 I. C. 334=26 Cr. L. J. 270, 27 C. 295.
3. Deposition before Committing Magistrate contradicting evidence before Sessions Judge cannot be put in under S. 288, Cr. P. C. without putting it to the witness under S. 145, I. E. Act. 1930 P. 338, 1922 P. 40, 7 A. 862, 21 A. 111. *See* 23 A. 683.
4. Where the Sessions Court is satisfied that statements made before the Committing Magistrate are true and before it are false, it can rely upon the previous statements. 47 A. 276=1925 A. 185=85 I. C. 130=26 Cr. L. J. 650.
5. Where two boys gave an entirely different version before Sessions Court from what they gave before Police and the Committing Magistrate, the previous statement could be used as substantive evidence under S. 288. 46 B. 97. *See* 22 A. 445, 27 C. 295.
6. A conviction based solely on evidence given by the witnesses before the Committing Magistrate and retracted by them at the trial is unsustainable. 17 P. R. 1919, 51 P. R. 1887, 21 A. 111 23 A. 683, unless corroborated by independent evidence. 5 L. 324 (323)=1924 L. 609=12 M. 123, 27 C. 295, 1926 P. 440=94 I. C. 258.
7. Where the opposing parties in a riot case did not wilfully identify the assailants, their evidence before the Committing Magistrate was admitted under S. 288=47 M. 232.
8. If a witness in the Sessions trial resiles from his deposition given before the Magistrate, and states that the latter deposition was made under influence of Police, the Judge should exercise a wise discretion in making some enquiry from the Inspector of Police regarding the pressure put upon the witness, before admitting it as evidence. 4 C. W. N. 49.
9. Statement made before Police is admissible in evidence to corroborate the statement made before the Committing Magistrate when the witness resiles from it, in the Sessions Court. 5 L. 324, 1923 M. 20, 27 C. 295.
10. When the Sessions Judge thinks that the witnesses are gained over, their statements before the Committing Magistrate should be transferred under S. 288. 24 M. 414, 2 P. 517=1923 P. 550=24 Cr. L. J. 641.

Deposition—(contd.)

16. Where wife admitted before the Committing Magistrate that her husband took part in murder but resiled in the Sessions Court and attributed torture to the Police which she never complained to the Judge. S. 238 applied. 1923 M. 837.
17. Depositions before Committing Magistrate may on appeal be looked into by High Court if the cross examination in the Sessions Court is not full. 12 Cr. L. J. 503.
18. Evidence admitted under S. 238 may be treated as evidence for all purposes, though it cannot be effectively utilized in support of conviction. It does not invariably require some independent corroboration. 1935 A. 671=155 I. C. 657=36 Cr. L. J. 823, 1927 A. 479=49 A. 251=27 Cr. L. J. 1365 Rel. on. 3 P. 781=1925 P. 51=26 Cr. L. J. 270. Not foll. 12 W. R. Cr. 3.
19. To transfer statement under S. 288 witness must be examined before Sessions Court or it should be proved that he is capable of giving evidence under S. 33, Ev. Act. 1934 L. 212=35 P. L. R. 75.
20. If the evidence before Committing Magistrate and Sessions Judge is contradictory, the statement can be transferred but to base conviction there should be independent corroboration. 1934 O. 182=35 Cr. L. J. 797.
21. When depositions are transferred to Sessions file, they should be acted upon as evidence deposited before Sessions Judge. 1934 L. 743.
22. Even if the witness denies the correctness of his previous statement, court can treat it as substantive evidence. 1933 R. 57=11 R. 4=34 Cr. L. J. 286. 2 Weir 375, 1923 P. 550, 1925 A. 185, 1925 B. 266 and 1926 C. 235 Rel. on. 1928 C. 690 Dist.

B. Duly recorded.

1. Prosecution witnesses were examined in the hospital but accused refused to cross-examine them as he was sick. They were again tendered and were cross-examined by the accused. They went back on their previous statements and supported the defence. Held, that the statements were duly recorded. 1926 L. 590=99 I. C. 65.
2. Whether a statement is recorded with a view to commitment or in the ordinary course of trial, is evidence recorded under Chapter XVIII. 53 C. 181=1926 C. 235.
3. A statement made in the absence of accused cannot be used under S. 288. 3 P. R. 1904, Cr. 23 C. 361, 35 A. 260.
4. If the accused was not allowed to cross-examine, the evidence cannot be said to be duly taken. 21 C. 642.
5. A statement made by a witness at a search does not come under S. 288. 36 M. 159.
6. A statement made before a Police Officer or investigating Magistrate is not contemplated by S. 288. 31 M. 127.

C. Object and scope.

1. The object is to provide for the contingency that may arise when a witness holds back information at the Sessions trial. 2 A. 646.
2. Under S. 288 the whole of the statement is to be taken under S. 288 and not portions of it. 1929 N. 233=114 I. C. 609=30 Cr. L. J. 333, 1925 M. 879.
3. Court, without informing the prosecution or defence, brought on record, the evidence of a witness under S. 288. Held, that course adopted is contrary to practice and law. 1929 N. 233=114 I. C. 609=30 Cr. L. J. 333.
4. S. 288 has no application to the evidence of a witness not produced and examined in a Court of Sessions. 56 I. C. 52.

D. "Subject to the provisions of Evidence Act."

1. Magisterial depositions can be utilized in a trial Court only if the matter contained therein is, according to the rule of evidence as laid down in Evidence Act of evidential value. Hearsay evidence contained in the deposition will not be utilized. 3 P. 781 (788-790)=1925 P. 51=6 P. L. T. 53=26 Cr. L. J. 270=84 I. C. 334.
2. The amending words "for all purposes subject to the provisions of the Indian Evidence Act, 1872" merely mean that law of evidence enacted in the Act must be complied with. For instance, evidence which had been wrongly admitted by the Committing Magistrate, in violation of the provisions of Evidence Act, could not be

2. Correction of—.

An honest witness should be allowed to alter or correct his statement and should not be deterred from doing so by fear of criminal charge. 10 C. 637.

3 Of a Civil Surgeon. S. 49, Cr. P. C.

1. It is only the deposition of a Civil Surgeon that is admissible. A letter written by him to the Sessions Judge expressing an opinion as to the nature of wound is not evidence. 8 C. 211.
2. The certificate of a medical officer as to the cause of death is no evidence. 1 Weir 659.
3. The report of a medical man on his *post-mortem* examination cannot be treated as evidence, though it may be used to refresh memory when giving evidence. 9 C. 455.
4. A certificate granted by the Professor of a Medical College as regards the bones submitted to him for examination is not admissible in evidence. He must be examined as witness. 24 Bom. L. R. 803=1923 B. 183=47 B. 74.
5. Before the deposition of a medical witness given before the Committing Magistrate can be admitted in the Sessions Court, it must be proved to have been taken and attested in the prisoner's presence. It should be merely presumed under S. 114 (e), Evidence Act, to have been so taken and attested. 9 A. 720, 18 C. 129, 8 C. 739, 4 C. W. N. 49, 10 A. 174.
6. If the cross examination of a medical witness is reserved for the Sessions Court the procedure of the Sessions Court in not summoning him is wrong. 1923 P. 116.
7. Failure of Magistrate to append certificate to the deposition of a medical witness does not itself make the evidence inadmissible. 1933 L. 131=34 Cr. L. J. 443. 18 C. 127 Dist. Cont. 10 A. 174, 18 C. 129, 9 A. 720.

4. Of a witness. See Examination of witness.

5. Presumption about. See Presumption.

1. There is a presumption under S. 80 and S. 114 ill (e) of Evidence Act that the deposition of a witness was duly taken, although the fact of its being on oath or reading over to the deponent does not appear on record. 1925 P. 378=4 P. 231, 1927 P. 100=28 Cr. L. J. 7, 28 P. R. 1918 Cr., 46 C. 895, 35 A. 575.
2. There is a presumption that the witness actually stated what is recorded in the deposition. 1930 S. 154=120 I. C. 524.

6. Using—in another case. See Evidence—42.

DESERTER.

A deserter from Army may be arrested without warrant. 2 P. R. 1911 Cr.

DESPERATE AND DANGEROUS CHARACTER. See S. 110, Cr. P. C.

DESTRUCTION. See S. 521, Cr. P. C.

1. Of coin.

If an accused is convicted of an offence under S. 241, I. P. C., and counterfeit coin is found in his possession, the Magistrate can order destruction of the coin. 2 Weir 669.

2. Of evidence—. See Record—2.

DETENTION.

1. In Hospital. See Grievous hurt—26.

2. Of accused by the Police for 24 hours. S. 61, Cr. P. C.

1. Certain persons were arrested by the Police on suspicion of having been concerned in a dacoity and afterwards the Police Officer reported to the Magistrate that

Detention—(contd.)

there was no sufficient evidence, the Magistrate should not detain them any longer so that the Police might institute proceeding under S. 110, Cr. P. C. 43 A. 186.

2. When the accused were not allowed to leave the Thana or to go to their homes, held, that they were detained in custody. The mere fact that there not being a special guard over them would not alter the nature of their position. 19 W. R. 36.
 3. On the expiry of 15 days allowed under Ss. 61 and 167, Cr. P. C., the Police must either release the accused, security being taken if required or the Magistrate must take cognizance on a report under S. 173 or the Magistrate must release him. 1924 C. 614=83 I. C. 628=26 Cr. L. J. 68.
 4. The intention is that accused should be brought before Magistrate with the least delay. 51 C. 402=1924 C. 476=81 I. C. 220=25 Cr. L. J. 732, 11 M. 98, 6 M. 69, 36 C. 166.
 5. Detention in excess of 24 hours is unlawful 6 W. R. 88, 19 W. R. 36, 41 A. 483.
 6. An approver cannot be detained in the custody of Police. 32 P. L. R. 728=1931 L. 480, 12 L. 635=1931 L. 476=132 I. C. 519=32 Cr. L. J. 913.
 7. The idea of free detention is altogether mistaken. 1924 R. 173=25 Cr. L. J. 381.
 8. Where a Police Officer detains a person for more than that fixed under S. 61, the detention is illegal and he is liable under S. 29, Police Act. 41 A. 483, 36 P. R. 1870, 1885 A. W. N. 59.
 9. It is not necessary to prove that Police Officer detained the accused with any guilty knowledge. 19 Suth W. R. 36.
- 3. Of accused by Magistrate.** See Remand, S. 167, Cr. P. C.
- 4. Of approver** Ss. 337, 339, 541, 541-A, Cr. P. C.
1. The approver will be detained in custody until an order of discharge is made by a Magistrate or of acquittal by a Judge. 37 B. 146, 1932 S. 40, 1927 S. 173, 1931 L. 476=12 L. 635.
 2. A Sessions Judge is not justified, as soon as the trial is closed, in sending an approver in custody to the Magistrate with a view to taking action against him for breach of the conditions of pardon. He is entitled to be discharged at the close of trial, although he can be re-arrested. 30 B 611, 10 Bur. L. T. 46.
 3. It is improper to keep the accused in further custody after the termination of the original trial. 37 C. 845, 11 N. L. R. 59, 62 C. 430.
 4. The discretionary power of superior Courts to grant bail to approvers should be sparingly used. The Magistrate tendering pardon cannot grant bail. 1927 S. 178=101 I. C. 471=28 Cr. L. J. 439.
 5. An approver cannot be detained in the custody of Police. 12 L. 635=1931 L. 476, 1931 L. 480=135 I. C. 192=33 Cr. L. J. 162.
 6. S. 541 (1), Cr. P. C., does not apply to the custody of approvers. The notification of the Local Government directing the confinement of approvers "in that portion of the Lahore fort which is in occupation of the Police" is *ultra vires*. 1931 L. 476=12 L. 635=132 I. C. 519=32 Cr. L. J. 913.
 7. A notification issued by Local Government under S 541, Cr. P. C., prescribing Police custody for approvers instead of detention in jail or judicial lock up is *ultra vires*. 12 L. 604=1931 L. 353=131 I. C. 625=32 Cr. L. J. 785.
 8. If the accused to whom pardon is tendered is already on bail, there is no necessity for sending him to lock-up, but if he is already in custody, the Magistrate is bound to remand him to custody and retain him there until the termination of the trial. 1932 S. 40=33 Cr. L. J. 906=140 I. C. 153, 37 Bom. 146.
 9. The nature of custody in which an approver is to be detained is judicial custody or confinement in prison. 12 L. 604=32 Cr. L. J. 785=1931 L. 353.
 10. As soon as pardon is granted to an accused person, he becomes a witness *qua* the case in which he is to be examined, till his pardon is forfeited. There is no law for detaining such an approver witness in Police custody. 12 L. 635.
 11. Detention of approver in custody ends with the trial and not till the time of appeal. 1935 C. 515=37 C. 515=42 P. 613 P.

Detention—concl'd.)

12. An approver is not a convicted prisoner but when his detention is ordered by Court under S. 337 (3), Cr. P. C., he comes within the category of "criminal prisoner" as defined in S. 3 (2) of the Prison Act and S. 4 of the Act imposes upon the Local Government the duty of providing for prisoners accommodation in prison as ordained by the Act. 12 L. 635=1931 L. 476=32 Cr. L. J. 913.
5. **Of married woman.** See Enticing away married woman.
6. **Of offenders attending Court.** S. 351, Cr. P. C.
 1. If a Magistrate ordered Police to file a charge sheet against a witness in a case before him and tried the case on the Police Report, he took cognizance of the case under S. 190 (b) and not under S. 190 (c) or S. 351, Cr. P. C. 1921 Bom. 365=62 I. C. 875=22 Cr. L. J. 603.
 2. Where accused is not in attendance, S. 351 does not apply. 12 Cr. L. J. 92.
7. **Of property.** S. 517, Cr. P. C.

If no offence is proved in respect of the property produced in Court, the Magistrate cannot detain it until the title of the rightful owner is declared by a Civil Court. 22 Bom. 844.

DETENTION OF MOTOR CAR PENDING TRIAL. S. 516-A, Cr. P. C.

Where a motor driver is being prosecuted for an offence under S. 338, I. P. C., it cannot be said that his car was used in the commission of an offence within the meaning of S. 516-A, Cr. P. C. Therefore detention of car pending trial is illegal. 1931 L. 565=1931 Cr. C. 853, 4 P. L. R. 1904.

DHATURA. See Poison—7. Hurt by poison—2.**DIARY—(Police)** S. 172, Cr. P. C. See Statement to Police. S. 162, Cr. P. C.**1. Admissibility of—**

1. A list of stolen property handed to a Police Officer during investigation is not admissible in evidence. 1925 C. 959=85 I. C. 723=26 Cr. L. J. 579.
2. A map which contains upon it certain things which must have been supplied to the Police Officer by some person should not be admitted, unless there had been evidence of the person as to what he told the Police Officer. 1925 C. 959=26 Cr. L. J. 579.
3. Entries made in a personal diary kept by a Police Officer, who did not start or carry on the investigation does not fall under S. 172, and therefore not inadmissible. 1925 C. 959=85 I. C. 723=26 Cr. L. J. 579.

2. Applicability of— S. 172, Cr. P. C.

1. Ss. 162 and 172 do not apply to Calcutta Police. 1929 C. 257, 1924 C. 542.
2. S. 172 does not apply to the statements of persons and certainly does not over-ride the provisions of Evidence Act. 9 L. 389=1928 L. 257=29 Cr. L. J. 348.

3. Contents of—

1. Statements made to a Police Officer by a witness under S. 161, Cr. P. C., should not be recorded in special diary. 33 C. 1023, 20 C. 642, 131 I. C. 17=1931 P. 150=32 Cr. L. J. 638 *Cont.* 19 A. 390.
2. No statement can be recorded in the special diary. If recorded, it would not be a privileged document. 1927 C. 644=104 I. C. 245=31 C. W. N. 940=28 Cr. L. J. 805, 9 L. 389=1928 L. 257=108 I. C. 167=29 Cr. L. J. 348.
3. What is intended to be recorded under S. 172 is what the Police Officer did, the place where he went, the people he visited and what he saw. No statement can be recorded. 1927 C. 644=104 I. C. 245=31 C. W. N. 940, 131 I. C. 17=1931 P. 150=32 Cr. L. J. 638=16 C. W. N. 145, 19 A. 390, 20 M. 189.
4. S. 172 applies to all Police Officers. They are required to enter proceedings from day to day. It is better if the statements attached to the diary are initialled by the Superintendent of Police and the number of their pages noted. 1935 L. 230=35 Cr. L. J. 1180.

*Diary—(contd.)***4. Copy of—**

Accused is not entitled to a copy of diary. If it is used by Police Officer for refreshing his memory, accused is entitled to inspect it only. 19 A. 390, 16 A. 207.

5. Delay in writing up—

1. Police officers are required to enter proceedings from day to day. 1935 L. 230.
2. Omission to record in case diary on the same day on which examination of witness is made and no explanation for delay is offered, the circumstance is very suspicious. 1935 N. 69.

6. Evidence of—in a case under S. 110. See Security for good behaviour from habitual offender—14.**7. Failure to maintain—**

1. When there is no diary at all and no case of refreshing memory the absence of diary does not vitiate trial. 131 I. C. 17=1931 P. 150=32 Cr. L. J. 638.
2. It is incumbent upon the Police Officer to keep the diary as provided by S. 172, otherwise Court is deprived of valuable assistance afforded by it. 16 P. R. 1918 Cr., 39 P. R. 1867.
3. S. 172 does not apply to personal diaries maintained by Police Officer not conducting any investigation. 1925 C. 959.
4. S. 172 does not apply to departmental enquiry. 1935 S. 13.
5. S. 172 applies to all Police officers making investigation. 1935 L. 230.
6. Diary must be kept while investigating non-cognizable case. 27 C. 144.

8. Object of—

1. The object is to enable the Court to direct the Police Officer who is giving evidence to refresh his memory from the notes made by him during investigation and to explain contradictions. 1926 L. 54=89 I. C. 252=26 Cr. L. J. 1308.
2. The object is to enable the Court to see the information recorded from day to day and the line of investigation of a case. 16 C W. N. 145, 19 A. 390, 1934 C. 458.

9. Refusal to refer to— Refreshing memory—

1. It may be within the right of the Police Officer not to refer to diary but accused is entitled to the benefit of his refusal to refer to the diary and to disclose the source of his information. 1925 P. 131=86 I. C. 274=26 Cr. L. J. 738.
2. Judge is not bound to compel witness to look at the diary to refresh his memory. 8 C. 739, 1932 L. 103=135 I. C. 209=33 Cr. L. J. 97. *Cont.* 1924 P. 829.
3. Court should compel a Sub-Inspector to refresh his memory by seeing the diary if he does not remember facts. 1924 P. 829, 1921 A. 86 *Cont.* 1926 Jour. 150.
4. If upon a question being asked of a witness, there is a lapse of memory on his part, and that failure of memory can be remedied by reference to any memorandum or other writing prepared by the witness at the time, and the Court invites the witness to refresh his memory with reference to the writing (Police diary), the witness is under an obligation to do so, it being his duty to lay the whole truth before the Court to the best of his ability. 19 A. L. J. 76.

10. Right of accused—inspection.

1. The accused is not entitled to inspect the whole diary but only the portion from which witness refreshed his memory. 2 P. 74=1922 P. 562=23 Cr. L. J. 591.
2. If the Police Officer says that no statement under S. 162 was recorded, the accused is not entitled to see the diary called for under S. 172. 1925 P. 339=26 Cr. L. J. 297.
3. Accused is not entitled to insist that Police Officer should refer to the diary to refresh his memory. 8 C. 154, 1932 L. 103=135 I. C. 209=33 Cr. L. J. 97, 8 C. 739.
4. Copies of diary cannot as a matter of course be granted to accused. 16 A. 207.

11. Use of—

1. The Police diary cannot be used as a substantive piece of evidence. It can be used for contradicting a witness and not for corroborating him. 1921 P. 331=61 I. C.

Diary—(contd.)

- 230=22 Cr. L. J. 374, 21 A. 159, 2 P. L. J. 223.
2. When a Sessions Court uses *zinnis* as evidence, the conviction is illegal. 1921 L. 267=66 I. C. 187=23 Cr. L. J. 251, 10 C. W. N. 600.
 3. The Court can use diary for clearing up obscurities in a case but not for coming to a judicial decision upon the case subsequently. 1926 L. 54=26 Cr. L. J. 1308.
 4. To disbelieve the story of the defence only because it is nowhere mentioned in the *zinnis*, is an improper use of the diary. 1926 L. 485=27 Cr. L. J. 572.
 5. Diary cannot be used for corroborating the evidence of prosecution witnesses as given in Court. 131 I. C. 535=32 Cr. L. J. 735 (1)=1931 P. 96.
 6. Entries in Police diary cannot be used to discredit the prosecution evidence. 1927 O. 64=99 I. C. 342=28 Cr. L. J. 134, 1883 A. W. N. 37.
 7. The power under S. 172 to look into case diary should be sparingly exercised. 1929 M. W. N. 587.
 8. Police proceedings cannot be used to test the correctness of statements made by witnesses on oath. References by a Magistrate to Police proceeding cannot be justified even under S. 172. 1923 L. 820=29 Cr. L. J. 493, 1917 P. C. 25.
 9. Judge can refer to Police diary even after the verdict of jury, as the trial does not end there. 56 C. 150=1929 C. 57=30 Cr. L. J. 435=32 C. W. N. 545.
 10. Accused is entitled to use the statements of witnesses contained in a diary prepared under S. 47 (a) of the Calcutta Suburban Police Act. 1924 C. 542=24 Cr. L. J. 757.
 11. Improper use of Police diary is no ground for revision by High Court if there is ample evidence otherwise supporting prosecution case. 1921 P. 331=61 I. C. 230.
 12. None but the officer who made the entry in a Police diary can be confronted with it. 44 C. 876 (P. C.) 19 A. 390.
 13. Diaries can be put in evidence if the persons who wrote them are called as witnesses to prove the facts. 1883 A. W. N. 145, 2 Weir 142, 27 C. 295.
 14. Diary may be used for assisting the Court in a trial, as suggesting means of further elucidating the points which need clearing up. 44 C. 876, 19 A. 390, 23 Cr. L. J. 251, 2 P. L. T. 223, 1894 A. W. N. 155.
 15. A Magistrate should not refer to any entry in a diary not used by the prosecution witness to refresh his memory. 23 I. C. 208=15 Cr. L. J. 256.
 16. In a criminal trial the Court should not make use of Police diaries. 1930 L. 484=31 Cr. L. J. 442=31 P. L. R. 185=122 I. C. 568.
 17. When the Magistrate saw the diary and observed that certain discrepancies in the evidence of prosecution witnesses were not material, the conviction must be set aside. 131 I. C. 535=1931 P. 96=32 Cr. L. J. 735 (1)=11 P. L. T. 837.
 18. A special diary cannot be used to enable any witness other than Police Officer who made it to refresh his memory by looking at it. 19 A. 390, 44 C. 876.
 19. Police diaries are not original evidence of the matter contained therein. 44 C. 876 (P. C.) 21 A. 159, 2 Weir 143.
 20. Right to inspect Police diaries is given only to Courts. Courts cannot delegate it to defence counsel. 1933 L. 498=34 Cr. L. J. 464, 19 A. 390 Foll.
 21. Subject matter of Police diaries is privileged under S. 125 or S. 123 in certain circumstances. 1933 L. 498=34 Cr. L. J. 464.
 22. Criminal Court can use diaries to aid it in the trial. 1936 R. 75=37 Cr. L. J. 414, 1935 R. 370.
 23. Police diary could be referred to by the Prosecution, not to substantiate the offence against the accused, but to see whether a witness has turned hostile. 1918 P. 459.
 24. It is the Court and not the accused or his agent that can use Police diary to contradict the Police Officer who made it. 19 A. 390.
 25. Police diaries not being evidence in the case, Court is not empowered to draw any presumption for or against prisoner from the non-production thereof. 1924 A. W. N. 181.

DIFFERENCE OF OPINION BETWEEN HIGH COURT JUDGES. S. 429—378 Cr. P. C.

1. If there are two accused and Judges are agreed in opinion with regard to one of them but are divided as regards the other, the third Judge to whom the case is referred is with regard to prisoner about whom they are divided. 38 C. 202, 1931 L. 513.
2. A Judge to whom the case is referred, should not differ from the other two unless there is a mistake of law or some fact which has escaped the notice or unless there are very strong grounds for doing so. 1930 S. 225, 22 C. W. N. 745, 51 B. 310.
3. A third Judge to whom reference is made cannot make a reference to a Full Bench. 1925 C. 1040=29 C. W. N. 475=26 Cr. L. J. 915.
4. On a difference of opinion in the matters under S. 145, Cr. P. C., the senior judge's opinion prevails, as the jurisdiction exercised is under S. 107, Government of India Act and not under S. 439. 22 Cr. L. J. 99, 47 C. 438.
5. If two Judges differ in criminal revision case, S. 439 read with S. 429 requires the case to be decided by a third Judge. 40 M. 976, 27 C. 892, 27 C. 501.
6. If the Judges disagree with regard to sentence, it is a good reason that death sentence should not be passed. 1930 C. 193=31 Cr. L. J. 817.

DIFFICULT CASES.

1. ————— contested and intricate in nature can be
by Magistrates than by Honorary Magis-
Cr. L. J. 898=10 N. L. J. 184.
2. It is extremely undesirable that cases involving difficult questions of Law and fact should be tried by a Bench of Honorary Magistrates. 47 M. 716=1925 M. 64=25 Cr. L. J. 1070, 1931 M. W. N. 407.
3. Where a Bench is of opinion that the case should be transferred from their file as it involves a difficult question, it should move the matter officially and not to leave it to the parties to move. 1929 M. 403=106 I. C. 715=29 Cr. L. J. 123.

DIMINUTION OF WATER SUPPLY. See Mischief—6. S. 430, I. P. C.

DIPSOMANIA. See Insanity—5.

DIRECTOR OF BANK. See Breach of trust—13.

DIRECTING PROSECUTION. Ss. 476, 195, Cr. P. C. See Disqualification of Magistrate—4.

1. Abetment.

1. For abetment of an offence no complaint by Court is necessary. 10 L. 442=1928 L. 787, 32 A. 74, 1934, S. 78 (1)=35 Cr. L. J. 1251.

2. Appeal or revision. S. 476-B, Cr. P. C.

1. An appeal under S. 476-B lies even if an action has been taken by the Court *suo motu* under S. 476. 119 I. C. 265=30 Cr. L. J. 1019=1929 L. 641=11 L. 55, Cont. 1929 L. 9=113 I. C. 537=30 Cr. L. J. 163.
2. The right of appeal under S. 476-B is restricted to offences mentioned in S. 195, clause (b) and (c). There is no right of appeal with regard to offence referred to in S. 195, clause (a). 102 I. C. 483=1927 A. 828=28 Cr. L. J. 547.
3. No appeal lies from a complaint made by appellate Court under S. 476-B. 120 I. C. 116=1929 A. 898=30 Cr. L. J. 1148.
4. Where an order is passed under S. 476-B, High Court can interfere in revision if it falls within one of the grounds mentioned in S. 115, Cr. P. C. 1930 C. 721.
5. If Election Commissioner passes an order under S. 476, appeal lies against the order. 47 A. 934=1925 A. 737=89 I. C. 630.
6. On the death of the appellant the appeal abates. 47 A. 359=1925 A. 620.
7. An appellate Court should reconsider the entire matter on its merits. 1929 C. 480=57 C. 500, 88 I. C. 358=1925 A. 544=26 Cr. L. J. 1126.
8. Under S. 476-B the finding about expediency and interest of justice is not necessary. 8 R. 25=1930 R. 201=31 Cr. L. J. 793=125 I. C. 266.

Directing Prosecution—(contd.)

9. Against the order of District Magistrate under S. 476-A appeal lies to the Sessions Judge under S. 476-B. 30 Cr. L. J. 550=116 I. C. 77=1929 N. 97.
 10. An order by a Collector as appellate Court of appeal to him, described as District Magistrate is not invalid. 1926 A. 402=93 I. C. 937=27 Cr. L. J. 523.
 11. The right of appeal is given whether the Court acts on its own motion or on the application of parties. 11 L. 55=1929 L. 641=119 I. C. 265=30 Cr. L. J. 1019.
 12. An order under S. 476-B is not appealable. 56 C. 824, 1925 L. 322=6 L. 56, 119 I. C. 703, 55 C. 765, 51 M. 777, *Cont.* 10 P. 446, 1926 P. 81.
 13. The limitation for an appeal under S. 476-B against an order, refusing to file a complaint under S. 195, Cr. P. C., is one provided by article 195 and not article 156, Limitation Act. 1926 A. 211=93 I. C. 851.
 14. Limitation for appeal runs from the date of actual filing of complaint. 52 Bom. 164=1928 Bom. 64=108 I. C. 26=29 Cr. L. J. 315, and not from the date of the order. 1935 N. 199, 1928 B. 64 and 1927 L. 54=7 L. 77 *Ref. on.*
 15. The appellate Court should reconsider the entire matter on its own merits. 57 C. 500=1929 C. 480.
 16. A District Judge cannot transfer the appeal to any Subordinate Judge. 1935 A. 440=1935 A. L. J. 473, 39 C. 774, 33 Cr. L. J. 410=1933 P. 179 and 114 I. C. 812, *Ref.*; 1927 A. 555=49 A 792 *Dist.*
 17. Appeal against complaint by Judge of Small Cause signed as Munsif lies to District Judge alone and he cannot transfer it to Subordinate Judge. 1935 A. 446 (2)=1935 A. 476, 1935 A. 212=1935 A. L. J. 66. 39 C. 774 and 40 A. 35 *Foll.*
 18. Where the Subordinate Judge refuses to prosecute and the District Judge sets aside the order and files a complaint under S. 476-B, no second appeal lies to the High Court. 1935 B. 157=37 B. L. R. 106, 55 C. 765=1928 Cal. 281=29 Cr. L. J. 119 *Ref. on.* 10 P. 446=1931 P. 343 and 5 P. 262=1925 P. 81 *Not foll.* 48 B. 401 *Ref.*
 19. Appellate Court cannot make remand to trial Court. It can itself make inquiry. 1935 O. 59=36 Cr. L. J. 254. 13 L. 342=1931 L. 761.
 20. Appellate Court cannot take additional evidence under S. 423 Cr. P.C., under S. 476-B, Cr. P. C. 13 L. 342=1931 L. 761=135 I. C. 594.
 21. For an offence committed before a Subordinate Judge acting as Election Commissioner, District Judge can make a complaint and the appeal lies to the High Court. 1935 M. 673=36 Cr. L. J. 895.
 22. In an appeal under S. 476-B in Civil proceeding, the appellate Court can remand the matter back for disposal. 1934 M. 52=57 M. 177=147 I. C. 351, 1931 C. 604 *Foll.* 1931 L. 761, 1929 C. 195, 54 C. 355 *Ref.*
 23. No appeal against a complaint under S. 195 (1)(a) lies. 1934 M. 473=35 Cr. L. J. 1134, 1934 M. 52, 1928 R. 296.
 24. Where several complaints are ordered by one order, several accused must file separate appeals. 1933 M. 125=34 Cr. L. J. 92, 52 B. 164 *Dist.*
 25. Where Assistant Sessions Judge refuses to make a complaint, appeal lies to Sessions Judge. 1933 C. 192, 1929 C. 521 *Foll.* 1931 C. 190.
 26. Under S. 476-B appellate Court can summarily dismiss or remand the appeal. 1933 M. 767=147 I. I. 794.
 27. If the statement before Committing Magistrate is contradictory to that made in Sessions Court, Sessions Judge can direct prosecution. 1932 M. 494, 37 I. C. 495 *Foll.* 1931 M. 778 and 15 Cr. L. J. 612 *Ref.*
3. By Superior Court. S. 476-A, Cr. P. C.
1. There is no objection to the superior Court granting sanction under S. 476 during the pendency of an application in the Subordinate Court. 82 J. C. 359=25 Cr. C. L. 128=1924 Bom. 511.
 2. In case of an invalid complaint by Magistrate, Sessions Judge can make complaint under S. 476-A. 26 Cr. L. J. 923=1925 A. 667=86 I. C. 987.

Directing Prosecution—(contd.)

3. The superior Court may take action when the Subordinate Court has neither made a complaint under S. 475 nor rejected an application for the same, but where the Subordinate Court has rejected the application the proper remedy is by way of appeal. 52 C. 1009=1925 C. 1228=90 I. C. 529=26 Cr. L. J. 1569.
 4. If the application in the Subordinate Court is withdrawn, superior Court can take action under S. 476-A. 112 I. C. 475=29 Cr. L. J. 1051=1923 B. 347.
 5. The Court to which an appeal against an order of revising or granting sanction for prosecution is transferred is competent to act under S. 476-A. 26 Cr. L. J. 796=1925 N. 358=86 I. C. 428.
 6. A Collector hearing appeal against mutation can order prosecution. 1935 O. 113.
 7. An offence under Ss 211-193 was committed in the Court of a first class Magistrate, District Magistrate has no jurisdiction to make a complaint. Sessions Judge can do so. 1934 O. 344 (2).
- 4. Court.**
1. The Civil Court exercising jurisdiction under S. 476 does not cease to be a Civil Court. 51 A. 344=1929 A. 774=111 I. C. 595=1929 A. L. J. 55.
 2. A Judge dealing with a petition under S. 83 of the Transfer of Property Act is a Court. 4 P. 24=1925 P. 330=26 Cr. L. J. 170=83 I. C. 730.
 3. A Court receiving guardian's report is a Court under S. 476. 22 Cal. 1004, 100 I. C. 1044.
 4. If the original complaint was transferred to another Court the latter Court can act under S. 476. 53 C. 488=1926 C. 788=27 Cr. L. J. 648=94 I. C. 600.
 5. The word "Court" under S. 476, includes the successor of a Judge before whom the alleged offence was committed or in whose notice the commission of it was brought in the course of a judicial proceeding. 4 L. 58, 37 C. 642, 63 I. C. 616, 3 R. 48=26 Cr. L. J. 500, 12 A. L. J. 1003, 34 A. 393.
 5. The successor Subordinate Judge can continue the proceedings under S. 476, started by his predecessor. 1922 L. 479=67 I. C. 723.
 7. The expression "Court" under S. 195 is of a wider scope than the expression "Civil, Revenue or Criminal Court" in S. 476, 48 A. 60=1926 A. 30.
 8. Ss 195 and 476, Cr. P. C., make reference to the Court and not to the Judge. 29 Cr. L. J. 1028=1928 L. 759=112 I. C. 356.
 9. There is permanent Court of the District and Sessions Judge with successive incumbents in the office of the Judge, the Sessions Judge can take action under S. 476, although the offence under S. 193, I. P. C., might have been committed before his predecessor. 1926 L. 394=27 Cr. L. J. 527=93 I. C. 991.
 10. Power to make complaint is not confined to Court taking cognizance but the superior Court to whom it is transferred or who has withdrawn case to its file under S. 524, may make complaint. 31 Cr. L. J. 430=1929 Cal. 724.
 11. If the case is transferred the Court to which it is transferred may make complaint. 31 Cr. L. J. 986=1930 M. 192, 125 I. C. 112, 95 I. C. 376.
 12. Ordinarily the trial Court should prefer complaint. 49 A. 460=1927 All. 469.
 13. An Election Commissioner is not a Civil Court within the meaning of S. 476. 47 A. 934=1925 A. 737=82 I. C. 630.
 14. A Judge of the High Court can direct prosecution under S. 476, although the matter out of which the action arose was heard by another Judge of the Court. 49 Bom. 710=1925 Bom. 436=85 I. C. 709=26 Cr. L. J. 1169.
 15. Where the original Court prefers a complaint High Court should not interfere since a complaint under S. 476 is almost invariably a matter of discretion. 45 B. 401=1924 B. 347=1930 C. 721, 5 P. 262, 1925 P. 81.
 16. Special Tribunal can make complaint for perjury regarding statement before it and also one before Magistrate under S. 164, Cr. P. C. 1934 L. 981.
 17. Where decree was sent to Collector for execution under S. 68, C. P. C., and sale was

Directing Prosecution—(contd.)

- being held by Mamlatdar, the accused put in a forged receipt of adjustment. Held, Mamlatdar could not make complaint under S. 476. 1935 B. 158=37 B. L. R. 93.
18. For an offence committed before Subordinate Judge acting as Election Commissioner, District Judge can file the complaint and appeal lies to High Court. 1935 M. 673 =36 Cr. L. J. 895. See 50 M. 121 and 1926 R. 25.
 19. Collector acting in appraisement proceedings under B. T. Act is a Court. 17 C. 872.
 20. President of the Tribunal constituted under Calcutta Improvement Act was a Court. 45 C. 585.
 21. A Tehsildar conducting mutation proceedings is a Court. 24 M. 121.
 22. A Divisional Officer hearing appeals under Income Tax Act is a Court. 36 M. 72.
 23. Arbitrators do not constitute a Court. 1935 M. 673 (677).
 24. Election Commissioner's is a Civil Court. 9 C. 295 (P. C.), 1935 M. 673.
 25. A District Judge hearing an election petition is a Court. 37 B. 365.
 26. A Tribunal acting without jurisdiction is a Court and still complaint of Court is necessary. 1934 C. 457.
5. Delay in—. See—11.
6. Duty of the Court.
1. There must be distinct evidence of the commission of offence by the person who is to be prosecuted before a complaint is made. 115 I. C. 174=30 Cr. L. J. 407.
 2. When a criminal offence is alleged to have been committed in the course of revenue or civil proceeding, the rule is that the facts on which the criminal offence is founded, should as far as possible be finally determined in the Civil or Revenue Court. 26 Cr. L. J. 1565=1926 P. 25=90 I. C. 445=7 P. L. T. 199.
 3. The Court acting under S. 476 should apply its mind to the matter upon its merits. Merely acting on the remarks of the appellate Court is not enough. 83 I. C. 498 =1924 A. 453=21 A. L. J. 930.
 4. The Court is bound to find that there is a *prima facie* case. 67 I. C. 205.
 5. The Judge taking action under S. 476 must himself make an inquiry. 115 I. C. 810.
 6. The officer making the complaint must state the evidence on which he relies. 11 Cr. L. J. 938.
 7. In a complaint of perjury passages complained of must be quoted. 30 Cr. L. J. 370 =1929 M. 74=114 I. C. 834=28 M. L. J. 774, 1926 A. 21, 24 A. L. J. 122=26 Cr. L. J. 1506=90 I. C. 290, 48 M. 395=1925 M. 609=86 I. C. 449=26 Cr. L. J. 801, 126 I. C. 530.
 8. Sanction is improper where a prosecution must fail. 1927 L. 352=100 I. C. 373=23 Cr. L. J. 293.
 9. Prosecution should not be ordered when it is a matter of oath against oath. 28 Cr. L. J. 1007=1927 M. 995=105 I. C. 831=39 M. L. T. 414.
 10. Prosecution should not be launched to feed fat grudge of private individuals. 1934 O. 344 (2).
7. Expert report.
1. It is not always very safe to order prosecution where there is no other testimony than that of an expert to support it. 25 Cr. L. J. 796=1925 N. 358.
 2. The report of the Government expert who never came into the witness box and whose report is not supported even by affidavit is inadmissible in evidence and cannot form basis of the order directing prosecution. 24 Cr. L. J. 500.
8. Expediency of—.
1. In sanctioning a prosecution under S. 476, the Court has not only to consider whether there is a *prima facie* case but also whether it is expedient in the interest of justice to sanction prosecution. 1929 L. 676=30 Cr. L. J. 666=116 I. C. 711, 51 Cal. 276, 1930 M. W. M. 591.

Effecting Prosecution—(contd.)

2. Magistrate should record finding that it is expedient in the interest of justice that an enquiry should be made under S. 476. 55 Cal. 1312, 1923 M. 783=29 Cr. L. J. 732=110 I. C. 588, 1933 C. 147.
3. If the order under S. 476 does not contain finding as required by S. 476 nor gives any reasons for such finding, the order is defective. 1929 M. 74=114 I. C. 834, 27 Cr. L. J. 1249, 1928 M. 783, 1930 C. 352, 1933 M. 67(1)=56 M. 157. 1931 M. 16 Diss.
4. It is sufficient that Court arrives at an opinion that there is reasonable prospect of the conviction of the accused and there is sufficient evidence to support prosecution. 127 I. C. 859=1930 L. 347=32 Cr. L. J. 60.
5. If it is in the interest of justice that a complaint should be made, then and only then a complaint should be preferred. 1928 Mad. 783=110 I. C. 588=29 Cr. L. J. 732.
6. Omission to write the words "expedient in the interest of justice" does not make the order illegal. 1935 A. 608 (1)=36 Cr. L. J. 781. *Cont.* 1935 N. 199, 55 C. 1312=1928 C. 862.
7. Mere reasonable hope of accused being convicted is not necessary. 1934 A. 385=35 Cr. L. J. 785=148 I. C. 866.
8. Express finding that in the interest of justice inquiry should be made into offence is essential. 1933 C. 147=34 Cr. L. J. 624, 55 C. 1312=1928 C. 862 and 1930 C. 352. *Rel. on.*

Grounds for and against.

1. Mere existence of contradiction in evidence is insufficient to order prosecution. 55 Cal. 1312=1923 Cal. 862.
2. Although there is some indication of accused's guilt yet if it does not amount to anything more than suspicion, prosecution should not be ordered. 109 I. C. 358, 16 Cal. 730, 31 Cr. L. J. 621.
3. The measure of proof to prove that a document is forged required in a Civil Court is very different from that required in the Criminal Court. Before ordering prosecution the Court must have direct evidence fixing offence upon the person to be prosecuted. 115 I. C. 174=30 Cr. L. J. 407.
4. There must be reasonable probability of conviction otherwise there would be waste of public time. 31 M. L. J. 440, 23 Cr. L. J. 509, 24 Cr. L. J. 823, 1935 M. 1044.
5. There must be reasonable foundation for the charge in respect of which prosecution is directed. 37 C. 250.
6. It is not necessary for the Court to go minutely into the evidence recorded in the suit. 2 Weir 587.
7. The Court taking action under S. 476 must be *prima facie* satisfied that the offence has been committed by definite individual. 23 C. 532.
8. The Court must come to finding that the individual sent for trial has committed the offence. 2 L. L. J. 63.
9. Where District Judge was of opinion that the forgery of document was committed by the plaintiff or by the defendant, ordering prosecution of both is illegal. 63 P. L. R. 1905.
10. Prosecution should not be ordered when it is a matter of oath against oath. 1927 M. 996=23 Cr. L. J. 1007, 1933 R. 119=34 Cr. L. J. 781.
11. The mere fact that medical evidence belies the eye witnesses, is not sufficient to order prosecution. 1927 M. 996=23 Cr. L. J. 1007=105 I. C. 831=39 M. L. T. 414=26 M. L. W. 479.
12. There should be reasonable probability of conviction. 1936 R. 473, 34 C. 551 and 37 C. 250 *Foll.*

0. Illegality of complaint.

The irregularity or illegality of complaint cannot be called in question in appeal from conviction. 1932 C. 545.

1. Initiation of proceedings.

1. Under S. 476 a complaint may be made by a Court either on the application or

Directing Prosecution—(contd.)

being held by Mamlatdar, the accused put in a forged receipt of adjustment. Held, Mamlatdar could not make complaint under S. 476. 1933 II, 155=37 B. L. R. 93.

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Directing Prosecution—(contd.)

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12. There should be reasonable probability of conviction. 1936 R. 473. 34 C. 551 and 37 C. 250 Foll.

10. Illegality of complaint.

The irregularity or illegality of complaint cannot be called in question in appeal from conviction. 1932 C. 545.

11. Initiation of proceedings.

1. Under S. 476 a complaint may be made by a Court either on the application or

Directing Prosecution—(contd.)

otherwise, whether person making an application is a party in the original suit or not is immaterial. 8 P. 736=1929 P. 242=120 I. C. 623=11 P. L. T. 75.

2. Proceedings under S. 476 should not be undertaken on the application of private persons unless it is clearly in the interest of justice and is reasonably certain to result in conviction. 125 I. C. 838=1930 O. 404=31 Cr. L. J. 938.
3. Proceedings under S. 476 are for the purpose of indicating and ensuring the purity of the administration of public justice. 34 C. W. N. 914=1930 C. 721=129 I. C. 561=52 C. L. J. 87.
4. The Court cannot take proceedings under S. 476 against person who is not a party to the proceedings in any Court. 31 Cr. L. J. 938=125 I. C. 838=1930 O. 404.
5. It is the duty of the Court and not of the private party to bring the culprit to justice. 120 I. C. 45=1930 P. 194=30 Cr. L. J. 1144.
6. In case of escaping from the custody of peon, the peon of the Civil Court should file the complaint in an ordinary way. 47 A. 409=1925 A. 318=86 I. C. 801=26 Cr. L. J. 865.
7. Order passed by the Court on a complaint made by the Police is not complaint by Court. 4 P. 323=1925 P. 483=26 Cr. L. J. 389=86 I. C. 825.
8. Complaint was made under S. 471, I. P. C., but same facts constituted offence under other section. Held, that fresh complaint is not necessary. 1934 P. 536.
9. Objection to initiation of proceedings *e. g.* want of jurisdiction by Magistrate must be taken at the earliest stage. 1936 P. 346, 1929 C. 203 and 1932 C. 545 Foll.
10. Cognizance is to be taken of the whole case. If any other offence is proved or any other person besides the accused is proved to be the offender, the Magistrate can take cognizance. 1936 P. 346=15 P. 26, 1934 P. 467 and 1934 P. 536 Ref.
11. Even if the name of offender is not mentioned in the complaint, Magistrate can proceed against him. 1936 C. 147=37 Cr. L. J. 521, 42 I. C. 133 Foll. 23 C. 532 Not foll.

12. Limitation for or delay in.

1. S. 476 does not limit time within which action should be taken and there is no legal necessity to proceed under this Section immediately after the close of the trial. 29 P. R. 1916 Cr., 19 Cr. L. J. 989, 20 Cr. L. J. 724.
2. Where an appeal has been preferred against an original case, the Court is justified in waiting till the disposal of the appeal before directing prosecution. 29 P. R. 1916 Cr., 16 B. 729, 4 L. 58, 6 C. 308.
3. It is desirable that an order under S. 476 should be made at the close of the proceedings or so shortly thereafter that it may be reasonably said that the order is a part of the proceedings. 31 M. 140, 32 M. 49, 42 M. 422, 23 Cr. L. J. 184, 53 P. W. R. 216 Cr. But see 43 B. 300.
4. An order under S. 476 should not be passed many months after the trial. 40 C. 444, 46 A. 851, 38 A. 695.
5. The delay of two months was considered to be too long. 18 Cr. L. J. 331, 20 Cr. L. J. 276.
6. The High Court will set aside an order directing the prosecution if it is passed so long after the offence that the delay is oppressive or scandalous. 1919 M. W. N. 112.
7. There is no hard or fast rule that the prosecution should not be ordered on the ground of delay. 1935 O. 113=153 I. C. 346, 34 C. 551 and 31 M. 140 Ref.
8. Delay in starting proceedings should not be encouraged. 1934 O. 272, 1930 L. 316 Foll.
9. Whether delay is fatal depends on the circumstances of each case. 1913 O. 430=35 Cr. L. J. 121.

13. Notice or opportunity.

1. Under S. 476 it is entirely discretionary and not obligatory on a Court to issue notice. 1920 L. 55=31 Cr. L. J. 179=1535 O. 113, 15 Cr. L. J. 217.

Directing Prosecution—(contd.)

2. Want of notice is at best a mere irregularity in proceeding. 10 A. L. J. 247, 7 B. L. R. 84, 15 C. W. N. 691.
3. A complaint under S. 476 is not invalid merely because an opportunity of showing cause against the complaint was not given. 30 Cr. L. J. 545=1929 P. 92=115 I. C. 882=10 P. L. T. 77.
4. Accused is entitled to notice when the prosecution is on the evidence of witnesses which is not tested. 1927 L. 173=28 Cr. L. J. 227=99 I. C. 1027.
5. When a Magistrate dismisses a complaint and takes action under S. 476 he should give the complainant an opportunity of showing true or *bona fide* character of the complaint. 7 M. 189, 6 C. 496, 7 C. 87.
6. The proceedings would not be irregular if the accused was not given an opportunity of substantiating his cause. 7 Cal. 208, 8 A. 182, 7 M. 292.
7. As a matter of strict law no notice is necessary but it is desirable that notice should be given. 1925 Bom. 436=88 I. C. 709=49 B. 710, 1924 A. 435.
8. Whether a notice is to issue or not depends upon the particular circumstances of the case. 73 I. C. 976=1923 R. 79=24 Cr. L. J. 736.
9. Where the plaintiff's claim was true but an order for his prosecution under S. 467 and 471, I. P. C., was made on the ground that the note on which he sued was spurious, held, that the order directing prosecution without deciding genuineness or otherwise of the document was illegal. 60 I. C. 425.

14. Offences not covered by S. 476.

1. Prosecution can be ordered for offences under Ss. 353, 341 and 147. 1924 C. 501=39 Cr. L. J. 33.
2. Robbery and its abetment do not fall within the scope of S. 476. 65 I. C. 481=23 Cr. L. J. 97=1922 Sind 9.
3. Proceedings in respect of an offence under S. 409, I. P. C., cannot be started under S. 476. 96 I. C. 526=27 Cr. L. J. 974.
4. A complaint by Court under Ss. 183 and 185, I. P. C., is *ultra vires*. 27 Cr. L. J. 1247=1927 O. 51=98 I. C. 63.
5. A complaint under S. 476 cannot be made against persons who are only witnesses and not parties to the suit. 1935 M. 1044, 46 M. 561 Ref.

15. Pending proceedings.

1. Proceedings should not be started during the pendency of an appeal in a case in which the petitioner is alleged to have given false evidence. 1925 L. 323=26 Cr. L. J. 760, 16 B. 729, 6 C. 308, 29 P. R. 1916 Cr.
2. When the appeal is pending, proceedings under S. 476 should await disposal of appeal. 1927 C. 718=28 Cr. L. J. 840=104 I. C. 456.
3. Proceedings under S. 476 should not be taken till after the close of the case in which false evidence was given or forged document was used. 4 B. L. R. 778, 21 Cr. L. J. 29, 1934 A. 1017.
4. The hasty proceeding as placing a witness on his trial is bad because the necessary result of such a step would be to intimidate subsequent witnesses and defeat object of the trial. 9 S. L. R. 176, 21 Cr. L. J. 29, 8 B. H. C. R. 126
5. If there is delay in the disposal of the suit in which an offence has been committed, proceedings may be started. 44 M. L. J. 74, 31 M. L. J. 440.

16. Preliminary enquiry.

1. Under S. 476 preliminary enquiry is not necessary, but as a matter of common prudence it should be held by every Court before it passed an order under S. 476. 1930 Cal. 282=127 I. C. 265, 20 Cal. 474, 34 Cal. 551, 34 A. 367, 15 A. 392, 1934 P. 536.
2. It is purely in the discretion of the Court to make a preliminary enquiry or not. 20 Cal. 249, 20 Cal. 474, 126 I. C. 553=1930 Cal. 515=31 Cr. L. J. 1055.
3. In each individual case the Court has to decide whether in the interest of justice

Directing Prosecution—(contd.)

- preliminary investigation is necessary. 52 C. L. J. 87=34 C. W. N. 914=1930 Cr. C. 1129, 129 I. C. 561=1930 Cal. 721, 37 Cal. 642, 29 Cal. 349.
4. Person proceeded against cannot claim to cross-examine witnesses in the preliminary enquiry. 97 I. C. 669=27 Cr. L. J. 1149=1926 M. 1008=50 M. 660, 34 A. 267.
 5. Preliminary enquiry need not be exhaustive. 104 I. C. 111=1927 Cal. 628=28 Cr. L. J. 783=31 C. W. N. 828.
 6. In case of false affidavit and false evidence it is expedient that an enquiry should be made. 1924 R. 374=3 Bur. L. J. 149.
 7. Where doubts were entertained in a complaint, and complainant was ordered to show cause why he should not be prosecuted under S. 182, the order was illegal. 22 Cr. L. J. 81, 59 I. C. 369, 16 W. R. 44.
 8. Before ordering prosecution for disobedience of summons to attend the Court after a person denies the services of summons, a preliminary enquiry should be held and he should be given opportunity to cross-examine the witnesses who had deposed as to the service of summons on him. 19 A. L. J. 56.
 9. The accused has no right to cross-examine witnesses in the preliminary enquiry. 18 B. L. R. 284, 34 A. 267.
 10. The preliminary enquiry must be conducted by the officer who directs prosecution and cannot be delegated to any other person. 20 Cr. L. J. 245.
 11. It is not necessary that the whole of the preliminary enquiry should be conducted by the Court. It can apply to the District Magistrate for the assistance of the C. I. D. 43 B. 300.
 12. Making of preliminary enquiry is discretionary with the Court. It is not necessary that it should be made in the presence of accused. 1935 O. 113.
- 17. Proceedings against strangers.**
1. Proceedings under S. 476 cannot be taken against persons not party to the proceedings. 1930 L. 644=125 I. C. 838, 2 R. 374=1925 R. 28=26 Cr. L. J. 295.
 2. If an accused is neither a party nor witness in the Court order under S. 476 is bad. 81 I. C. 919=1924 Cal. 986=25 Cr. L. J. 1095.
 3. The Court can make a complaint against persons not a party to the proceedings. 40 A. 24, 1922 O. 220=86 I. C. 68=23 Cr. L. J. 223.
 4. The Court can make a complaint not only against persons who were party but against a person who causes a false complaint to be lodged. 1930 Cal. 515=126 I. C. 553=31 Cr. L. J. 1055.
- 18. Revision.**
1. Where a Criminal Court takes proceedings under S. 476, the appellate order of the Sessions Judge can be revised by High Court under S. 439. 1935 O. 59=36 Cr. L. J. 254=153 I. C. 104.
 2. Where a Civil or Revenue Court takes action under S. 476 then S. 439, Cr. P. C., has got no application and Code of Civil Procedure applies. Revision lies under S. 115, C. P. C. 59 C. 68=131 C. 604=134 I. C. 1063. See 1931 C. 3=58 C. 402.
 3. Where a District Judge orders the withdrawal of complaint on appeal, Revision lies under S. 115, C. P. C. 1934 P. 55 (1)=147 I. C. 535, 1926 A. 229=27 Cr. L. J. 278=92 I. C. 454 Rel. on.
- 19. Right of accused to cross-examine.**
1. Witness under S. 476 was no party to the previous proceedings and the evidence was taken behind his back, he should be given an opportunity to cross-examine witnesses. 22 Cr. L. J. 143, 19 A. L. J. 56.
 2. In proceedings under S. 476 accused is entitled to cross-examine the witnesses produced by the opposite party. 61 I. C. 842, 22 Cr. L. J. 458, Cont. 18 B. L. R. 284, 34 A. 267.
- 20. Scope.**
1. It is doubtful whether a Court can review its order refusing to make a complaint

Directing Prosecution—(concl'd.)

under S. 476. 49 A. 752=1927 A. 571=102 I. C. 351=28 Cr. L. J. 543.

2. Finding of a competent Court that a document is forgery is a *prima facie* ground for an order under S. 195 or S. 476. 1926 A. 21=26 Cr. L. J. 1506.
3. The offence must be one which appears to have been committed in relation to a proceeding in Court. 46 A. 851=1924 A. 770=25 Cr. L. J. 1277.
4. S. 339 (1) does not cancel S. 476. 1927 N. 189=28 Cr. L. J. 645.

21. Second application under S. 476

1. An order refusing to proceed under S. 476, Cr. P. C., is not a judgment nor is it an order of autopoies acquit. and there it does not debar the Magistrate from proceeding under that section later, if he changes his mind in that matter. 1930 Sind 315=130 I. C. 442, 1932 M. 130=33 Cr. L. J. 272=136 I. C. 313, 1929 P. 242=8 P. 736=120 I. C. 629, 153 I. C. 947, 1935 Pesh. 1=36 Cr. L. J. 470.
2. If the Magistrate has refused to take action under S. 476 on the request of a particular individual for directing prosecution of witness for perjury, he may *suo motu* or on the complaint of some body else take action. 1935 Pesh. 1=153 I. C. 947=36 Cr. L. J. 470. 29 M. 126 (F. B.) Rel on.
3. If the first complaint was by an authorized officer, a second complaint by an officer described in S. 195 (1) (a) is competent. S. 403, Cr. P. C., is no bar to it, as the first officer had no jurisdiction. 1934 P. 411 (1).
4. Complaint was made under S. 471, I. P. C., but the same facts constituted some other offence. Held, that fresh complaint was not necessary. 1934 P. 536.

22. Subordination of Courts.

1. A Munsif is subordinate to Sub-Judge, 1st Class, in respect of suits specified in the notification under Punjab Courts Act and to District Judge *qua* remaining cases. 2 L. 57.
2. A Collector, when passing an appealable decree of arrears of rent is subordinate to District Judge under the Agra Tenancy Act. 1934 A. 886, 1930 A. 407=31 Cr. L. J. 898.

23. When High Court will interfere.

1. When proceedings were entirely without jurisdiction, High Court will interfere in revision. 29 M. 100.
2. If the Court proceeded on fanciful grounds the High Court will interfere. 23 A. 249, 26 A. 514, 35 C. 909.
3. If the Lower Court has arrived at a judicial opinion the order should not be interfered with merely because High Court disagrees with that opinion. 23 A. 249, 18 Cr. L. J. 1615, 4 A. L. J. 803.
4. Revision should be granted only if there is some error of law or irregularity or if there is abuse or failure to exercise jurisdiction and not simply because the revisional Court has formed a different opinion from that of the Court below. 18 P. R. 1902 Cr.
5. When an order under S. 476 was passed by a Civil Court the High Court can interfere under S. 115, C. P. C. 40 C. 477, 19 C. W. N. 447.
6. An order of the Small Cause Court under S. 476 directing prosecution for perjury can be interfered only under S. 25 of Provincial Small Cause Courts Act. 1 R. 372=1924 R. 54=2 Bur. L. J. 154.
7. High Court has no power in revision to interfere with an order passed by a Revision Court. 39 A. 91, 36 M. 72.

DIRECTION OF ASSAILANT. See Wound—4.**DISAPPEARANCE OF EVIDENCE. S. 201, I. P. C. See Gift to screen offender—1.****1. Applicability.**

1. S. 201 applies to the person who screens the principal or actual offender and not to the principal or actual offender himself. 1926 L. 209=27 Cr. L. J. 109, 22 C. 638, 27 M. 271, 1 L. C. 454 (1924), 21 N. L. R. 85.

Disappearance of Evidence—(contd.)

2. S. 201 does not apply to a criminal causing evidence of one's own crime to disappear. 1925 N. 407=27 Cr. L. J. 60.
 3. Section is intended to apply to acts to which Ss. 193—195 do not extend, and not to acts covered by those sections. 42 P. R. 1884.
- 2. Attempt.**
- Stealing a forged promissory note from the record of a case is an offence under Ss. 201—511. 31 I. C. 647.
- 3. Charge.**
1. It is highly undesirable to charge the same person in the alternative of murder and offence under S. 201. 1923 B. 262, 20 C. W. N. 166=32 I. C. 132.
 2. An accused charged both under Ss. 302, 201 may be convicted under S. 201 by the High Court, although he is acquitted by the Sessions Judge under S. 302. 6 C. 789, 1 P. R. 1904 Cr., 8 P. R. 1913 Cr., 54 A. 792, 46 C. 427, 6 L. 226=1925 P. C. 130, 2 A. 713, 7 A. 749, 8 A. 252 and 22 C. 638 Ref.
 3. A separate sentence under S. 201 along with a conviction of the accused of murder is illegal. 30 I. C. 135=16 Cr. L. J. 583, 2 A. 713.
- 4. Concealing corpus delicti. See—5.**
- 5. Disappearance of evidence.**
1. Since suicide is no offence, the removal or concealment of dead body is not punishable under S. 201. 17 P. W. R. 1911 Cr.=11 I. C. 609.
 2. A person advanced towards a thief who attacked him. The latter struck the thief with a stick and caused his death. Two of his brothers along with him carried the dead body in a sugarcane field and left it there. Held, they are not guilty as it was a justifiable homicide and the accused could not be convicted of screening him. 2 W. R. 43 Cr.
 3. Accused was discharged in a murder case for want of evidence, he could not be charged for concealing evidence by burning the dead body before the arrival of Police. 11 C. 619, 22 C. 638.
 4. Two accused along with four others were tried for murder but the only evidence against them was that they removed the corpse in their cart which was found to be blood stained, they are guilty under S. 201, though they were acquitted of murder. 11 P. R. 1904 Cr.
 5. Accused after murdering C. removed the dead body to C's field to divert suspicion. They were not guilty under S. 201 because they had done so to screen themselves and secondly the removal of corpse did not cause any evidence to disappear. 2 A. 713.
 6. Accused removed the blood-stained sheet from the child's body murdered by her son and locked it in a room. Held, she was not guilty under S. 201. 53 P. R. 1905 Cr.
 7. Disappearance of evidence does not include keeping out of the way of a witness who would have given evidence in the case. 21 P. R. 1882 Cr.
 8. 'Causing disappearance' implies some active exertion and not mere passive acquiescence or neglect. Accused found a dead body near his field and did not give any information of the occurrence, although he had reason to believe that crime had been committed. Held, he is not guilty. 25 P. R. 1881 Cr.
 9. 'Evidence' means material object, making the crime evident and does not include statements of a witness and Panchnamas. 1921 B. 115=63 I. C. 145=22 Cr. L. J. 609.
 10. A forged document in a damaged condition is not said to disappear even temporarily under S. 201, if it is complete and fully available as evidence under Ss. 467, 477. I. P. C. 31 I. C. 647.
 11. Concealing or otherwise disposing of the body of the murdered person means causing disappearance of evidence 8 P. W. R. 1909 Cr.
 12. S. 201 does not apply to the principal offender but to others who by causing evidence of the offence to disappear, assist him to escape the consequences of his offence. 10 P. 140=1931 P. 172, 7 A. 749, 8 A. 252, 46 C. 427 and 8 B. H. C. R. (Cr.) 126,

Disappearance of Evidence—(contd.)

Foll. 6 L. 226 (P. C.)=30 C. W. N. 816 Ref.; 49 A. 57.

13. A person charged for murder can be convicted under S. 201, when there was some suspicion against him of his complicity in murder. 10 P. 140=1931 P. 172=32 Cr. L. J. 975. But see 46 C. 427.
14. For a conviction under S. 201, I. P. C., it is not necessary that the principal offender should be some known person. 1931 P. 172=32 Cr. L. J. 975.
15. The mere fact that accused had been suspected or tried or acquitted of the principal offence would not in itself prevent his conviction under S. 201. But the statement he makes under a charge of murder in order to exculpate himself should not form the basis of his conviction under S. 201. 6 P. R. 1902 Cr.

6. Essentials and Evidence.

1. Accused helped a murderer by carrying the corpse to a ditch and buried it along with wearing apparel. Held, he is not guilty as he did not voluntarily do the act and was bullied to do it and that he had no intention of screening the offender. 1930 A. 45=120 I. C. 268=31 Cr. L. J. 37=1930 Cr. C. 61.
2. An intention to screen an offender unknown to the Crown is sufficient. 1927 S. 241=28 Cr. L. J. 674, 13 Cr. L. J. 721. See 1925 S. 257=26 Cr. L. J. 897.
3. When Crown has proved that an offence is committed and the accused caused disappearance of evidence or gave false information, a presumption arises in favour of the Crown that accused did act with the requisite intent. 1927 S. 241=28 Cr. L. J. 674.
4. A was charged with murder. He knew the place where dead bodies were. The jewellery removed from the body was produced by him and he confessed his guilt to Lambardar. Held, he is not guilty under S. 302 though under S. 201. 1928 L. 858=111 I. C. 449=29 P. L. R. 486=29 Cr. L. J. 865.
5. Tracker found tracks of accused near the dead body which was discovered at his instance. There was motive for murder. Held, evidence is not sufficient for murder though ample for S. 201. 1928 L. 476=29 Cr. L. J. 1019=9 L. 671.
6. The Court must find what offence the accused knew or had reason to believe had been committed and treat him to be a stranger to the crime, who had merely witnessed it. 1930 M. W. N. 489.
7. In case of grave and sudden death, the offender himself is under an obligation to give information. If he is found guilty of principal offence, no Court will think of convicting him under S. 201. But if the principal offence is not brought home, he is liable under S. 201. 1930 M. W. N. 489, 1927 S. 241=28 Cr. L. J. 674.
8. The mere removal of a dead body from one place to another so as to remove traces of the place where murder took place or indications which might implicate a particular individual is an offence under S. 201. 49 A. 57=1926 A. 737=97 I. C. 44, 47 A. 306, 1930 O. 113=123 I. C. 886=31 Cr. L. J. 575.
9. The principal offender of murder can be convicted under S. 201 for removing traces of the crime. 49 A. 57=1926 A. 737=27 Cr. L. J. 1068=97 I. C. 44.
10. Accused having found the dead body of a woman within the limits of their village removed it to a distant place in order to save themselves from the harassment and expense of Police investigation. It had the effect of putting the Police off the scent for a time. Held, they are not guilty. 46 C. 427, 5 N. W. P. H. C. R. 186.
11. If killing is justifiable, there can be no offence under S. 201. 2 W. R. 43.
12. A woman missing.
child. He
having to account for the missing child. 6 C. 789.
13. Giving false information to Police implicating innocent persons and screening real offenders is an offence under Ss. 201-203-211, I. P. C. 46 C. 427.
14. It is not necessary that there should be complete destruction of evidence. If a corpse is buried with intent to conceal the fact, an offence under S. 201 is committed. 13 Cr. L. J. 18=13 I. C. 210.

Disappearance of Evidence—(concl.)

15. Denial by prisoner of knowledge regarding offence in which he took part is not punishable under S. 201. 4 P. R. 1887 Cr.
16. S. 201 does not apply to a person refusing to give information respecting the offence. 42 P. R. 1884 Cr.
17. S. 201 does not apply to false information given by a witness in judicial proceedings. 42 P. R. 1884 Cr.
18. S. 201 does not apply to mere omission to give information of an offence without any positive act of concealment. 25 P. R. 1881 Cr.
19. Accused removed the dead body from the master's house who threatened to kill him he is protected under S. 94, I. P. C. 47 A. 306=1925 A. 315
20. Approver's evidence was that accused committed murder. There was corroboration as regards motive only. Accused pointed out spot where dead body was buried. Held, that offence under S. 201 was only proved. 1934 L. 23(2)=147 I. C. 215.
21. When a murder was committed and the informant did not know how body was removed to the house of third person, he was not guilty under S. 201. 1933 A. 30=34 Cr. L. J. 445.
22. A person who secretly buries the headless body of man just murdered is *prima facie* guilty under S. 201. Knowledge or conviction of murderer is not necessary. 1933 L. 516=34 Cr. L. J. 683, 16 I. C. 755 and 9 L. 671 Rel. on.
23. Before there can be conviction under S. 201, it must be proved that an offence, the evidence of which is caused to disappear, has actually been committed. 1932 C. 850, 11 C. 619 and 3 C. 412 Rel. on.
24. In case of murder of child by either of two accused and disposal of body by both, they are guilty under S. 201 and not under S. 302. 1932 M. 748, 1930 M. 870, Rel. on. 22 C. 638 Dist. 8 Bom. H. C. R. 126, 46 C. 427 and 1931 P. 172 Ref.
25. Where there is a clear evidence of disappearance of evidence in order to screen some person known or unknown, conviction under S. 201 is legal, although accused had been tried and acquitted of murder. 10 L. 213, 54 M. 68, 1932 Cr. C. 91.

7. In Case of suicide. See Suicide—3.

Since suicide is no offence, the removal or concealment of body is no offence under S. 201. 17 P. W. R. 1911=11 I. C. 609, 1934 S. 139.

8. Procedure.

1. A separate sentence under S. 201 along with a conviction for murder is illegal. 30 I. C. 135.
2. Acquittal of principal offence is no bar to conviction under S. 201, I. P. C. 10 L. 213, 29 Cr. L. J. 746=1928 L. 906=110 I. C. 682, 8 P. R. 1913, 6 P. R. 1902 Cr., 1 P. R. 1904 Cr., 1925 P. C. 130, 1923 B. 262, 1926 A. 737 Foll. 22 C. 638 and 1925 N. 407 Diss from. 1926 L. 209=27 Cr. L. J. 109=91 I. C. 541 Dist.
3. A conviction under S. 201 is not illegal merely because it is suspected but not proved that the accused committed the principal offence. 1927 S. 241, 6 P. R. 1902 Cr.
4. Alternative conviction under Ss. 303-201 is not justified. 11 P. R. 1913 Cr.
5. A murderer cannot be charged under S. 201. If murder is not proved to be committed by him, he can be convicted under S. 201. 1934 S. 139.

9. Sentence.

Punishment depends on the offence that accused knew was committed. A person acquitted of principal offence should be treated as a stranger to crime, as one who had merely witnessed it. 1930= M. 870=129 I. C. 230=32 Cr. L. J. 263.

DISCHARGE.**1. Absence of complainant. See Absence of complainant.****2. Before taking all evidence. S. 253 (2), Cr. P. C.**

1. If the case against the accused is groundless and Magistrate has before him the report of the Police in support of his view, it is not necessary that he should ask the complainant to prove his case. 1930 C. 515=155 I. C. 533=31 Cr. L. J. 1055.

Discharge—(contd.)

1926 A. 461=27 Cr. L. J. 541, 1926 L. 213, 12 Cr. L. J. 105.

2. There is no warrant for saying that Magistrate must examine all witnesses, that may be offered or available before taking action under S. 253. 52 M. 987=1929 M. 754=121 I. C. 619, 1926 A. 461, 68 P. R. 1900, 1928 L. 945.
3. Groundless evidence means such evidence that no conviction could be rested on it. It does not mean that evidence discloses no offence whatsoever. 52 M. 987.
4. To say that no case is made out is not tantamount to saying that charge is groundless. 51 M. 185, 1930 L. 461=123 I. C. 275=31 Cr. L. J. 481.
5. The mere fact that the matter is one of rendition of accounts and must be referred to Civil Court is obviously insufficient to justify an order of discharge under S. 253 (2) in a case of alleged breach of trust. 1930 L. 461=31 Cr. L. J. 481.
6. A Magistrate can discharge an accused at any stage before recording evidence or in the course of evidence if he is of opinion that the charge is groundless. 1930 C. 515=126 I. C. 553, 12 Cr. L. J. 105, 34 I. C. 305, 1930. L. 158.
7. Magistrate's personal knowledge that the complainant's witnesses were untrustworthy is no adequate reason for discharging the accused. 1929 C. 479=120 I. C. 458.
8. It is not proper to discharge accused merely on a statement by a prosecution witness of a prior admission by complainant that the case was a false one. It is better in such a case to hear the whole evidence. 1929 L. 623=117 I. C. 883.
9. Under S. 253 (2) a Magistrate can discharge an accused even before the date fixed for hearing if the Magistrate is satisfied from the record that the accused cannot possibly be convicted of the offence. 1925 P. 154=25 Cr. L. J. 696.
10. If the evidence recorded does not raise any presumption that the accused has committed any offence but merely leads to doubt, he should be discharged. 2 P. R. 1906 Cr.=3 Cr. L. J. 345=37 P. L. R. 1905.
11. When a Magistrate is reasonably convinced, on what has been already disposed that a criminal charge cannot be sustained, he can discharge the accused at any time. 12 Cr. L. J. 105, 32 C. 783, 1921 P. 474, 51 M. 185.
12. The Magistrate discharging an accused under S. 253 (2) without hearing all the evidence, is bound to record reasons. 9 Bom. L. R. 250, 52 M. 987.
13. Under S. 253 the Court has two alternatives either to discharge the accused under S. 253 (2) if the complaint is groundless or under S. 253 after recording whole of the evidence. He cannot act under both clauses. 1935 Pesh. 23=36 Cr. L. J. 632=1935 Cr. C. 172.
14. Magistrate when discharging accused under S. 253 (2) can take into account a Police report or a civil Court's judgment touching the dispute. 1925 A. 461=27 Cr. L. J. 541, 58 C. 346, 41 B. 1.

By Committing Magistrate. S. 209, Cr. P. C.

1. Accused should be discharged if no *prima facie* case is made out. 15 M. 39, 2 Weir 255, 51 C. 849, 1922 M. 43=65 I. C. 993=23 Cr. L. J. 279.
 2. Accused should be discharged if the evidence for prosecution is on the whole untrustworthy. 7 C. W. N. 77, 25 A. 564, 51 C. 849, 35 B. 163, 4 L. 69, 37 A. 355, 44 A. 57, 46 A. 537, 1922 M. W. N. 325, 1925 A. 664, 92 I. C. 450, 1923 L. 279=68 I. C. 825, 5 A. 151.
 3. If no evidence is forthcoming owing to the absence of the prosecutor and his witnesses, accused should be discharged. 15 W. R. 53.
 4. If the Magistrate is satisfied that the charge is without foundation, he should discharge the accused, even if the statements of witnesses make out a *prima facie* case. 26 Cr. L. J. 795=1924 A. 664=45 A. 537, 25 A. 564.
 5. When the Magistrate is convinced that the evidence is false, it is his duty to discharge the accused. In case of doubt about the credibility of evidence, he should commit the accused to Sessions. 1925 C. 525=93 I. C. 973=27 Cr. L. J. 509.
- 4. By Magistrate in a warrant case. S. 253, Cr. P. C.**
1. Where a warrant case which cannot be compounded, is compounded and the case

Discharge—(contd.)

dismissed, it amounts only to a discharge. 1 B. 64.

2. A Magistrate is not competent to discharge an accused until the evidence of all the witnesses named for the prosecution has been taken. 4 M. 329, 3 P. W. R. 1908, Cr., 2 C. L. R. 389, 22 W. R. 25, 20 W. R. 67, 8 P. R. 1880, 1929 C. 479, 12 Cr. L. J. 412, 14 Cr. L. J. 412, 1930 C. 515, 1920 M. 131, 7 Cr. L. J. 272.
3. Where a case is transferred from a Bench of Magistrates, to a Deputy Magistrate, the latter is bound to examine the evidence already recorded and cannot discharge the accused without considering the evidence. 38 C. 823.
4. Even if the complaint is withdrawn in a non-compoundable case, the Court must proceed with the case and not discharge the accused. 13 B. 600, 37 B. 369.
5. An order of discharge can be made when no case has been made out which if un rebutted would warrant conviction. 18 P. W. R. 1909 Cr., 11 Cr. L. J. 110, 49 A. 879, 1925 A. 298, 10 Cr. L. J. 14, 3 Cr. L. J. 102, 1934 O. 321.
6. An order of discharge cannot be made after a charge has been framed. It would amount to acquittal. 14 P. R. 1903 Cr., 1925 O. 60, 1935 A. 834.
7. Where, after a full trial, the accused persons were discharged, that discharge is for all purposes, as good as acquittal and the Magistrate is not justified in ordering further enquiry. 1921 L. 283=4 L. L. J. 331.
8. Discharge of accused without hearing evidence of prosecution witnesses in a Police challan case is irregular. 8 P. R. 1880 Cr.
9. A Magistrate should not discharge the accused merely because he has no jurisdiction to try the case. In such a case he ought to proceed under S. 346. 2 Weir 323.
10. If the complainant is absent and the offence was non-compoundable, the dismissal of complaint is improper. 10 C. 67, 20 C. W. N. 698, 4 C. W. N. 26.
11. Examination of accused is not necessary before charge is framed. 45 M. 820, 1926 N. 459=27 Cr. L. J. 830, 1920 P. 471=21 Cr. L. J. 705.
12. Magistrate need not record reasons for discharge. 28 C. 652.

5. By Sessions Judge.

A Sessions Judge is not competent to discharge but to acquit or convict an accused committed to Sessions. 3 P. R. 1874 Cr.

6. Dismissal of complaint. See Complaint—13.

7. Effect of—. See Complaint—13-A.

1. Where after a full trial the accused were discharged, that discharge is for all purposes, as good as acquittal, and the Magistrate is not justified in ordering further enquiry. 1921 L. 283=4 L. L. J. 331.
2. An order of discharge of accused in a case of criminal breach of trust is a bar to entertaining a fresh complaint. 33 P. R. 1894 Cr.
3. An order of discharge under S. 253 does not amount to acquittal. 5 W. R. 58.
4. When a complaint is dismissed, the proper procedure is to apply to Sessions Judge for setting aside the discharge and not to file a fresh complaint. 1935 A. 59=36 Cr. L. J. 128=152 I. C. 619. Cont. 1935 A. 60=35 Cr. L. J. 1485=151 I. C. 714.

8. Fresh Proceedings. See Fresh complaint.

1. Discharge of an accused does not bar a fresh complaint and it is not necessary that previous order of discharge must be set aside before fresh proceedings can be taken. 15 C. 608, 28 C. 211, 31 M. 543.
2. Fresh proceedings should not be taken except when there has been a manifest error or miscarriage of justice with regard to the order of discharge. 29 M. 126.
3. An order of discharge cannot be set aside and fresh proceedings taken unless there are new materials before the Magistrate, which were not before him formerly and unless upon those materials there is probability of the conviction. 23 Cr. L. J. 236.

9. Further Enquiry. See Further enquiry.

District Magistrate can himself hold a further enquiry or direct such enquiry, when the

Discharge—(concl'd.)

order of discharge is passed by him. 18 Cr. L. J. 705, 9 A. 52, 14 M. 334, 32 M. 220 *Cont.* 6 M. 25.

10. Implied.

When accused though tried for two offences, is convicted for one only and no charge is framed for the offence, it amounts to discharge, and further inquiry or commitment could be ordered. 1931 L. 402, 1933 M. 65 (2)=33 Cr. L. J. 825, 1 B. 610, 1935 S. 221, 1925 S. 190 *Foll.*

11. Order of—.

1. An order of discharge after taking defence evidence but without framing a charge is irregular. 20 P. R. 1883 Cr.
2. Accused absconding after an order of discharge or before order for further inquiry—the attachment of property is illegal. 15 P. R. 1893 Cr.
3. Order of discharge on reading challan is illegal. 68 P. L. R. 1902.
4. Order of discharge on withdrawal of complaint is not a judgment. 29 P. R. 1914 Cr.
5. An order of discharge without taking evidence in a challan case is illegal. 8 P. R. 1880 Cr., 68 P. L. R. 1902, 3 P. W. R. 1903 Cr.

12. Quashing. See Revision—28.**13. Setting aside. See Further enquiry—5—7.****DISCOVERY. S. 27, Evidence Act.****1. Accessibility of place to others.**

1. Accused pointed a tank from which stolen property was discovered. Held, that as the tank is not the property or within the sole control of the accused, the evidence is insufficient. 1929 M. 846=1929 M. W. N. 785=1929 Cr. C. 614.
2. Production of stolen property from a jungle, which is neither in the possession nor control of the accused is insufficient for conviction. 46 P. L. R. 1912 Cr., 1923 L. 438 (2)=26 Cr. L. J. 257.
3. If the property is found in a place accessible to others, the conviction is illegal. 1925 A. 478=26 Cr. L. J. 1022=87 I. C. 846.
4. Where counterfeit coins and moulds were buried in a verandah which was open, with village street on both sides, held, that probably they were kept by enemies. 51 I. C. 263=20 Cr. L. J. 439.
5. Stolen property was discovered in a well not belonging to accused. He was not guilty under S. 379 or S. 411, although it was recovered at his information. 1934 N. 54=35 Cr. L. J. 581, 17 A. 576, 1930 L. 91 and 1929 M. 846 *Rel. on.*
6. When stolen property is recovered at the information of accused from a place not belonging to him, he cannot be convicted under S. 379 or S. 411. 1930 L. 91, 1934 N. 54.
7. Accused lived in a joint house with others. If the property is found on his person or in a locked box of which he had the key, he is guilty. 1929 S. 9=111 I. C. 732.
8. Where accused lived with his brother and other relatives, he could not be convicted for recovery of stolen property in the house. 9 Cr. L. J. 52, 6 B. 731.
9. If the property is found in a shed, at some distance from the house. 10 B. 319; or workshop 13 W. R. Cr. 70; or in an open place 1932 S. 180, no presumption arises.

2. Accused and in custody.

1. If the person making the statement was not accused at the time of such statement, it is inadmissible. 1928 P. 491=29 Cr. L. J. 790=7 P. 411, 6 A. 509.
- The person making the statement must be both accused and in custody. 6 A. 509 (513), 30 Cr. L. J. 258=1929 N. 17=114 I. C. 273. 59 C. 1040=1932 C. 297, 1931 L. 278=32 Cr. L. J. 650, 1930 S. 225, 1928 P. 473, 17 Cr. L. J. 402.
3. Accused pointed out a rifle and said it was buried there. He was not in custody. Held, it could not be presumed that he concealed it. 1923 L. 238 (2), 11 P. R. 1915 Cr. *See* 14 B. 260 and 72 P. L. R. 1916.

Discovery—(contd.)

4. Submission to custody by word or action under S. 46, Cr. P. C., is custody within S. 27, I. E. Act, 1931 L. 278=32 Cr. L. J. 650, 12 P. 241, 49 C. 167.
5. Statement made by accused before arrest and not in Police custody is inadmissible though it may lead to the discovery of dead body. 1932 C. 297=36 C. W. N. 373.
6. As soon as a person states that he has done certain acts which amount to an offence he is an accused person in the custody of Police Officer within the meaning of S. 27. 12 P. 241=1933 P. 149=34 Cr. L. J. 349. *Cont.* 1928 P. 491, 6 A. 509.
7. Accused was not formally arrested when giving information, but was arrested before going to spot where article was hidden, accused shall be deemed to be in Police custody at the time of giving information. 1936 N. 200=164 J. C. 954. 1933 N. 136 Foll.

3. Admissibility of statement.

1. Statement of accused that he had in possession stolen property is admissible even though he himself produced the property. 50 M. 274, 14 L. W. 418.
2. Statements accompanying production of articles are inadmissible, as there is no discovery, though the act of production or delivery may be proved as 'conduct' under S. 8, Evidence Act. 11 B. H. C. R. 242, 4 A. 198. *See* 10 B. 595, 11 C. 635, 1935 C. 184, 15 L. 310, 31 A. 592, 1933 C. 148, 1932 L. 609.
3. Where a Police Officer deposed that the accused told him that he had robbed K of Rs. 48, whereof he had spent Rs. 8 and had Rs. 40, and that accused made over Rs. 40 to him. This statement is inadmissible. 11 C. 635 (640, 641).
4. Only so much of the information given by the accused as relates distinctly to the fact thereby discovered can be proved. 1930 S. 225=31 Cr. L. J. 1026, 1925 L. 371=86 I. C. 347, 1930 C. 291, 1923 L. 434, 1930 B. 244.
5. Only that portion of information which is immediate and proximate cause of discovery of fact can be proved. 10 L. 283=1929 L. 344=115 I. C. 6=30 Cr. L. J. 414, 9 L. 626 overruled. 10 B. 595, 4 A. 198, 171 P. L. R. 1913.
6. "I shall produce the *tathi* with which I killed A" is inadmissible. 1929 S. 175=1929 Cr. C. 453. *See* 6 P. 747=1928 P. 162, 1926 M. 638.
7. The statement of accused that he in company with his brother and father buried the body is admissible when body is discovered in consequence of information given by him. 27 Cr. L. J. 827, 25 C. 413, 98 P. L. R. 1918, 72 P. L. R. 1916.
8. In a case under S. 302, I. P. C., the information given by the accused that he buried the body and does not relate to the discovery of the body is not provable under S. 27. 1926 L. 138=89 I. C. 901=26 Cr. L. J. 1429.
9. But where accused makes statement as to the locality of certain property and upon such statement, the Police accompany him to the locality and accused produces the property the statement is admissible. 14 B. 260, 25 C. 413, 112 I. C. 55.
10. Accused charged with the murder of a girl, took the Police to a place where ornaments worn by the girl at the time of murder were discovered. Held, that the evidence of these facts is admissible as conduct under S. 8. 31 A. 592.
11. The statements admissible under S. 27 are statements preceding finding upon search or inquiry. 3 Bom. 12, 14 Bom. 260.
12. Statements which lead to no physical discovery after they are made, are inadmissible. 3 Bom. 12.

Discovery—(contd.)

16. It is not legitimate to record as evidence that accused said "I will point out property which I obtained as my share of booty in dacoity." 52 P. L. R. 1918.
17. Where there is immediate connection between discovery and statement made to Police, the latter is admissible. 98 P. L. R. 1918, 50 C. 481, 72 P. L. R. 1916.
18. The statement of the accused that he buried the weapon in a certain place is relevant but not the statement that it was the weapon with which he committed the crime. 171 P. L. R. 1913=15 P. W. R. 1913 Cr.
19. Where an article the possession of which is forbidden by the Arms Act has been discovered by reason of information given by the accused, the conviction upon that evidence is valid. 1927 L. 903=28 Cr. L. J. 250, 72 P. L. R. 1916.
20. A confession caused by illegal inducement or illegal detention of accused's relative is irrelevant. 11 Cr. L. J. 41, 26 Cr. L. J. 840=1925 M. 574 (2).
21. When a material fact is already discovered, the statement of the accused to the Police is inadmissible under S. 27. 3 P. W. R. 1911 Cr.
22. "I will point out the place where I committed murder" is not admissible. 11 P. R. 1915 Cr., 13 P. W. R. 1913 Cr.
23. Accused made a statement to the Police that he had put the corpse of victim in a colliery mine and in consequence of this information, it was found. Held, that the statement was admissible. 10 P. 153, 10 L. 283=1929 L. 344.
24. If the accused gives information to the Police in a form which divides the information under several heads, that which leads to discovery will be admissible and the other head will not be admissible. 56 Bom. 172=1932 B. 286.
25. If the statement is made by four persons, then the statement made by the first individual only so much as it leads to facts discovered is admissible. The statements of others cannot be used in evidence. 1932 C. 297=36 C. W. N. 373, 137 I. C. 9=1932 M. 391=1932 M. W. N. 305.
26. A statement made before arrest and not in Police custody is admissible though it may lead to the discovery of dead body. 1932 C. 207.
27. Even when a thing is discovered under S. 27 the statement of prisoner as to how he came by the things discovered cannot be proved. 1935 M. 528 (540)=68 M. L. J. 73=1935 Cr. C. 728.
28. Where a weapon is recovered from the accused and the Court believes his confession, the mention of such weapon therein as weapon of offence is sufficient to

Discovery—(contd.)

36. If the statement has not led to discovery, it is inadmissible. 1929 N. 350.
37. The information which is *immediate* or *proximate* cause of the fact discovered has to be separated from the remote cause of it. 1934 L. 417, 1934 B. 233=36 Cr. L. J. 1444, 1934 S. 159, 56 B. 172, 12 M. 153.
38. The expressions "the property which I received as my share of booty" 52 P. L. R. 1918, 10 L. 283, "the *latih* with which I killed deceased," 1929 S. 175, 171 P. L. R. 1913, 1933 O. 404; "The place where I murdered A" 171 P. L. R. 1913, 11 P. R. 1915 Cr., 57 C. 1062, are inadmissible.
39. The statements "I pawned the *karas* to A" 10 L. 283, "I buried the body of deceased at such a place" 1933 L. 516=34 Cr. L. J. 683; 1930 L. 530; 10 P. 153=1931 P. 145 "I buried the liquor at such a place" 29 Cr. L. J. 967, "I and other accused hid the ornaments, in the fort" 56 M. 231=1933 M. 233, "I have killed my wife and corpse is lying in my house" 47 I. C. 659, have been held to be admissible.

4. Co-accused

Statement by one accused to Police is not admissible against co-accused. 1922 A. 24=65 I. C. 849=23 Cr. L. J. 193=20 A. L. J. 178.

5. Conviction on—

1. Where incriminating article is discovered by reason of information, the conviction based on this evidence is legally sound. 1927 L. 900=28 Cr. L. J. 250. *Cont.* 1930 B. 244=31 Cr. L. J. 1104.
2. Conviction on discovery is not safe when the place pointed by accused is in the possession of another. 1930 L. 91=31 Cr. L. J. 774, or is accessible to the public. 1929 M. 846, as it is possible that some other person may have placed the thing, and accused might merely have knowledge of the place. 1 P. R. 1917 Cr., 1930 L. 91.
3. The mere fact that accused gave information of a place where incriminating thing is found, does not show that he put the article there himself. 1923 L. 238.
4. If accused produces stolen property from his house there is a presumption under S. 114 that either he is thief or receiver of stolen property. 1930 B. 244=31 Cr. L. J. 1104.
5. When it is difficult to say whether discovery was made before the confession or afterwards, confession ought not to be accepted. 1922 O. 202=23 Cr. L. J. 481.
6. The evidence of confession under S. 27 ought to receive very little credence by the Court. 120 I. C. 210
7. Exact spot was shown and articles were dug out by accused. His conduct is relevant under S. 8 and taken with other evidence is enough to warrant presumption of complicity in crime. 1936 N. 200=164 I. C. 964.

6. Custody.—See Confession to Police Officer—11, Detention.

1. The submission to the custody of a Police Officer within the meaning of S. 46 is custody within the meaning of S. 27 49 C. 167, 1933 P. 149, 1931 L. 278.
2. For the purpose of S. 27, Evidence Act, custody does not necessarily mean detention or confinement, but submission to custody by word or action under S. 46 (1) Cr. P. C. 131 I. C. 93=1931 L. 278=32 Cr. L. J. 650.
3. Accused who was suspected after the first information report, made a statement and pointed out dead body to Police and his name was subsequently mentioned in the second report. Held, that he was not in custody of any kind and therefore the statement made by him was not admissible under S. 27. 1931 L. 278=131 I. C. 93=32 P. L. R. 347=32 Cr. L. J. 650.
4. A person suspected and treated as accused, though not formally arrested is in custody of Police and statements leading to discovery of things are admissible. 1934 L. 150 (1)=15 L. 310=152 I. C. 206, 25 Cr. L. J. 361=1924 R. 173 and 1931 L. 278 *Rel. on*, 1932 C. 297=50 C. 1040 *Dist.*, 1933 C. 149.
5. The fact of free detention is altogether mistaken. 1924 P. 173=25 Cr. L. J. 351=27 L. 445.

Discovery—(contd.)

6. The test is whether accused is at liberty to move from a particular place. A Police Officer secured the accused and handed him over to his master with instructions that he should not escape. Held, he was in custody. 1932 S. 149, 20 B. 165, 3 M. H. C. R. 318 and 42 B. 1 Rel. on. 1921 S. 145 and 124 R. 173 Ref. 1932 L. 609=33 Cr. L. J. 756.

7. Discovery—What is—of Material object. See—11.

1. Discovery means discovery to or by Police. 1921 C. 111=62 I. C. 578.
2. Places already known to Police are not places discovered within S. 27. 1929 N. 350=120 I. C. 210=31 Cr. L. J. 15, 120 I. C. 81
3. Accused admitted that he had in his possession stolen property. The statement is admissible and it makes no difference whether the property is dug out by him or some one else on his information. 1926 M. 638=50 M. 274.
4. Discovery of articles by accused in his house is a fact discovered within S. 27. 45 A. 303=1923 A. 352=73 I. C. 62=21 A. L. J. 143=24 Cr. L. J. 526.
5. Once property has been discovered in consequence of information received from a suspected person, it cannot be rediscovered in consequence of information received from another. 1922 L. 315=64 I. C. 502, 120 I. C. 81.
6. If the facts are known to persons other than Police Officers, such facts cannot be said to be not discovered in consequence of information received within S. 27. 49 C. 167=1922 C. 342.
7. A person accused under S. 328, I. P. C., pointed out a *dhatūra* tree and said that he had taken the fruit of it, the statement is inadmissible. 32 I. C. 136.
8. Where accused took the Police to a shop and stated that she had purchased arsenic from it, it is inadmissible as there is no discovery of fact. 1933 A. 394=144 I. C. 357.
9. S. 27 was applied to cases where a witness or co-culprit was traced. 1930 L. 157, 7 P. R. 1916 Cr., 1924 A. 207=25 Cr. L. J. 490. *Cont.* 43 I. C. 111=19 Cr. L. J. 79, 11 C. 635.
10. "Fact" discovered means material thing 10 L. 283=1929 L. 344.
11. Discovery of guns from license holders is no discovery. 1933 N. 252.

8. Discovery of irrelevant fact

S. 27 has nothing to do with the question whether the fact discovered is or is not relevant. 10 L. 283=1929 L. 344=115 I. C. 6=30 Cr. L. J. 414, 6 P. 611=1918 P. 22=105 I. C. 683=28 Cr. L. J. 971.

9. Discovery of places and things already known to Police.

1. Places already known to Police are not places discovered within S. 27. 1929 N. 350=120 I. C. 210=31 Cr. L. J. 15, 120 I. C. 81, 11 C. 635, 1934 L. 786, 1929 S. 250, 1930 S. 225=126 I. C. 449.
2. Once property is discovered in consequence of information from one suspected person, it cannot be rediscovered in consequence of information received from another 1922 L. 315=64 I. C. 502, 120 I. C. 81=1929 S. 250, 42 I. C. 1002.
3. Where accused offered to show scene of murder and the places where deceased's things were concealed, both of which had already been discovered by an accomplice, the conduct of accused in this respect was inadmissible. 19 Cr. L. J. 42.
4. If fact was known to others but not to Police, Section will apply. 49 C. 167 *Cont.* 1934 L. 423.
5. Although the circumstance that the Prisoner's purchase of mattress in which dead body was wrapped was already known to Police, it would not prevent the discovery of purchase from being a discovery of fact under S. 27. 1935 M. 528, 49 C. 167.
6. If a fact is disclosed to Police Officer by an approver, it can be deemed to be discovered subsequently by an accused person. 42 I. C. 1002=19 Cr. L. J. 42.

10. Duty of Court.

1. Bold evidence introduced through the mouth of a prosecution witness to prove the

Discovery—(contd.)

confession of accused under cover of S. 27 ought to receive very little credence by the Court, when direct evidence to prove the same fact is available. 1929 N. 350 = 120 I. C. 210 = 31 Cr. L. J. 15.

2. The Court must know exactly what the statements relied upon are, because they are admissible only so far as they lead to discovery of some facts and no further. 31 Cr. L. J. 1101 = 1930 Bom. 244, 11 B. H. C. R. 212.
3. In cases of discoveries made on information given by accused, it is necessary to consider whether it has been the result of promise. If so, the evidence is worthless. 31 A. 592, 9 I. C. 718.

11. "Fact."

1. The expression 'fact' as defined in S. 3 includes not only the physical fact but also the psychological fact or mental condition of which any person is conscious. It is in the former sense that the word is used in S. 27. 10 L. 283 = 1929 L. 344.
2. A dead body was found wrapped up in a mattress. The Sub-Inspector said, "The accused pointed out the shop saying that it was in that shop that he purchased the mattress" and further "that it was this woman (coolie) that carried the mattress". Held, that the statements were admissible. 1935 M. 523 = 1934 M. W. N. 1479 = 68 M. L. J. 73, 10 L. 283 Rel. on.
3. The statement of the prisoner that he had pledged jewellery with a certain man was admissible in consequence of discovery of jewels with that man. 1929 L. 344 = 10 L. 283 = 30 Cr. L. J. 414.
4. The discovery of a witness to the crime or act of the accused on his information would not be discovery of fact under S. 27. 1934 M. W. N. 601.

12. "Information" which explains the thing.

1. The word "statement" is used interchangeably with the word "information." 10 L. 283
2. Statement can be made by gesture even. 1926 R. 112 = 27 Cr. L. J. 658.
3. Expression like "stolen property" 1925 O. 1; "Property obtained as share of booty" 52 P. L. R. 1918 = 19 Cr. L. J. 439; "The *lathi* with which I killed Ismail." 1929 Sind 175; "The *chhavi* with which I committed murder" 14 Cr. L. J. 190, 1933 O. 404, "The place where I murdered the deceased" 14 Cr. L. J. 190; 11 P. R. 1915 Cr., 57 C. 1062, are inadmissible.

13. Joint discovery.

1. Where more than one accused in custody of Police point out or produce property jointly, such evidence of joint discovery is not sufficient for conviction. 63 P. L. R. 1914 = 9 P. W. R. 1914 Cr., 8 P. W. 1909 Cr. = 153 P. L. R. 1909, 135 I. C. 267 = 1931 Sind 154, 6 A. 509 (549). 1935 C. 184, 59 C. 1040, 7 P. R. 1916, 1929 L. 665, 1930 B. 244.
2. When all the accused jointly pointed out a place where dead body was discovered, the evidence is not admissible against any of the accused. 1929 L. 665 = 116 I. C. 619 = 30 Cr. L. J. 639 = 30 P. L. R. 397, 1930 B. 244, 1935 C. 184, 7 P. R. 1916, 6 A. 509 (549), 1935 C. 184, 1931 S. 154.
3. Facts discovered from information of several accused will be deemed to be discovered from information of the first. 1927 L. 739 = 101 I. C. 488 = 28 Cr. L. J. 456 = 28 P. L. R. 187, 34 I. C. 993 = 52 P. L. R. 1916, 1932 M. W. N. 113, 1932 C. 297 = 36 C. W. N. 373, 1922 L. 315 = 23 Cr. L. J. 22, 1925 N. 407.

14. Pointing out or production of property. Sec—11.

1. Mere pointing out the place where stolen property is concealed is not sufficient. 1921 L. 385 = 73 I. C. 331, 1 P. R. 1917 Cr., 20 P. R. 1905 Cr., 17 A. 576, 7 Cr. L. R. 175, 1934 S. 159, 1930 S. 168.
2. Mere production of a stolen property by the accused from a jungle which was neither in his possession nor control is not sufficient. 46 P. L. R. 1912 = 22 P. W. R. 1912 Cr., 1923 L. 438, 92 P. L. R. 1902, 1 P. W. R. 1906 Cr.
3. Where accused knew where stolen property was buried and produced it but falsely

Discovery—(contd.)

stated that he did it under instructions from Police who themselves had buried it is sufficient for conviction. 1930 S. 168=31 Cr. L. J. 947=126 I. C. 53.

4. Pointing out of dead body is no evidence of murder, but the fact of his knowledge of place is material circumstance against him. 1922 L. 169=23 Cr. L. J. 617.
5. When a man points out unknown matters, it is presumed under S. 114 that he is connected with the crime unless he gives explanation of his knowledge. 1923 B. 183=47 B. 74=24 B. L. R. 803.
6. Where several accused charged of theft went with the Police Officer and merely took out property from the place where it was buried at one and the same time, but there was no evidence to show that any one of them made a statement where it was buried, the property cannot be said to be discovered in consequence of information given by them within S. 27. Moreover, joint discovery has no value against any one of the accused. 1931 S. 154=135 I. C. 267.
7. Accused produced a *gandasa* from a pond and it was not blood-stained nor proved to have been connected with the crime. Held, that the confessional statements were not admissible in evidence. 1935 L. 433=37 P. L. R. 83.
8. Pointing out or production of article is by itself relevant under S. 8, Ev. Act, as conduct. 1935 C. 184, 15 L. 310, 31 A. 592, 10 B. 595, 12 Cr. L. J. 429. See 1933 C. 148=34 Cr. L. J. 675, 1932 L. 609=33 Cr. L. J. 756.

15. Pointing out place of occurrence.

1. Statement made by accused to Police showing place in jungle where occurrence took place are not admissible being confession made to Police Officer while in custody. 1933 C. 146=34 Cr. L. J. 638, 1929 L. 794=31 Cr. L. J. 269, 1926 C. 320=27 Cr. L. J. 263, 20 Cr. L. J. 681.
2. Accused pointed out places where he had taken the abducted woman and other places connected with the offence, while he was in Police custody. Held, that it was really evidence of confession and was inadmissible. 152 I. C. 473, 1920 C. 320=27 Cr. L. J. 263, 20 Cr. L. J. 681, 14 B. 260, 1935 O. 1, 1933 C. 146, 1929 L. 794, unless a relevant fact is discovered.
3. But if the accused leads the Police to a place where weapon with which murder was committed was discovered, 1925 M. 574=26 Cr. L. J. 840 or ornaments worn by deceased, 31 A. 592; or some stolen property, 35 I. C. 962; or the concealed body of the murdered man is discovered, 55 M. 903, the evidence is admissible under S. 8, Ev. Act, as conduct. *Cont.* 1935 O. 1, 14 B. 260.
4. Where no material fact is discovered, evidence of pointing out is inadmissible. 1929 L. 794=31 Cr. L. J. 269, 1920 C. 320, 1933 C. 146, 20 Cr. L. J. 681.
5. Places were pointed out by accused in Police custody to a Magistrate. Held, it is admissible. 1932 L. 488=142 I. C. 699, 1929 L. 794=31 Cr. L. J. 269.
6. From the statement "This is the place where I killed the deceased", there is no discovery. 3 B. 12. See 57 C. 1062=1930 C. 291.
7. Whether section includes discovery of a fact other than material object. See 58 M. 612=1935 M. 528. (F. B.).

16. Production of property without statement.

A number of accused charged with theft went together with the Police Officer and took out the property from the place where it was buried, without making any statement. Held, that property was not discovered in consequence of information under S. 27, 1931 S. 154=135 I. C. 267, 7 Cr. L. R. 175.

17. Rediscovery.

1. If the discovery of fact is already known to Police, production of the stolen property by accused is valueless. 7 P. L. R. 1902, 153 P. L. R. 1909, 11 C. 635.
2. Fact was discovered in consequence of information by one accused and the other gave the same information. Fact cannot be said to be discovered from the information of both. 1930 B. 244=32 Bom. L. R. 574=31 Cr. L. J. 1104, 1922 L. 315=64 I. C. 502, 120 I. C. 81, 120 I. C. 210, 11 C. 635.
3. When the Police succeed in discovering property in consequence of information

Discovery—(contd.)

received from an accused, it is not competent to the Police to replace the property in the place whence it is discovered and to ask the accused to produce the property. 2 Bom. L. R. 1089, 36 I. C. 474.

4. Police should not enact the farce of asking the accused to point out the place, already discovered by another accused. 10 S. L. R. 7 (9), 9 Bom. L. R. 1039.

18. Scope.

1. Out of the statement containing confession only such portion as leads to discovery is admissible. 57 C. 1062=1930 C. 291, 1929 L. 338=30 Cr. L. J. 395.
2. S. 27 does not relate to statement of accused prior to his arrest or detention. 1929 N. 17=114 I. C. 273=30 Cr. L. J. 258.
3. S. 27 qualifies Ss. 24, 25 and 26 and the confession although through inducement becomes admissible for the truth of confession is guaranteed by the discovery of facts in consequence of the information given. 1923 L. 476=29 Cr. L. J. 1019=9 L. 671=112 I. C. 347, 10 L. 283=1929 L. 344, 57 C. 1062, 9 L. 671, 1925 M. 574. *Cont.* 1925 M. 574=86 I. C. 664, 11 Cr. L. J. 41.
4. S. 27 is not affected by S. 162, Cr. P. C., 51 M. 967, 1929 N. 17=114 I. C. 273, 1929 R. 116, 1925 L. 88, 1925 M. 574, 1923 N. 109, 1934 L. 695, 55 A. 463, 55 M. 903, 5 P. 63, 54 C. 237, 51 M. 967.
5. A statement though admissible under S. 27 should be excluded if under S. 24 the accused was under the influence of the village Magistrates promise to save him from punishment. 1925 M. 574 (2)=86 I. C. 664=25 Cr. L. J. 840, 31 A. 592, 4 I. C. 759=11 Cr. L. J. 41.

19. Statements accompanying pointing out or production of property. See—3.

1. Statements accompanying pointing out scene of crime or production of property are inadmissible although the acts of pointing out or production may be given in evidence as conduct relevant under S. 8, Evidence Act. 11 B. H.C.R. 242, 3 B. 12, 16, 17, 14 B. 260 (263), 4 A. 198.
2. If the recoveries are made in consequence of information supplied by the accused, the statements are admissible. 1923 L. 434, 112 I. C. 55.
3. Statements can be made by gestures even. 1926 R. 112=94 I. C. 706=27 Cr. L. J. 658.
4. If the accused himself produces a thing and simultaneously makes some statement concerning it, the act of production is itself admissible, but the accompanying statement is inadmissible under S. 27 or S. 8. 56 B. 172=1932 B. 286, 11 B. H. C. 242, 171 P. L. R. 1913, *See* 31 A. 592, 1935 C. 184 and 50 M. 274.
5. Accused stated that he robbed A of Rs. 48 out of which he spent Rs. 8 and he produced Rs. 40 before the Police Officer. Held that the statement was inadmissible. 11 C. 635.
6. Accused gave knife to Police saying he committed murder with it. Held, it was inadmissible. 4 A. 198. *See* 11 B. H. C. 242.
7. Where accused took the Police to the house of another person and asked him to hand over the article which he had given him, the statement is admissible. 55 A. 463=1933 A. 440=34 Cr. L. J. 875.

20. Statement before arrest. See Confession to Police—6.**21. Statement leading to no—.**

Mere statement which led to no physical discovery is inadmissible. 3 B. 12, 1931 O. 119=131 I. C. 439=32 Cr. L. J. 697, 32 I. C. 136.

22. Statement that article was given to another.

1. If one of the accused states that 'incriminating article is in the possession of the other accused, and the article is found in the possession of the latter, the statement is inadmissible under S. 27 against the former. 54 I. C. 479=21 Cr. L. J. 79, 1934 N. 71=35 Cr. L. J. 1097. *Cont.* 10 L. 283, 55 A. 463.
2. Where accused took the Police to the house of another person and asked him to hand over the article which he had given him, the statement is admissible. 55 A.

DISCREPANCY. See Evidence—32.

1. Between English and Urdu records. See Record—22.

2. Clearing up by Court or Police. See Court's duty—11.

1. When the Magistrate saw the Police diary and observed that certain discrepancies in the evidence of prosecution witnesses were not material, the conviction must be set aside. 1931 P. 96=131 I. C. 535=32 Cr. L. J. 735 (1), 44 C. 876.
2. The Police Officers should not try to remove all discrepancies in the evidence of witnesses as originally recorded with the object of presenting to Court a picture of witness making consistent and coherent statement. It is absolutely futile. 1935 L. 230=150 I. C. 1056=35 Cr. L. J. 1180.

3. Immaterial.

1. Discrepancies like sitting or standing, facing north or south or who snatched the *dang*, etc., at the occurrence are immaterial. 1923 C. 463=71 I. C. 657=24 Cr. L. J. 193.
2. Prosecution evidence should not be rejected on immaterial discrepancies or probabilities. 1923 O. 217=74 I. C. 434=24 Cr. L. J. 770, 1933 O. 333.
3. Where illiterate villagers come forward to depose as to evidence which was crowded into their memory for a few moments, any little discrepancy or contradiction should not be taken as a proof of their mendacity. 1931 L. 38=32 Cr. L. J. 522=130 I. C. 140=32 P. L. R. 259
4. Where evidence for the prosecution has been implicating the accused, he should not merely rely on discrepancies or exaggerations in the prosecution story but must lead evidence. 1928 P. 100=6 P. 627=107 I. C. 305=29 Cr. L. J. 239.
5. A slight change in the statement as to date of birth is not necessarily to be discredited. 1924 O. 385=81 I. C. 484=11 O. L. J. 297.
6. Where the discrepancies between witnesses as to dates is not unnatural, it is an indication of *bonafides*. 1930 P. C. 18=121 I. C. 205=1930 M. W. N. 60.
7. There are discrepancies of truth as well as discrepancies of falsehood and too minute attention to immaterial discrepancies may lead to failure of justice. 15 P. R. 1909 Cr.=37 P. W. R. 1909 Cr.
8. Minor discrepancies will always be found where honest witnesses come to depose. 1933 S. 166=34 Cr. L. J. 808.
9. If witnesses are tutored, care is always taken that they tell the same story. Discrepancies are not less informative of testimony, because a greater sagacity on the part of witnesses would have avoided it. 11 B. H. C. R. (Cr. C.) 146.
10. Memory is fallible and whenever two persons attempt without previous arrangement to relate an incident, discrepancies will invariably be discovered. 1935 S. 145 (158)=1935 Cr. C. 753.
11. Minor discrepancies upon immaterial points do not discredit the witness. On the contrary witness should be regarded with suspicion if upon such points as this, no discrepancies can be detected in their statements. 1935 S. 145 (158).
12. When accounts of a transaction come from the mouths of different witnesses, it is seldom that it is not possible to pick out apparent or real inconsistencies between them. On the contrary a close and minute agreement induces the suspicion of confederacy and fraud. *Field's Law of Evidence in British India, 8th Ed. Page XXI of Introduction.*
13. If a person talks over the incidents of some startling accident or other abnormal occurrence to some persons who were also present there, he will find that he observed some things which did not attract the attention of some of his fellow observers, while some of them have seen matters which escaped his observation. *Ibid.*
14. The angle of view at which each observer stands, the objects that more or less intervene, the number of surroundings and distracting circumstances, and the difference between the powers of observation and keenness of sight of different individuals, together with other causes will readily account for this *circumstantial*

Discrepancy—(concl'd.)

variety, while all are agreed about the broad incidents of the substantial truth. *Ibid*.

15. Experience tells us that a certain variety in detail accompanies and even indicates truth, while a close and minute agreement is significant of conspiracy and falsehood. *Ibid* at page XXII.
16. In a case of assault five witnesses described the incident and all detailed the names of the eleven accused *in the same order*. It may safely be said that, without concert, this could not possibly happen. It appeared that the Mukhtar obtained a copy of the complaint made some days previously and, in order to guard effectually against discrepancy, he had made each of the five witnesses *commit to memory*. *Ibid* at page XXIII.
17. Where several witnesses bear testimony to the same transaction and concur in their statement of a series of particular circumstances, there can be only two conclusions—either the testimony is true or the coincidences are the result of concert and conspiracy. To determine which is the case, there are two valuable tests. *First*, are the witnesses independent and acting without concert? *Second*, are the coincidences natural and undesigned? *Ibid* at page XXII.
18. In case of omissions in the evidence, it will be important to see whether the omission to mention a particular fact arises from wilful suppression or from witness's attention being rivetted upon some other facts, with describing which his mind has been wholly engrossed. If the fact be one which could not possibly have escaped his observation, supposing him to be a true witness, and if, on being indirectly questioned, deny such knowledge, the supposition of inadvertence is scarcely possible, and a discrepancy is apparent. *Field's Law of Evidence in British India*. 8th Ed., page XXVI.

4. Material.

1. In case of material discrepancies in prosecution story accused gets the benefit of doubt. 1923 L. 195.
2. Statement of a witness in hopeless conflict with his previous one should be rejected. 1925 L. 483=92 I. C. 577=26 P. L. R. 659=27 Cr. L. J. 289.
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4. Where material discrepancies occur between statements of corroborating witnesses before the Police and the Court there is no corroboration of approver's story. 36 P. W. R. 1910 Cr.=11 Cr. L. J. 580.
5. It is not permissible to reject the prosecution story owing to immaterial discrepancies or improbabilities. 1923 O. 217=74 I. C. 434=24 Cr. L. J. 770=10 O. L. J. 68.
6. Discrepancies in the statements of witnesses on material points must not be lightly passed over as they seriously affect their testimony. 36 A. 187.
7. Where material discrepancies exist between the statements of corroborative witnesses before Police and the Court, there is no corroboration. 35 P. W. R. 1910 Cr.
8. Expression of opinion that discrepancy between complaint and subsequent evidence does not affect prosecution case is misdirection. 1934 C. 77=35 Cr. L. J. 483=147 I. C. 832.
9. Discrepancy between statements of approver and witness cannot be explained away by reference to statements before Police. 1934 L. 102=35 Cr. L. J. 517.

5. Transfer of deposition under S. 288 for— See Deposition.

6. Witness can correct—

There is no provision of law which requires that witness should be given an opportunity to explain discrepancies in his evidence. He can correct it when it is read to him. 1924 C. 300=122 I. C. 290=31 Cr. L. J. 373.

DISCRETION.

1. Discretion must be guided by law. It must be governed by Rules and not by

Discretion—(concl'd.)

- humour. It must not be arbitrary, vague and fanciful but legal and regular. 5 C. 259, 42 B. 172, 38 M. 489, 48 B. 37.
2. In using judicial discretion, the Courts have to bear in mind not only the statutes but also the great rules and maxims of law, such for example, as those of logic or evidence or public policy. 14 B. 331 (344—352).
 3. Discretionary power of Magistrate should not be interfered in Revision. 10 P. R. 1896 Cr., 6 P. R. 1905 Cr.
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 5. Power of proceeding against surety of a person convicted under S. 4, Gambling Act is discretionary. 27 P. R. 1881 Cr.
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 7. Notice to accused before passing order for further enquiry is in the discretion of the Court. 17 P. R. 1895 Cr.
 8. It is a wrong exercise of discretion of Magistrate, when he discharges an accused on evidence *prima facie* sufficient for conviction. 14 P. R. 1908 Cr., 10 P. R. 1909 Cr.
 9. A discretion conferred by statute cannot be whittled away by ruling 1931 M. 439 = 131 I. C. 461 = 32 Cr. L. J. 756 = 1931 M. W. N. 399.
 10. Discretion does not depend upon resolutions of the Executive Government. 42 B. 172.
 11. When there is no indication of discretion in the Act or Rules, it is mistake for the Courts to lay down any hard and fast rules or grounds in that regard. 41 C. 446.
 12. Where legislature concedes wide discretion it also imposes heavy responsibility. 1933 S. 49 = 34 Cr. L. J. 591.

DISEASE. See Public Nuisance—38.

1. A prostitute had connection with the prosecutor to whom she communicated syphilis. Held, she was not guilty under S. 269 because she could not spread it without the complicity of the prosecutor, but may be guilty of cheating if there was misrepresentation or of hurt. 11 B. 59.
2. When drunkenness becomes disease, it is a good defence. 29 C. 493.

DISHONESTLY OR DISHONESTY. S. 24, I. P. C.

1. Definition or Meaning.

1. S. 24 is not an exhaustive definition of 'dishonestly.' It includes cases of intention of causing wrongful gain or loss 1929 P. 60 = 110 I. C. 712 = 30 Cr. L. J. 236.
2. The word 'dishonestly' does not necessarily imply wrongful gain to accused himself. 1925 O. 469 = 88 I. C. 833 = 26 Cr. L. J. 1217 = 2 O. W. N. 469.
3. The obtaining of acquittal is very distinctly the obtaining of an advantage and that brings the case within the definition of S. 24. 1929 P. 60 = 113 I. C. 712 = 30 Cr. L. J. 236.
4. An act, whether dishonest, is determined by intention. 1932 S. 169.
5. The word 'dishonestly' applies only to wrongful gain or loss. 1932 B. 545.

2. Gain.

1. Gain must be taken to mean material gain. 1925 R. 9 = 76 I. C. 225.
2. For "dishonesty" there may be wrongful loss though no wrongful gain. 22 C. 1017.

3. Intention.

1. Intention to cause wrongful loss by itself amounts to dishonesty. Loss is no ingredient of the offence under S. 406, Penal Code. 1924 L. 353, 28 P. R. 1916 Cr.
2. The primary and not the more remote intention of the accused must be looked at. 8 A. 653, 19 C. 383.
3. A candidate gaining admission to an examination by presenting a forged certificate

Discrepancy—(concl'd.)

variety, while all are agreed about the broad incidents of the substantial truth. *Ibid.*

15. Experience tells us that a certain variety in detail accompanies and even indicates truth, while a close and minute agreement is significant of conspiracy and falsehood. *Ibid* at page XXII.
16. In a case of assault five witnesses described the incident and all detailed the names of the eleven accused *in the same order*. It may safely be said that, without concert, this could not possibly happen. It appeared that the Mukhtar obtained a copy of the complaint made some days previously and, in order to guard effectually against discrepancy, he had made each of the five witnesses *commit to memory*. *Ibid* at page XXIII.
17. Where several witnesses bear testimony to the same transaction and concur in their statement of a series of particular circumstances, there can be only two conclusions—either the testimony is true or the coincidences are the result of concert and conspiracy. To determine which is the case, there are two valuable tests *First*, are the witnesses independent and acting without concert? *Second*, are the coincidences natural and undesigned? *Ibid* at page XXII.
18. In case of *omissions* in the evidence, it will be important to see whether the omission to mention a particular fact arises from wilful suppression or from witness's attention being rivetted upon some other facts, with describing which his mind has been wholly engrossed. If the fact be one which could not possibly have escaped his observation, supposing him to be a true witness, and if, on being indirectly questioned, *deny* such knowledge, the supposition of inadvertence is scarcely possible, and a discrepancy is apparent. *Field's Law of Evidence in British India*. 8th Ed., page XXVI.

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Dishonestly or Dishonesty—(contd.)

- was held to have acted "dishonestly" within the meaning of S. 24. 25 C. 512 (519). 15 A. 210, 25 M. 726. *Overruling* 19 C. 380.
4. Where a person fabricated false receipts in lieu of genuine ones which had been lost, he could not be convicted under S. 471, for there was no dishonesty. 7 A. 459.
 5. The use of forged certificate to procure employment is dishonest under S. 24. 2 P. R. 1895 Cr.
 6. The intention of wrongful gain in a Civil Court by altering a document falls within S. 24. 6 P. R. 1895 Cr.
 7. In a case of criminal breach of trust intention to restore money negatives dishonesty. 39 P. L. R. 1902.
 8. There is no dishonesty in using strayed animals. 28 P. L. R. 1906.
 9. The accused's brother felled trees without a license. The accused fearing detection took the Government marking hammer from the watchman's baggage and after marking the trees replaced it there. Held, there was no dishonestly taking within the meaning of S. 24, therefore no theft was committed, 1 P. R. 1887 Cr.
 10. Accused purchased wool from a firm with delivery of possession, agreeing to pay the price next day, which he did not but pledged it with B and appropriated the money himself. He is not guilty of cheating as there is nothing to show that he at the time of purchase had no intention to pay. 1885 U. B. C. 312.
 11. The Manager of a joint Hindu family applied to Collector for payment of money due to joint family and was asked to produce power of attorney of minors or minors themselves. He produced false persons as minors. Held, he is not guilty as he caused no wrongful gain or loss. 1 C. L. J. 469.
 12. If a person pretends falsely to be the winner of a lottery and induces the lottery officials to pay the prize to him, he causes a wrongful gain to himself and acts dishonestly. 15 Cr. L. J. 555 = 24 I. C. 963.
- 4. Proof of intention.**
1. While it is true that intent must be proved, it is also true that where a person commits an unlawful act, it is presumed that he has acted advisedly and with an intent to produce the natural consequences of such an act. 26 B. 558.
 2. If a man is proved to have wilfully set a house on fire, no further proof of intention to injure is necessary, 10 I. C. 929.
 3. If a creditor takes possession of his debtor's goods, with a view to compel him to pay up his just debts, he is guilty of theft. 22 C. 1017, 15 B. 344, 22 C. 139, 22 C. 669 overruled.
 4. K agreed to sell her land but fell ill on the way and sent accused who by personating her had the deed registered before the Registrar. Held, accused is not guilty of cheating as she did not intend to defraud or injure any one. 2 B. L. R. 25.
 5. Accused applies for the duplicate of a University certificate to the Registrar in the name of another person qualified to receive it. He is guilty of cheating. 23 M. 90, 12 M. 151, 15 A. 210, 28 A. 358, 25 C. 512, 43 C. 421, 42 M. 558.
 6. Accused in order to obtain recognition of his title to "Loskur" which carried no emolument, presented a forged *Sanad* to the Settlement Officer. Held, there was no intent to defraud within the meaning of S. 24. 10 C. 584.
 7. Accused improperly obtained possession of a person's account-book and retained it with the intention of producing it in a judicial inquiry as evidence against the person, such a temporary retention is no wrongful loss to the owner. 4 Shome 14.
 8. Accused seized a boat of the complainant, so that passengers may be compelled to use accused's boat, he is guilty of theft. 15 B. 344.
 9. There is no dishonest intention where there is a *bona fide* claim of right, 27 C. 501, 2 A. 101, 28 M. 304.
 10. A Hindu acting under a strong religious impulse seized cows which a Mohamedan was taking to kill, his motive from his religious standpoint was virtuous but his intention being to deprive the owner of his property and the means employed being unlawful he is guilty of theft. 15 A. 299.

Dishonestly or Dishonesty—(concl'd.)

11. Accused took away bamboos with the intention of causing wrongful loss to the proprietors, his act is dishonest. The fact that he had no intention to convert bamboos to his own use is immaterial. 32 Cr. L. J. 739=1931 P. 337=131 I. C. 539.

DISOBEDIENCE TO ORDER OR SUMMONS. S. 174, I. P. C.

1. Appearance through Counsel. See Appearance.

1. A Barrister was summoned under the Motor Vehicles Act, but being unable to appear owing to professional work on that day applied for adjournment through counsel. Held, that there was sufficient appearance and he was not guilty under S. 174. 1924 R. 35=1 R. 549=25 Cr. L. J. 229.
2. Where a person makes an appearance through his agent with instructions to apply for his personal exemption, he is not guilty under S. 174. 27 C. 985.

2. Departing without permission.

1. A person attended the Court at 10 A.M. but finding the Magistrate absent, departed without waiting for a reasonable time. Held, he was guilty under S. 174. 10 B. 93, (1870) 14 W. R. 20.
2. But a person who departs without permission is not guilty in the absence of direction that he should not leave without permission. (1890) 1 Weir 99.
3. A witness was summoned by High Court to give evidence and left the jurisdiction without being discharged as a witness and without the permission of the Court in order to avoid giving evidence. Held, he was guilty. 4 R. 257=27 Cr. L. J. 1241.

3. Inability to attend.

1. Failure to attend in obedience to summons owing to illness is not punishable. 1922 A. 82=65 I. C. 864=23 Cr. L. J. 208.
2. An Advocate was served with a summons to appear and answer a charge under the Motor Vehicles Act. He was on that date engaged in another case and sent a Barrister to appear. Held, there is no disobedience. 1924 R. 35=1 R. 549=76 I. C. 693=2 B. L. J. 146.
3. If a person was detained by another Court, he is not guilty if he fails to attend in obedience to summons. 10 W. R. 33.

4. Insufficiency of expenses.

In a civil case if the witness does not appear owing to insufficiency of expenses he is not guilty. (1907) U. B. R. 9.

5. Intentional non-attendance.

1. A witness when served told the process server that he would not be able to attend owing to expected arrival of marriage procession. Held, his absence was not 'intentional.' 22 P. R. 1880 Cr.
2. tentional disobedience.
intimation of his in-
onal disobedience. 27
3. Accused was summoned to appear before a Magistrate but sent his agent. He himself proceeded to apply for transfer of the case to the High Court. Held, he was not guilty of intentional disobedience. 27 C. 985.
4. Accused was summoned to appear at 10 o'clock, but was told that the Magistrate might come at noon, he went away after an hour. Held, he was not guilty. 14 W. R. 20. But waiting only for 2 or 3 minutes is wholly unreasonable. 10 B. 93.
5. If the accused is summoned to appear at a particular time, he is bound to wait for his case being taken up if the Magistrate is engaged in another case. 14 W. R. '20, 10 B. 93.
6. A solicitor was required to attend and produce a letter written by his client. He absented. Held, he was not guilty. 42 I. C. 532.
7. If a person was summoned to appear on a certain day and failed to appear, he is not guilty if the Magistrate was absent from the station. 20 M. 31, 10 Cr. L. J. 576.

Disobedience to Order or Summons—(contd.)

8. Intentional disobedience means non-attendance which amounts to wilful disobedience. 1923 L. 163=72 I. C. 593=24 Cr. L. J. 423.
9. In a civil case if a witness does not appear on the ground of insufficient expenses, he is not guilty. (1907) U. R. R. 9.
10. If the case was not taken up by the Magistrate owing to other work, failure to attend in obedience to summons is no offence. 10 Cr. L. J. 576.
11. It must be proved that non-attendance was in the nature of wilful disobedience. 1 N. W. P. H. C. R. 303.

6. Jurisdiction.

Court before whom witness failed to appear is not competent to try. Consent of accused is immaterial. 1934 L. 545 (1), 46 I. C. 48=19 Cr. L. J. 688.

7. Late service.

If the summons is served on the accused evening previous to the date for appearance, he is not guilty under S. 174 if he does not appear. 1923 A. 690=110 I. C. 670=29 Cr. L. J. 910, 1 R. 549=76 I. C. 693.

8. Legality of summons or order.

1. Disobedience to summons wrongly issued under S. 193, U. P. Land Revenue Act, is not an offence under S. 174, I. P. C. 36 I. C. 151=14 A. L. J. 1069.
2. For a conviction under S. 174, the public servant must have jurisdiction to issue summons or order which should be legal one. 66 I. C. 70=23 Cr. L. J. 230, 59 I. C. 335, 25 I. C. 347.
3. A Court could not ask a solicitor to attend and produce letter written to him by his client, as it is privileged. If he fails to attend, he is not guilty. 42 I. C. 532.
4. A complainant was ordered to appear personally or his case will be dismissed. He is not guilty under S. 174, if he fails to appear. 2 L. L. J. 539.
5. Disobedience to summons served on an Amin personally by a Sub-Inspector, Police, is an offence under S. 174. Service through department is confined to summons issued by Court. 40 I. C. 733=18 Cr. L. J. 733.
6. Disobedience to citation issued under S. 147, U. P. Land Revenue Act, is not an offence under S. 174. 49 A. 205, 1930 A. 265 Cont. 11 Cr. L. J. 250.
7. S. 36, Legal Practitioners Act does not authorise a District Magistrate to compel attendance of an alleged Tout. If he fails to attend, he is not guilty under S. 174. 6 R. 529=1923 R. 296=111 I. C. 672=29 Cr. L. J. 912.
8. Tahsildars in the Punjab have no power to order the Lambardars to appear for preparing the list of Chaukidars. 14 P. R. 1887 Cr.
9. The Tahsildar in the Punjab cannot summon Munsifs appointed to prepare and attest list of cattle for the purpose of distributing revenue over waste lands. 4 P. R. 1907 Cr.
10. Sub-Inspector has no power to summon a surety of the absconding accused to admonish and urge him to produce him. 43 A. W. N. 1885.
11. A Civil Court can appoint arbitrators but cannot enforce their attendance, much less to prosecute them for disobedience. 18 P. R. 1875 Cr., 2 P. R. 1871 Cr.
12. A public servant may have authority to issue summons but it should be for a lawful purpose. 1 Weir 97-98.
13. A Court can issue summons to a person to appear before another officer, if so empowered. 66 I. C. 70=23 Cr. L. J. 230.
14. A Tahsildar was asked to make enquiry under S. 107, Cr. P. C. He sent summons to parties provided for cases under S. 193, Land Revenue Act. The conviction of the parties for failing to attend is illegal. 59 I. C. 335=22 Cr. L. J. 79.
15. Where the Magistrate did not act in that capacity but as Secretary, Cantonment Committee, a refusal to attend is not punishable under S. 174. 66 I. C. 70.
16. The summon was not personally served, but was affixed on the outer door. *Held*,

Disobedience to order or Summons—(concl'd.)

that without evidence of the knowledge of summons, accused cannot be convicted for disobedience. 6 M. H. C. R. App. 29.

9. Order.

1. A verbal order given to a witness by a Court to attend on a particular day is an order, the disobedience of which is punishable under S. 174. 5 M. H. C. App. 15 (1870), 1 Weir 87, 7 M. H. C. App. 3.
2. The order should be directed or addressed to the accused. 6 P. R. 1870 Cr., 8 P. R. 1881 Cr.
3. Where a complainant was ordered to appear or his complaint would be dismissed, he was not guilty under S. 174 when he failed to appear. 2 L. L. J. 539.

10. Order or proclamation duly promulgated. See Disobedience to order duly promulgated. S. 188, I. P. C.**11. Public servant absent.**

Where a public servant is absent on the day fixed in the summons, the person summoned cannot be convicted, though he purposely fails to attend. 20 M. 31, 3 S. L. R. 155, 10 Cr. L. J. 576.

12. Personal service necessary.

1. Before the provisions of S. 174 can come into play, personal service of summons must be attempted. 6 P. R. 1870.
2. Where a summons was shown to the person and taken back, he is not liable. 11 M. 147, 5 B. H. C. Cr. C. 20.
3. Service on Pleader is insufficient in criminal cases. 6 C. W. N. 927.
4. Mere affixing of summons to the house of a person is insufficient. (1864) 1 Weir 84, (1882) 1 Weir 85, 6 M. H. C. App. 29.

13. Refusal to show goods to Octroi Officer.

Refusal to show goods to Octroi Officer acting in the discharge of his duties is punishable under S. 186, I. P. C. and an assault on him is an offence under S. 332, I. P. C. 1935 S. 245.

14. Refusing to sign summons.

Refusing to sign summons by accused is not an offence of preventing the service of summons on himself under S. 173, I. P. C. 5 B. H. C. R. 34.

DISOBEDIENCE TO ORDER DULY PROMULGATED. S. 188, I. P. C.**1. Applicability.**

1. The disobedience of a prohibitory order under O. 21, r. 46, C. P. C., is not punishable under S. 188, as section does not apply to orders of Civil Court. 11 Cr. L. J. 56=4 I. C. 824, 39 M. 543, 6 C. 445.
2. The operation of S. 188 is limited to the public orders relating to safety, health or convenience of the public. A guardian disobeying an injunction of a Court not to marry a ward does not fall within S. 188. 16 Cr. L. J. 668=30 I. C. 652=17 Bom. L. R. 676, 6 C. 445.
3. S. 188, I. P. C., does not apply to the disobedience of an order by an attaching Court to produce the property. 1921 O. 123=61 I. C. 237=22 Cr. L. J. 381.
4. S. 188 does not apply to orders made in civil suits. 6 C. 445, 17 Bom. L. R. 676, 9 Bom. L. R. 639, 24 O. C. 18.
5. If an injunction of a Civil Court is disobeyed, the remedy is a committal for contempt. 8 Bom. L. R. 638.

2. Complaint.

1. Complaint in writing under S. 195, Cr. P. C., is not dispensed with by S. 11 of the Prevention of Intimidation Ordinance. 55 B. 322, 58 C. 971=1931 Cal. 122.
2. A complaint is necessary if a person is proceeded against for continuing nuisance in disobedience to the order of Court, under S. 188. 1930 L. 1055=129 I. C. 224.

*Disobedience to order duly promulgated—(contd.)***3. Disobedience long after order.**

Orders passed under S. 144, Cr. P. C., being intended to provide for cases where speedy remedy was desirable, do not have more than a temporary operation. A conviction long after the order is bad. 22 Cr. L. J. 2=5 C. 7, 10 A. 115, 2 M. 140.

4. Essentials and Evidence.

1. It should not merely be proved that there was an order which was duly promulgated but also that the accused was aware of it. The promulgation of the order is not sufficient to establish this knowledge. 54 C. 152=1927 C. 23=99 I. C. 36, 1927 C. 306=100 I. C. 830, 22 Cr. L. J. 705=63 I. C. 865.
2. In case of disobedience of order under S. 144 the offence is made out only when annoyance, injury or obstruction is caused thereby. 1922 P. 84=67 I. C. 205.
3. It is not sufficient to prove that a person was a member of a crowd which disobeyed a lawful order. But it must further be found that the disobedience of the order was intended to cause danger to human life, health or safety or tended to cause a riot or an affray. 10 L. 231, 32 Cal. 793, 1923 M. 591.
4. Where having regard to the circular issued by the accused and his admission that he convened the meeting there is adequate ground for drawing the inference that the accused knew that the disobedience of the order of the Commissioner of Police would at least result in conflict with the Police. The disobedience of the order under S. 23 (3), Police Act, in such a case falls under S. 189. 1929 Bom. 433.
5. If the order under S. 145 is illegal there can be no conviction under S. 188. 92 P. L. R. 1913.
6. Disobedience of the order and risk of breach of peace must be proved. 1930 C. 131.
7. It is duty of the prosecution to prove by positive evidence that accused had knowledge of the order with the disobedience of which he is charged. 63 I. C. 865.
8. Petitioner was ordered to remove obstruction from the road-way who maintained that the road-way was not public. He was asked to show cause against the prosecution, pleaded that he had removed the obstruction. The order for prosecution is bad and must be set aside. 1933 P. 131=73 I. C. 327=24 Cr. L. J. 583.
9. Evidence on the point of breach of peace must be definite and the fact that there is a dispute between two rival *samundars* concerning two huts was likely to lead to a breach of peace is insufficient. 32 Cal. 793.
10. Breach of lawful order issued by a Police Commissioner under S. 62-A. (4), Calcutta Police Act and S. 93-A, Suburban Police Act is an offence under S. 188, if such disobedience causes injury to any person. 58 C. 1303=1931 C. 410=132 I. C. 174=32 Cr. L. J. 844.
11. Mere disobedience of an order does not constitute an offence. It must be shown that it caused annoyance, or injury to a person lawfully employed. 58 C. 971, 6 A. W. N. 251.

5. Jurisdiction.

The Magistrate promulgating the order cannot himself punish a man for disobeying his order. 4 C. W. N. 226, 20 C. W. N. 981.

6. Legality of order. Valid or invalid orders.

1. To determine of question where an offence is committed in disobeying an order depends upon its legality. 45 A. 526=1923 A. 606=24 Cr. L. J. 689.
2. The legality of order under S. 144, Cr. P. C., can be gone into if accused is prosecuted under S. 188, I. P. C. 1921 Cal. 258=67 I. C. 200=34 C. L. J. 578.
3. Order under S. 144 must be in writing and duly served or promulgated to the public. 36 P. R. 1905 Cr. See 13 Cal. 175.
4. A Magistrate having received a report of an accident to workmen employed in quarrying stone from hill issued verbal order through some clerk to stop work. On receiving a report of its continuance summoned the accused and fined him. Held, that the order and trial were both illegal. 36 P. R. 1905 Cr.
5. If the order is not served personally that fact alone vitiates it so as to render dis-

Disobedience to order duly promulgated—(contd.)

obedience penal under this section. 16 C. 9.

6. The order prohibiting the rival disputants to refrain from collecting rent until such time as the right of both parties should have been established by a competent Court is illegal. 9 C. W. N. 392.
7. Court can attach property pending dispute but an order directing a person to pay his rent to such individual is illegal unless there is a legally appointed receiver. 20 A. 501.
8. It is not competent to the Magistrate under S. 144, Cr. P. C., to prohibit the public generally from giving caste dinners in a city during the prevalence of cholera. 14 B. 165, 14 B 180.
9. S. 133, Cr. P. C., does not empower a Magistrate to order the owner of a house standing apart in public road in its own compound to repair it. 20 A. 501.
10. An order issued by a Magistrate warning the owners of cattle to take proper care not to allow them to run at large on the public roads, is illegal. 12 W. R. 36.
11. Order prohibiting persons from leaving their homes between 9 P. M. and sunrise and frequenting any public road or place is illegal. 12 C. L. R. 231.
12. An order passed by Sub-Inspector asking a Station Master to retain some property which he suspected to be stolen is illegal and disobedience is no offence under S. 188. 22 I. C. 753=16 O. C. 371.
13. A verbal order to remove an obstruction is not a final order under S. 137, Cr. P. C., and is not lawful. 26 I. C. 328.
14. An injunction issued by Civil Court is not an order promulgated by a public servant. Consequently its disobedience is not punishable under S. 188. 39 M. 543=30 I. C. 652=17 Bom. L. R. 676.
15. Superior Police Officer incharge of a Police Station is empowered to order an unlawful assembly of five or more persons likely to cause a disturbance of the public peace to disperse and disobedience of it would be punishable under S. 188. 7 Bom. 42.
16. Plying of a boat on hire at a distance of three miles from a public ferry being prohibited by the Ferry Act, a Magistrate is empowered to pass an order prohibiting it and its disobedience would be punishable under S. 181. 1 A. 527.
17. A Magistrate under S. 144 can prohibit a person from holding a hut on a specified day but has no power to direct that it shall be held upon certain day. The disobedience is not illegal. 31 C. 950.
18. An order forbidding persons to enter Railway quarters except for the purposes of travelling is illegal as the public has the right to go to railway premises for many purposes other than travelling. 35 A. 136.
19. Legality and disobedience are distinct matters. 45 A. 526=1923 A. 606.
20. When the order does not specify how long the prohibition was to continue, the order is bad. 1932 C. 288=137 I. C. 816=33 Cr. L. J. 518.
21. Validity of an order under S. 133, Cr. P. C., is not open in proceeding for disobedience. 1934 C. 242 (1)=60 C. 1336.
22. If an order is to have a temporary operation only, and has expired by efflux of time and has not been again promulgated, no conviction can be had for disobedience to it. 10 A. 115.
23. Disobedience to invalid order is not punishable. 13 A. 577, 12 M. 475, 5 C. W. N. 329, 10 C. L. R. 193.
24. An order commanding an assembly of five to disperse is valid. 7 B. 42.
25. An order prohibiting shouting against drink near liquor shop is valid. Shout from a private house is punishable. 10 Bom. L. R. 1047.
26. An order that music should cease when a procession is passing is invalid. 2 M. 140, 6 M. 203.
27. An order forbidding persons to enter a railway station except for the *bona fide*

Disobedience to order duly promulgated—(concl'd.)

purpose of travelling is invalid. 35 A. 136.

28. An order directing a station master to detain certain logs suspected to be stolen property is invalid. 16 O. C. 371.

7. Offences under Special Act.

The disobedience of an order under Bombay City Police Act is an offence under S. 188 if all the conditions laid down by that section are fulfilled. 1929 B. 433=31 Bom. L. R. 1151.

8. "Promulgated".

1. Commissioner of Police issued a notification under S. 23 (3) prohibiting the president, secretary and the members of a managing committee from holding or calling any assembly of mill-hands for one week and was duly promulgated in the mill area. The accused issued a circular signed by six persons inviting the strikers to attend the meeting, the accused was guilty as it was a lawfully promulgated order within the meaning of S. 188. 1929 Bom. 433=31 Bom. L. R. 1151.
2. "Promulgated" seems to indicate form of publication. The view that it must be printed or written, may be rejected. 47 A. 205=1925 A. 165=26 Cr. L. J. 599.

9. Resistance or non-compliance.

1. Where a person was not only aware of proceedings under S. 145, Cr. P. C., but acts in consultation with one party in order to deprive the other party of fruits of their success in S. 145 case, held, that the order under S. 145 was binding on such persons and a resistance will be punished under S. 188. 1930 C. 63=31 Cr. L. J. 945.
2. Non-compliance with the order passed by the Deputy Commissioner under S. 219 of the C. P. Land Revenue Act of 1917 is punishable under S. 188. 1922 N. 209.

10. Sanction.

Cognizance of a case cannot be taken except in accordance with S. 195, Cr. P. C. and under S. 487, Cr. P. C., the Magistrate whose order is disobeyed is not competent to try the case. 51 I. C. 845, 20 C. W. N. 981, 4 C. W. N. 226.

DISORDERLY HOUSE. See Public Nuisance—12.

DISPERSING UNLAWFUL ASSEMBLY. S. 127 to S. 132, Cr. P. C.

1. Order of— Ss. 127—132, Cr. P. C.

1. An order directing the dispersal of an assembly passed by a Deputy Commissioner of Police is an order by a lawful authority. 7 B. 42.
2. An assembly may be for lawful purpose, e. g., Religious procession, but it may excite such opposition as to be likely to cause a breach of the peace. If so, it may be called upon to disperse. 22 P. R. 1887 Cr, 7 B. 42.
3. Police Officer in charge of Patrol boat has no power to disperse unlawful assembly. 50 C. 318 (323).
4. Where Constables pleaded that they acted under the orders of their superior officers in dispersing an assembly, prosecution cannot be continued except with the sanction of the Governor-General. 62 I. C. 878=22 Cr. L. J. 606.
5. Want of sanction under S. 132 is not curable. 31 M. 80.
6. Police is not final authority to judge character of assembly. 1933 N. 277, 7 B. 42.
7. Procession with music on public road is not unauthorized. 1933 N. 277=34 Cr. L. J. 705.

2. Refusal to disperse. See Unlawful assembly—16.**3. Use of fire arms.** S. 128, Cr. P. C.

An officer in charge of Patrol boat, whose powers are not higher than those of an officer in charge of an outpost, cannot use fire arms under S. 128. 50 C. 318.

DISPOSAL OF PROPERTY. Ss. 516-A, 517, 518, 520, Cr. P. C.

1. Applicability of S. 517, Cr. P. C.

1. S. 517 does not apply to property which has passed out of the hands of the Court.

Disposal of Property—(contd.)

It does not contemplate double restoration. 1923 P. 84=65 I. C. 494.

2. When a property is produced in Court as sample, it is deemed to have been produced in Court and the Magistrate can make an order under S. 517. 2 Weir 670.
3. Accused gave false information that his jewels were stolen and was convicted under S. 182, I. P. C. Order for confiscation of jewels is illegal as they were neither produced before the Court nor was there any offence committed with regard to them. 9 C. W. N. 597=2 Cr. L. J. 273.
4. The Magistrate can dispose of property stolen in British India, which was seized by Police in foreign territory. 20 P. R. 1878 Cr.
5. An order directing the keys of a house to be made over to the complainant amounts to delivery of possession under S. 517. 1931 L. 527=32 Cr. L. J. 847.
6. S. 517 does not apply to property not produced before the Court. Where the accused was convicted of criminal breach of trust with respect to two Government Promissory Notes the Court cannot direct the restoration of renewed notes issued in lieu of the old at the instance of third party. 1932 O. 218=33 Cr. L. J. 569.
7. Any property or document used for the commission of offence is not to be returned to convicted accused. 1934 A. 207=151 I. C. 735.

2. By Appellate or Revisional Court. S. 520, Cr. P. C.

1. An order restoring a child to the parents cannot be passed under S. 520. 1926 L. 487=94 I. C. 142=27 Cr. L. J. 574.
2. An application under S. 520 is not an appeal. 50 M. 916=1927 M. 797.
3. Under S. 423 (1) (a) and 520 an appellate Court can pass an order disposing of property, although trial Court omitted to do so. 10 L. 187=1928 L. 567.
4. Even if no appeal has been preferred from a conviction by a subordinate Court, the District Magistrate as a Court of Revision can pass an order under S. 520. 1 R. 199=74 I. C. 1050=1923 R. 227.
5. The orders under Ss. 517, 519 are appealable, although there may not be an appeal from the order of conviction or acquittal. 3 C. 379, 9 M. 448.
6. A first class Magistrate after acquitting the accused, restored the stolen property to him. Sessions Judge has no jurisdiction to act under S. 520, as he is not a Court of appeal in this case for appeal against acquittal lies to the High Court. 42 B. 664, 46 A. 623, 47 M. L. J. 481. *Cont.* 6 R. 259=111 I. C. 878.
7. If the appeal in the main case lies to Sub-Divisional Officer, that officer and not the District Magistrate can pass order under S. 520. 46 M. 162. *See* 42 B. 664.
8. No period of limitation is prescribed for an application under S. 520, Cr. P. C. 4 L. 49 (51)=1924 L. 75=73 I. C. 937=24 Cr. L. J. 713.
9. When the order of Lower Court is set aside by Sessions Judge under S. 520, the order of Sessions Court is not appealable but High Court can revise it. 1898 A. W. N. 40, 2 Weir 669.
10. If Additional District Magistrate is invested with powers of Revision under S. 10 (2), Cr. P. C., he is competent to make any order regarding disposal of property. 1930 M. 769=126 I. C. 594=31 Cr. L. J. 1055=1930 Cr. C. 895.
11. If the property alleged to be stolen in a dacoity is not proved to belong to complainant, it should be restored to the person producing it. 1924 L. 588=85 I. C. 273.
12. A Sessions Judge cannot interfere with the order passed by a Sub-Divisional Magistrate on appeal under S. 520. 1924 M. 899=25 Cr. L. J. 1247.
13. A trying Magistrate or Court of appeal can pass an order subsequent to passing a judgment convicting or acquitting the accused. 1925 R. 183=85 I. C. 358.
14. Sessions Judge is not a Court of revision within the meaning of S. 520. 1936 C. 185=37 Cr. L. J. 541, 1935 P. C. 35=57 A. 156 and 56 B. 369=1932 B. 534 Rel. on.
15. "Court of appeal" means Court to which appeals ordinarily lie. 1936 C. 185=37 Cr. L. J. 541, 3 C. 379; 1929 R. 97; 9 M. 448 and 1932 B. 534=56 B. 369 Ref.

Disposal of Property—(contd.)

16. Sessions Judge can pass any order with regard to the property. He need not refer matter to High Court. 1932 B. 534, 1929 R. 97 Foll. 42 B. 654 overruled. 35 B. 253; 9 M. 448; 2 A. 276; 3 C. 379; 46 A. 623; 1923 R. 227 and 1923 R. 240 Ref.
3. **Cash and currency notes.**
 1. Cash is not strictly speaking property except in so far as it is capable of being possessed and identified in specie. Coins which have passed on to the public, be treated in the same way as stolen coins actually remaining in the possession of thieves. The principal of *excat emptor* never applies to currency coin. 1925 S. 17=89 I. C. 259=26 Cr. L. J. 1315.
 2. Genuine notes from which counterfeit notes are supposed to be forged, cannot be confiscated. 53 Bom. 344=1929 Bom. 123=30 Cr. L. J. 588.
 3. Where the stolen currency note was cashed in the Treasury. Held: currency note is money and ownership passes by mere delivery, and the original owner cannot claim the amount as against treasury. 19 C. 52.
 4. If the stolen note was cashed by a shop-keeper, it should be returned to him. 40 Bom. 186. See 3 C. 379.
 5. *Babashahi* coin is not current coin and it should be returned to the complainant from whom it was stolen. 25 Bom. 702.
 6. In view of Explanation to S. 517, the objection that the coins directed to be returned are not the identical coins cannot be sustained. 4 S. L. R. 255.
 7. If the thief sold the stolen gold ornaments the money cannot be confiscated or ordered to be given to complainant. 20 Bom. L. R. 604.
 8. Property in currency notes passes by mere delivery and in the interest of commerce and the security of human dealing, nothing short of fraud in taking it, will engraft an exception upon the rule. 7 M. H. C. R. 233.
 9. The property in stolen cash or Bills or notes, which circulate as cash, is inseparable from possession ordinarily. It remains in the person from whom they are taken. 1 N. W. P. H. C. R. 298.
4. **Confiscation and destruction.**
 1. Genuine notes from which counterfeit notes are forged cannot be confiscated. 53 Bom. 344=1929 B. 128=31 B. L. R. 148.
 2. Where currency notes were found on the person of a man convicted of importing opium into British India, they should not be confiscated. 1924 A. 618=81 I. C. 103=25 Cr. L. J. 615.
 3. If accused is convicted under S. 241, I. P. C., the Magistrate can order destruction of the counterfeit coin found in possession of accused. 2 Weir 669.
 4. Accused was convicted of taking bribe and the money was deposited in Court by the complainant, the Magistrate can order a portion of it to be confiscated and the rest to be paid to the complainant. 9 P. R. 1873 Cr.
 5. A Press in which a seditious matter has been published cannot be confiscated. 34 C. 986, 37 P. W. R. 1907 Cr.
 6. Money found in the waistcoat of accused convicted of gambling cannot be confiscated. 41 M. 644.
 7. A boat used for committing theft or escaping from pursuit cannot be confiscated. 8 C. W. N. 887.
 8. Pony and cart of accused convicted of rash driving cannot be sold to pay compensation to the complainant. 9 P. L. R. 1904.
 9. Government cannot claim the sale proceeds of stolen property so long as there is a person entitled to possession of the same. 1934 L. 247=34 Cr. L. J. 581, 2 Bom. L. R. 768 Foll.
5. **Doubtful title—.**
 1. If the title to the seized property is doubtful, it should be returned to the person

Disposal of Property—(contd.)

from whom it was seized. 50 M. 916, 1923 R. 248=25 Cr. L. J. 666, 16 Cr. L. J. 207=1915 B. 295.

2. Where there is doubt as to ownership of property, it should be kept in *Malikhana*, subject to the decisions of Civil Court. 1924 C. 1040.

3. If the property alleged to be stolen is not proved to belong to the complainant, it should be restored to the person who produced it and the complainant should be referred to Civil Court. 1924 L. 588=86 I. C. 273=6 L. L. J. 213.

6. Inquiry to be held before—

1. Magistrate should hold enquiry before he can make an order for the disposal of property which has been seized or produced before him. 1923 R. 248=25 Cr. L. J. 666.

2. A purchaser has got a right to be heard. 1924 A. 189=24 Cr. L. J. 804.

7. Limitation for application for—

No period of limitation is prescribed for an application for restoration of property under S. 517. It can be made within a reasonable time. 4 L. 49=1924 L. 75.

8. Notice to other party.

An order regarding stolen property should not be made without giving notice of hearing to the other side. 136 I. C. 735, 17 Cr. L. J. 27, 1924 A. 189=24 Cr. L. J. 804.

9. Pending trial. S. 516 A, Cr. P. C.

Disposal of Property—(contd.)

direct the parties to Civil Court. 1934 C. 451=35 Cr. L. J. 836=149 I. C. 36.

9. Court can order the money equivalent of property if the property has become incapable of production and restoration to the other party. 1934 C. 454=35 Cr. L. J. 886, 48 C. 522 Rel. on.

11. Reference regarding— S. 518, Cr. P. C.

An order under S. 518 was passed in 1873 and the accused was convicted for disobeying the same in 1920. Held, that conviction could not be sustained, as S. 517 had a temporary operation. 59 I. C. 34.

12. Restoration.

1. If no offence is proved to have been committed in respect of property produced before the Court and the accused is acquitted, it should be restored to the person from whom it was last taken. 22 Bom. 844, 10 Bom. 197, 17 Bom. 248, 14 C. 834, 9 M. 448, 1897 A. W. N. 26, 2 Weir 669, 1932 M. 495, 1931 M. 17.
2. If a case of theft fails, because the dishonest intention is not proved, the property can be restored to the complainant. 16 M. L. J. 4.
3. A Magistrate discharging an accused cannot restore property to him, if he disclaims it. 37 P. W. R. 1913 Cr.
4. If there is a *bona fide* dispute about the property it should be retained till the decision of the Civil Court or agreement of parties. 16 Bom. L. R. 951, 16 Cr. L. J. 104.
5. If the property belongs partly to accused and partly to another, it can be given to them on their joint receipt. 34 M. 94.
6. An elephant was seized by Police from the accused on a charge of abetment of theft, who was acquitted on his claiming to be the purchaser of certain shares in the animal. Held, the animal should be restored to him. 54 C. 283=1927 Cal. 532=102 I. C. 482, 1926 Cal. 1048=95 I. C. 933.
7. During the pendency of a case, the key of the house was given by Court to the complainant. The accused after his acquittal applied for the return of the key. Held, no order could be passed under S. 517. 1930 A. 35=120 I. C. 197=31 Cr. L. J. 6.
8. Accused was found utilizing the embezzled money to pay off his creditors. The Police traced a creditor who handed over the amount to the Police. Held, the money could be paid to the complainant. 1926 A. 47=26 Cr. L. J. 1232.
9. Accused having hypothecated certain property to the complainant as security for a loan, removed it from his possession and sold it. He was convicted of theft. The property should be returned to the complainant. 1923 C. 598=71 I. C. 702=24 Cr. L. J. 238.
10. Where a motor bus was sold under a hire-purchase system and hirer having defaulted, the owner prosecuted him for theft but the charge was not proved. The bus should be restored to the hirer from whom it was seized. 132 I. C. 902=32 Cr. L. J. 983=1931 Cal. 455=35 C. W. N. 198.
11. If accused is acquitted of theft, property should be returned to him and it is not advisable for the Criminal Court to launch into questions of possession. 1931 M. 17=59 M. L. J. 901=129 I. C. 458=32 Cr. L. J. 355.
12. Where a motor car was sold under hire-purchase system and the hirer having defaulted, the owner prosecuted him for theft but charge was not proved and it appeared that it was to evade a civil suit. Held, that the car should be returned to the hirer. 35 C. W. N. 198=1931 C. 455=32 Cr. L. J. 983.
13. The property should be restored especially when there is no finding in the case that it belongs to some one else. 3 M. L. T. 334.
14. Articles used for the commission of offence are not to be returned to convicted accused. 1934 A. 207=151 I. C. 735.
15. If the party has been ordered to restore property and he has already converted it to his own use, Court can order the production of money-equivalent of such

Disposal of Property—(contd.)

property as may be incapable of production. 1934 C. 454=35 Cr. L. J. 886=149 I. C. 36, 48 C. 522 Rel. on.

13. Scope.

1. Order regarding custody of children cannot be passed under S. 517. 1 Weir 348.
2. Order as to removal of wall is illegal under S. 517. 1900 A. W. N. 81.
3. Detention of property when no offence has been proved is illegal. 22 B. 844.
4. Order demanding security for the production of property when required is illegal under S. 517. 7 C. W. N. 522. See 2 Weir 668.
5. S. 517 applies to moveable property only. 36 C. 44, 59 I. C. 414.

14. Seized by police. S. 523, Cr. P. C.

1. If the Police seize property from a person who is not shown to have committed offence, Magistrate should hold such person as being entitled to property. The remedy of the other party claiming it is by way of civil suit. The burden of proof is on him to prove title. 1936 B. 171=60 B. 183, 1933 M. 434=56 M. 654 and 54 C. 283=1927 C. 532 Rel. on.
2. If the property seized by Police has not been produced in Court, an order of its disposal can be made under S. 523 and not under S. 517, 1925 S. 316.
3. Seizure by Police means under Ss. 51, 54, 164, 165 or 550 and not by virtue of warrant issued by a Magistrate under S. 96 or so. 17 B. 748, 26 B. 552.
4. If the Police Officer retains a piece of gold found in search and fails to report his possession, he is guilty under S. 217, I. P. C. 16 Cr. L. J. 453.
5. Magistrate cannot vary the order if once passed. 4 Bom. L. R. 12.
6. Magistrate's order may be challenged by a civil suit. 9 B. 131, 40 B. 200.
7. Limitation of six months does not apply to the original possessor of the property. 1925 S. 316, 22 C. 761.
8. Magistrate can make an order without independent inquiry and on Police report or papers before him. 4 L. 38, 12 Cr. L. J. 108, 1920 L. B. 36. Cont. 17 B. 748, 5 I. C. 972.
9. Where certain currency notes are found in the course of gambling and in the trial they are not traced to the ownership of any person, Magistrate can treat them as ownerless and deal with them as such. 16 Cr. L. J. 254.
10. Where the owner was unable to show that property was legally acquired by him, it cannot be forfeited if there is no other claimant. 16 Cr. L. J. 207.

15. Third parties' claim—*Bona fide purchaser*.—

1. A purchaser of commodity has a right to be heard. In case of question of *bona fide* title, the complainant should be left to his remedy in Civil Court. 1924 A. 189=74 I. C. 708=24 Cr. L. J. 804, 24 Cr. L. J. 238.
2. Accused after having hypothecated certain property to the complainant as security for loan, removed it from his possession and sold it to the petitioner, who claimed it as purchaser in good faith. Held, it should be returned to the complainant. 1923 C. 598=71 I. C. 702=24 Cr. L. J. 238.
3. Certain jewels were given to the accused to sell. He instead of selling gave them to another person who pledged them to a third person. Held, the jewels should be restored to the pledgee. 23 Cr. L. J. 216, 3 Bur. L. T. 111, 4 L. B. R. 25.
4. If the pledgee is not a *bona fide* pledger and knew that pledger had no authority to pledge, the articles should be delivered to the owner. 1 R. 179=193 R. 227=74 I. C. 1050=24 Cr. L. J. 858.
5. A goldsmith was given a diamond and gold to make a comb for the complainant. He pledged it with a merchant who did not know that it belonged to the complainant. Held that the articles should be delivered to the complainant. 2 Bur. L. J. 152.
6. Accused was utilizing the embezzled money to pay off his creditors. The Police

Disposal of Property—(contd.)

direct the parties to Civil Court. 1934 C. 454=35 Cr. L. J. 886=149 I. C. 36.

9. Court can order the money equivalent of property if the property has become incapable of production and restoration to the other party. 1934 C. 454=35 Cr. L. J. 886, 48 C. 522 Rel. on.

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3. Detention of property when no offence has been proved is illegal. 22 B. 844.
4. Order demanding security for the production of property when required is illegal under S. 517. 7 C. W. N. 522. See 2 Weir 668.
5. S. 517 applies to moveable property only. 36 C. 44, 59 I. C. 414.

14. Seized by police. S. 523, Cr. P. C.

1. If the Police seize property from a person who is not shown to have committed offence, Magistrate should hold such person as being entitled to property. The remedy of the other party claiming it is by way of civil suit. The burden of proof is on him to prove title. 1936 B. 171=60 B. 183, 1933 M. 434=56 M. 654 and 54 C. 283=1927 C. 532 Rel. on.
2. If the property seized by Police has not been produced in Court, an order of its disposal can be made under S. 523 and not under S. 517, 1925 S. 316.
3. Seizure by Police means under Ss. 51, 54, 164, 165 or 550 and not by virtue of warrant issued by a Magistrate under S. 96 or so. 17 B. 748, 26 B. 552.
4. If the Police Officer retains a piece of gold found in search and fails to report his possession, he is guilty under S. 217, I. P. C. 16 Cr. L. J. 453.
5. Magistrate cannot vary the order if once passed. 4 Bom. L. R. 12.
6. Magistrate's order may be challenged by a civil suit. 9 B. 131, 40 B. 200.
7. Limitation of six months does not apply to the original possessor of the property. 1925 S. 316, 22 C. 761.
8. Magistrate can make an order without independent inquiry and on Police report or papers before him. 4 L. 38, 12 Cr. L. J. 108, 1920 L. B. 36. Cont. 17 B. 748, 5 I. C. 972.
9. Where certain currency notes are found in the course of gambling and in the trial they are not traced to the ownership of any person, Magistrate can treat them as ownerless and deal with them as such. 16 Cr. L. J. 254.
10. Where the owner was unable to show that property was legally acquired by him, it cannot be forfeited if there is no other claimant. 16 Cr. L. J. 207.

15. Third parties' claim—*Bona fide* purchaser.—

1. A purchaser of commodity has a right to be heard. In case of question of *bona fide* title, the complainant should be left to his remedy in Civil Court. 1924 A. 189=74 I. C. 708=24 Cr. L. J. 804, 24 Cr. L. J. 258.
2. Accused after having hypothecated certain property to the complainant as security for loan, removed it from his possession and sold it to the petitioner, who claimed it as purchaser in good faith. Held, it should be returned to the complainant. 1923 C. 598=71 I. C. 702=24 Cr. L. J. 238.
3. Certain jewels were given to the accused to sell. He instead of selling gave them to another person who pledged them to a third person. Held, the jewels should be restored to the pledgee. 23 Cr. L. J. 216, 3 Bur. L. T. 111, 4 L. B. R. 25.
4. If the pledgee is not a *bona fide* pledger and knew that pledger had no authority to pledge, the articles should be delivered to the owner. 1 R. 199=19-3 R. 227=74 I. C. 1050=24 Cr. L. J. 858.
5. A goldsmith was given a diamond and gold to make a comb for the complainant. He pledged it with a merchant who did not know that it belonged to the complainant. Held that the articles should be delivered to the complainant. 2 Bur. L. J. 152.
6. Accused was utilizing the embezzled money to pay off his creditors. The Police

Disposal of Property—(conclid.)

traced one of these payments and the creditor handed over the amount to Police. Held, the money should be paid to the complainant. 1926 A. 47=83 I. C. 848=25 Cr. L. J. 1232=23 A. L. J. 889.

7. Where the property forming the subject matter of theft is validly pledged, the Court cannot disturb possession of the pawnee. 12 L. 304=1931 L. 525=132 I. C. 335=32 Cr. L. J. 960=32 P. L. R. 724.
 8. Certain jewels were given to a broker for sale. He sold them and misappropriated the money. Held, that jewels should be returned to the purchaser, because offence was not committed with regard to jewels but the sale proceeds. 4 Bur. L. T. 170.
- 16. Time for order.**
1. Court can pass order under S. 517 at the time of passing judgment or afterwards. 1926 L. 9=89 I. C. 973=26 Cr. L. J. 1453, 83 I. C. 358.
 2. If the appellate Court omits to pass an order under S. 520, the successor can pass the same afterwards. 1922 M. 329=71 I. C. 511=24 Cr. L. J. 159, 85 I. C. 353.
- 17. Revision.**

The order under S. 517 is discretionary but discretion is open to correction by the High Court where it has been exercised in violation of judicial principles. 40 B. 185.

18. Sale of perishable property. S. 525, Cr. P. C.

A third class Magistrate cannot order sale. 23 B. 494.

19. When no claimant within six months. S. 524, Cr. P. C.

1. The person in whose possession property was found can prove his title after six months. 22 C. 761.
2. Magistrate is bound to summon witness cited by claimant, 18 W. R. 5.
3. Person found in possession of property must be presumed under S. 110, Evidence Act to be its owner, though he fails to prove his right. 1925 S. 316. 16 Cr. L. J. 207.
4. A suit for the recovery of such property is competent. 1920 P. 182.
5. A third class Magistrate cannot order sale under S. 524. 23 B. 494.

DISPOSSESSION FROM IMMOVEABLE PROPERTY AND RESTORATION.
S. 522, Cr. P. C. See Restoration of immoveable property—3.**1. Appeal and Revision.**

1. An order under S. 522 is subject to appeal and Revision by the High Court. 29 C. 724, 36 C. 44.
2. An appellate Court has no power to pass an order under S. 522 if the trial Court had made no order at all. 1924 A. 212=46 A. 92, 39 C. 1050, 48 I. C. 510.
3. A Court of appeal or Revision cannot compel the trial Court to pass an order under S. 522, where the latter has declined to do so. 45 A. 533=1924 A. 183, 39 C. 1050, 14 P. R. 1919 Cr.
4. High Court on reference cannot interfere. 1932 L. 210=33 Cr. L. J. 191.
5. If the property is dealt with under Ss. 517-518-519, any Court of appeal or revision can make substantive order about that property. 56 B. 369=1932 B. 534.

2. Conviction set aside.

1. If the conviction is set aside, the order under S. 522 resulting therefrom must also be set aside. Once it has been held that no offence has been committed, the consequence arising from the commission of the offence must automatically cease to lie. 1923 L. 15=72 I. C. 957=24 Cr. L. J. 493, 66 I. C. 324=1922 O. 144, 118 I. C. 392=30 Cr. L. J. 902, 5 P. R. 1895 Cr.
2. To justify an order under S. 522 it is necessary that all the accused should be convicted. 31 C. 691, 23 B. 494, 1931 B. 77=55 B. 155=32 Cr. L. J. 275.

3. Criminal force.

1. If accused succeed in taking possession of the house by means of criminal trespass threatening to use force to the complainant their act comes under S. 522. 4 P. 438.

Dispossession from Immoveable Property and Restoration—(contd.)

2. In the absence of any finding that criminal force was used by an accused person, an order under S. 522 is illegal. 1927 L. 792=104 I. C. 435=23 Cr. L. J. 819, 27 C. 174, 16 P. R. 1919 Cr., 26 M. 49, 25 A. 341 Rel. on.
 3. If the complainant was driven off his lands by the accused rushing towards him with sticks and using threats, the criminal force is proved. 45 A. 25=1923 A. 333.
 4. Where the act of trespass on immovable property was not attended by criminal force or criminal intimidation, S. 522 does not apply. 1927 L. 833=100 I. C. 544=28 Cr. L. J. 320=23 P. L. R. 238, 1927 L. 830=105 I. C. 676=23 Cr. L. J. 964, 75 I. C. 730, 25 A. 341, 27 C. 174, 16 P. R. 1919, 12 P. R. 1906.
 5. Where use of criminal force is wanting, the Court should restore the parties to the position in which they were before possession was wrongly given by Court. 1922 M. 188=68 I. C. 38=23 Cr. L. J. 502.
 6. The words "attended by criminal force" do not mean an offence of which criminal force is an ingredient. 26 M. 49, 31 C. 691 *Cont.* 25 C. 434, 23 W. R. 54.
 7. Force means force used to a person and not to property. Accused dispossessed the complainant of his garden by breaking open padlock of the Gate and no force was used to any person, the case does not fall under S. 522. 15 Cr. L. J. 175.
 8. If accused committed rioting and used force to complainant's fencing. Held, S. 522 did not apply. 18 C. W. N. 1150=15 Cr. L. J. 720.
 9. Accused were convicted under S. 447, I. P. C. for continuing to cultivate the lands from which they were ejected but there was nothing to show that criminal force was used. Held, S. 522, did not apply. 21 A. L. J. 593.
 10. Taking advantage of temporary absence of the owner from the house, the wife who had deserted him along with others broke open the lock and entered it and when the husband returned, he was driven out by force. Held, an order restoring possession is a proper order. 1923 M. 237 (2)=72 I. C. 892=24 Cr. L. J. 476.
 11. If there is no finding that criminal force was used, the Magistrate has no jurisdiction to make an order of restoration under S. 522, Cr. P. C. 1935 L. 477=157 I. C. 471=37 P. L. R. 176, 5 P. R. 1895 Cr. and 25 M. 49 Rel. on. 1934 O. 185 (1)=35 Cr. L. J. 788, 1934 O. 199.
 12. If possession was taken in the absence of complainant it is "without force or show of force" and no order under S. 522 can be proved. 1934 L. 454, 1927 L. 830 Rel. on. 93 I. C. 895 Dist.
- l. Dispossession.**
1. Where there is no evidence of dispossession an order under S. 522 is bad. 38 P. W. R. 1917 Cr., 2 Weir 674.
 2. Where it is found that neither party is in actual possession, no order under S. 522 can be made. 2 Weir 675.
 3. Where a person got possession through Civil Court and was forcibly dispossessed, Criminal Court should restore possession to him under S. 522. 1933 N. 36=34 Cr. L. J. 145.
- 5. Ex-parte order.**
- An order for restoring property under S. 522 cannot be passed *ex-parte*. 23 C. W. N. 862, 1932 L. 17=135 I. C. 266=33 Cr. L. J. 123.
- 6. Nature of order.**
1. An order under S. 522 is passed not against any person but in favour of the person dispossessed. 62 I. C. 591.
 2. Order under S. 522 binds only the parties and not the third parties. 1925 M. 799=86 I. C. 744.
- 7. Third party's interest—Notice—.**
1. A third person who was not a party may be dispossessed if complainant was dispossessed by force. 32 Bom. L. R. 1496, 5 C. W. N. 374, 55 B. 155.
 2. Though in case of an order under S. 522, a notice may be proper, yet it is not

Disposal of Property—(could.)

traced one of these payments and the creditor handed over the amount to Police. Held, the money should be paid to the complainant. 1926 A. 47=88 I. C. 848=26 Cr. L. J. 1232=23 A. L. J. 889.

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1. Court can pass order under S. 517 at the time of passing judgment or afterwards. 1926 L. 9=89 I. C. 973=26 Cr. L. J. 1453, 85 I. C. 358.
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The order under S. 517 is discretionary but discretion is open to correction by the High Court where it has been exercised in violation of judicial principles. 40 B. 186.

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2. Magistrate is bound to summon witness cited by claimant, 18 W. R. 5.
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4. A suit for the recovery of such property is competent. 1920 P. 182.
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DISPOSSESSION FROM IMMOVEABLE PROPERTY AND RESTORATION.
S. 522, Cr. P. C. See Restoration of immoveable property—3.**1. Appeal and Revision.**

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5. If the property is dealt with under Ss. 517-518-519, any Court of appeal or revision can make substantive order about that property. 56 B. 369=1932 B. 534.

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2. To justify an order under S. 522 it is necessary that all the accused should be convicted. 31 C. 691, 23 B. 494, 1931 B. 77=55 B. 155=32 Cr. L. J. 275.

3. Criminal force.

1. If accused succeed in taking possession of the house by means of criminal trespass threatening to use force to the complainant their act comes under S. 522. 4 P. 435.

Dispossession from Immoveable Property and Restoration—(contd.)

2. In the absence of any finding that criminal force was used by an accused person, an order under S. 522 is illegal. 1927 L. 792=104 I. C. 435=28 Cr. L. J. 819, 27 C. 174, 16 P. R. 1919 Cr., 26 M. 49, 25 A. 341 Rel. on.
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2. Where it is found that neither party is in actual possession, no order under S. 522 can be made. 2 Weir 675.
3. Where a person got possession through Civil Court and was forcibly dispossessed, Criminal Court should restore possession to him under S. 522. 1933 N. 36=34 Cr. L. J. 145.

5. Ex-parte order.

An order for restoring property under S. 522 cannot be passed *ex-parte*. 23 C. W. N. 862, 1932 L. 17=135 I. C. 206=33 Cr. L. J. 123.

6. Nature of order.

1. An order under S. 522 is passed not against any person but in favour of the person dispossessed. 62 I. C. 591.
2. Order under S. 522 binds only the parties and not the third parties. 1925 M. 799=86 I. C. 744.

7. Third party's interest—Notice—

1. A third person who was not a party may be dispossessed if complainant was dispossessed by force. 32 Bom. L. R. 1495, 5 C. W. N. 374, 55 B. 155.
2. Though in case of an order under S. 522, a notice may be proper, yet it is not

Dispossession from Immoveable Property and Restoration—(concl'd.)

necessary and its absence does not render the order bad. 55 B. 155=1931 B. 7
=32 Cr. L. J. 275, 14 Cr. L. J. 172, 23 C. W. N. 862.

8. Time for order.

1. It is not essential in law that an order under S. 522 should find a place in the actual judgment. But it should be immediate and without any fresh material having been produced. 14 Cr. L. J. 172, 20 Cr. L. J. 115.
2. Order can be passed after conviction of the accused. 15 P. R. 1914 Cr.
3. If a Magistrate passes an order under S. 522 beyond the prescribed one month though the order is illegal, the High Court as Court of Revision can order restoration of possession. 4 P. 438=91 I. C. 809=1925 P. 689=27 Cr. L. J. 137.
4. Where appeal was filed against conviction to a first class Magistrate and dismissed and Revision to the High Court was also dismissed, an order of restoration passed by the High Court within one month of the date of dismissal of Revision is valid. 1927 N. 131=99 I. C. 863=28 Cr. L. J. 191.
5. An order of restoration of possession cannot be made one month after the conviction. 33 Cr. L. J. 191=1932 L. 210, 1932 C. 750=30 Cr. L. J. 868.
6. Appellate Court has jurisdiction to pass an order under S. 522 (3) when appeal is pending before it. 1932 C. 750=33 Cr. L. J. 191=140 I. C. 66.
7. An application for possession under S. 522, Cr. P. C., was consigned to record room, because it was held not desirable to proceed with it when a civil suit was pending. The Magistrate passed an order for possession the application being removed. Held, that no doubt 20 months had elapsed between conviction and order for possession but delay was fully explained. The order was not illegal. 15 P. R. 1914 Cr., 23 B. 494, 14 C. L. J. 172.
8. It is not necessary that an order under S. 522 must be made at the time of conviction. It is enough if it is made without unreasonable delay after conviction. 49 I. C. 99=20 Cr. L. J. 115.
9. No time limit is fixed for an order by an appellate Court even after the disposal of appeal. 1934 P. 154=35 Cr. L. J. 1158.
10. The order by the trial Court must be made within one month. An application within month is not sufficient. 1934 P. 154=35 Cr. L. J. 1158, 1933 P. 617 Ref.

DISPUTE CONCERNING RIGHT OF USE OF IMMOVEABLE PROPERTY.
See Easement.

DISPUTE AS TO EASEMENT. *See Easement.*

DISPUTE RELATING TO IMMOVEABLE PROPERTY. S. 145, Cr. P. C.

1. Applicability of S. 145.

1. S. 145 applies only to dispute about actual and physical possession and not to dispute about joint possession. 1928 L. 818=29 Cr. L. J. 775, 1930 B. 172.
2. If the dispute is about possession of land and not a right to erect it, the case falls under S. 145. 1930 C. 59=125 I. C. 857=31 Cr. L. J. 944.
3. If there is dispute as to the right of worship only the proper section to prevent a breach of peace is S. 147 and not S. 145. 1925 M. 779, 29 M. 237, 11 M. 323.
4. When there is ample time for obtaining a civil remedy criminal action is not justified. 76 I. C. 691=1924 O. 341=25 Cr. L. J. 227.
5. The claim to weigh grain in a market and to realise the weighing dues is not covered by S. 145. 1922 A. 430=68 I. C. 836=23 Cr. L. J. 612.
6. Dispute as to mines and minerals falls within the scope of S. 145. 1922 C. 83=71 I. C. 236=24 Cr. L. J. 108, 71 I. C. 871, 24 Cr. L. J. 263.
7. S. 145 does not apply to dispute between co-sharers as to their shares. 1922 O. 192=69 I. C. 90=23 Cr. L. J. 650.
8. S. 145 only contemplates cases where one party claims to be in actual possession of the property in dispute as against his opponents. 63 I. C. 321=22 Cr. L. J. 625.

Dispute relating to Immoveable Property—(contd.)

9. Where parties claimed the land on the strength of recent sale-deed from the original holder, an order under S. 145 is sound. 68 I. C. 34=1921 P. 410.
10. Dispute relating to a possession of temple comes within S. 145. 2 Weir 110.
11. Dispute about the exclusive right to collect the entire toll from half of the market falls under S. 145. 30 C. 593.
12. A dispute about fishery or jalkar right falls under S. 145. 35 C. 117.
13. Dispute about standing crops comes under S. 145 but not the crops severed from land and stored on the thrashing floor. 30 C. 110, 15 A. 394, 28 A. 268 *Cont.* 2 Weir 108.
14. Trees severed from land do not come under S. 145. 22 P. W. R. 1917.
15. Trees growing on land come within this section as being produce of land, but lac is not a produce of land or crop. 24 C. W. N. 1039.
16. Dispute as to collection of rent is dispute concerning land within the meaning of S. 145. 11 C. 413, 12 M. 88, 15 C. 527, 16 C. 513, 27 C. 892.
17. Dispute about the right of succession to a *mutt* and its appurtenances does not fall under S. 145. 11 W. R. 23.
18. A dispute as to the right to collect fees from the sellers of a market is not a dispute as to the profit of a market within the meaning of S. 145. 36 A. 143.
19. A dispute relating to the rights to the offerings of public worshippers only is a dispute relating to a moveable property and is outside the scope of S. 145. 38 C. 387, 37 C. 578.
20. A dispute concerning the right to take Sandalwood paste from an idol does not fall under S. 145. 2 B. L. R. 438.
21. S. 145 does not apply where there is no dispute as to the possession who is entitled to collect rent from the tenants. 36 C. 986, 36 A. 943.
22. Disputes as regards easement fall more appropriately under S. 147 than S. 145. 21 Cr. L. J. 697, 22 Cr. L. J. 868.
23. Share in annual produce of mango grove is not specific tangible property susceptible of exclusive possession 1935 N. 44=17 N. L. J. 216.
24. An inquiry under S. 145 should be confined to the question of possession only. 1935 P. 83=36 Cr. L. J. 513=154 I. C. 426.

2. Actual possession.

1. Possession by tenant is not that of landlord in case there is dispute between them. 2 Weir 107.
2. In case of dispute between two rival Zamindars regarding a constructive possession through their tenants, Magistrate may proceed under S. 145 (5). 1921 C. 637.
3. In a case under S. 145, the Court is concerned only with actual possession. 1932. S. 145.

3. Attachment.

1. If Magistrate is unable to satisfy himself as to which of the parties was in possession at the date of preliminary order, he should continue the attachment already made till a competent Court has determined the rights of the parties. 1928 N. 325=111 I. C. 445=29 Cr. L. J. 861.
2. The property should be attached only if there is imminent danger of the breach of peace. 7 L. 134=1926 L. 205=27 Cr. L. J. 751=95 I. C. 281.
3. If Magistrate finds that there is no danger of breach of peace and files proceedings he has no jurisdiction to direct that the attached property should be delivered to one of the parties. In such a case property should remain in his custody till the decision of a Civil Court. 1925 N. 297=48 C. 522.
4. A Magistrate's order that neither party should work on the land is not correct. If the case is emergent he can attach the land. 1925 R. 111=84 I. C. 548.
5. A Magistrate should be reluctant to make use of S. 146. 82 I. C. 367=1924 P.

Dispossession from Immoveable Property and Restoration—(concl'd.)

necessary and its absence does not render the order bad. 55 B. 155=1931 B. 77 =32 Cr. L. J. 275, 14 Cr. L. J. 172, 23 C. W. N. 862.

8. Time for order.

1. It is not essential in law that an order under S. 522 should find a place in the actual judgment. But it should be immediate and without any fresh material having been produced. 14 Cr. L. J. 172, 20 Cr. L. J. 115.
2. Order can be passed after conviction of the accused. 15 P. R. 1914 Cr.
3. If a Magistrate passes an order under S. 522 beyond the prescribed one month, though the order is illegal, the High Court as Court of Revision can order restoration of possession. 4 P. 438=91 I. C. 809=1925 P. 689=27 Cr. L. J. 137.
4. Where appeal was filed against conviction to a first class Magistrate and dismissed and Revision to the High Court was also dismissed, an order of restoration passed by the High Court within one month of the date of dismissal of Revision is valid. 1927 N. 131=99 I. C. 863=28 Cr. L. J. 191.
5. An order of restoration of possession cannot be made one month after the conviction. 33 Cr. L. J. 191=1932 L. 21C, 1932 C. 750=30 Cr. L. J. 868.
6. Appellate Court has jurisdiction to pass an order under S. 522 (3) when appeal is pending before it. 1932 C. 750=33 Cr. L. J. 191=140 I. C. 66.
7. An application for possession under S. 522, Cr. P. C., was consigned to record room, because it was held not desirable to proceed with it when a civil suit was pending. The Magistrate passed an order for possession the application being removed. Held, that no doubt 20 months had elapsed between conviction and order for possession but delay was fully explained. The order was not illegal. 15 P. R. 1914 Cr., 23 B. 494, 14 C. L. J. 172.
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DISPUTE CONCERNING RIGHT OF USE OF IMMOVEABLE PROPERTY.
*See Easement.***DISPUTE AS TO EASEMENT.** *See Easement.***DISPUTE RELATING TO IMMOVEABLE PROPERTY.** S. 145, Cr. P. C.**1. Applicability of S. 145.**

1. S. 145 applies only to dispute about actual and physical possession and not to dispute about joint possession. 1928 L. 818=29 Cr. L. J. 775, 1930 B. 172.
2. If the dispute is about possession of Bund and not a right to erect it, the case falls under S. 145. 1930 C. 59=125 I. C. 857=31 Cr. L. J. 914.
3. If there is dispute as to the right of worship only the proper section to prevent a breach of peace is S. 147 and not S. 145. 1925 M. 779, 29 M. 237, 11 M. 323.
4. When there is ample time for obtaining a civil remedy criminal action is not justified. 76 I. C. 691=1924 O. 341=25 Cr. L. J. 227.
5. The claim to weigh grain in a market and to realise the weighing dues is not covered by S. 145. 1922 A. 430=63 I. C. 336=23 Cr. L. J. 612.
6. Dispute as to mines and minerals falls within the scope of S. 145. 1922 C. 83=71 I. C. 236=24 Cr. L. J. 105, 71 I. C. 871, 24 Cr. L. J. 263.
7. S. 145 does not apply to dispute between co-sharers as to their shares. 1922 O. 199=69 I. C. 93=23 Cr. L. J. 630.
8. S. 145 only contemplates cases where one party claims to be in actual possession of the property in dispute as against his opponents. 63 I. C. 321=22 Cr. L. J. 423.

Dispute relating to Immoveable Property—(contd.)

9. Where parties claimed the land on the strength of recent sale-deed from the original holder, an order under S. 145 is sound. 68 I. C. 34=1921 P. 410.
10. Dispute relating to a possession of temple comes within S. 145. 2 Weir 110.
11. Dispute about the exclusive right to collect the entire toll from half of the market falls under S. 145. 30 C. 593.
12. A dispute about fishery or jalkar right falls under S. 145. 35 C. 117.
13. Dispute about standing crops comes under S. 145 but not the crops severed from land and stored on the thrashing floor. 30 C. 110, 15 A. 394, 28 A. 268 *Cont.* 2 Weir 108.
14. Trees severed from land do not come under S. 145. 22 P. W. R. 1917.
15. Trees growing on land come within this section as being produce of land, but lac is not a produce of land or crop. 24 C. W. N. 1039.
16. Dispute as to collection of rent is dispute concerning land within the meaning of S. 145. 11 C. 413, 12 M. 88, 15 C. 527, 16 C. 513, 27 C. 872.
17. Dispute about the right of succession to a *mutt* and its appurtenances does not fall under S. 145. 11 W. R. 23.
18. A dispute as to the right to collect fees from the sellers of a market is not a dispute as to the profit of a market within the meaning of S. 145. 36 A. 143.
19. A dispute relating to the rights to the offerings of public worshippers only is a dispute relating to a moveable property and is outside the scope of S. 145. 38 C. 387, 37 C. 578.
20. A dispute concerning the right to take Sandalwood paste from an idol does not fall under S. 145. 2 B. L. R. 438.
21. S. 145 does not apply where there is no dispute as to the possession who is entitled to collect rent from the tenants. 36 C. 986, 36 A. 943.
22. Disputes as regards easement fall more appropriately under S. 147 than S. 145. 21 Cr. L. J. 697, 22 Cr. L. J. 868.
23. Share in annual produce of mango grove is not specific tangible property susceptible of exclusive possession. 1935 N. 44=17 N. L. J. 216.
24. An inquiry under S. 145 should be confined to the question of possession only. 1935 P. 83=36 Cr. L. J. 513=154 I. C. 426.

2. Actual possession.

1. Possession by tenant is not that of landlord in case there is dispute between them. 2 Weir 107.
2. In case of dispute between two rival Zamindars regarding a constructive possession through their tenants, Magistrate may proceed under S. 145 (5). 1921 C. 637.
3. In a case under S. 145, the Court is concerned only with actual possession. 1932. S. 145.

3. Attachment.

1. If Magistrate is unable to satisfy himself as to which of the parties was in possession at the date of preliminary order, he should continue the attachment already made till a competent Court has determined the rights of the parties. 1928 N. 325=111 I. C. 445=29 Cr. L. J. 861.
2. The property should be attached only if there is imminent danger of the breach of peace. 7 L. 134=1926 L. 205=27 Cr. L. J. 701=95 I. C. 281.
3. If Magistrate finds that there is no danger of breach of peace and files proceedings he has no jurisdiction to direct that the attached property should be delivered to one of the parties. In such a case property should remain in his custody till the decision of a Civil Court. 1925 N. 297=48 C. 522.
4. A Magistrate's order that neither party should work on the land is not correct. If the case is emergent he can attach the land. 1925 R. 111=84 I. C. 548.
5. A Magistrate should be reluctant to make use of S. 146. 82 I. C. 367=1924 P.

Dispute relating to Immoveable Property - (contd.)

- 804=25 Cr. L. J. 1295=5 P. L. T. 559.
6. Magistrate cannot attach properties other than land. 1922 A. 523=71 I. C. A. L. J. 905=24 Cr. L. J. 85.
 7. If Revenue Court decides in favour of one party, attached property should be sold. 73 I. C. 153=24 Cr. L. J. 537=1922 O. 300.
 8. Magistrate cannot attach a public path when neither party is in possession. 848=22 Cr. L. J. 461 (Cal.)
 9. Under S. 145 moveable property cannot be attached. 22 Cr. L. J. 625.
 10. When no proceedings under S. 145 have been drawn up attachment is illegal. I. C. 848=23 Cr. L. J. 24=1921 P. 353.
 11. Attachment of a mosque is illegal. 46 P. L. R. 1903.
 12. Attaching Magistrate has inherent power to realise property attached. 1 L. 451.
 13. Magistrate has no power to treat profits claimed for disputed land as delaps to Government. 123 P. L. R. 1911.
 14. Attachment interrupts adverse possession. 1921 C. 584, 22 C. L. J. 283.
 15. Under S. 146 a Magistrate should be extremely reluctant to attach the land in dispute after the land had been cultivated every year, the Magistrate will admitting his own weakness if he states that he cannot come to a decision. P. 804=82 I. C. 367=25 Cr. L. J. 1295=5 P. L. T. 559.
 16. Order of attachment passed on no legal evidence is defective. 72 I. C. 541, 421, 61 I. C. 51.
 17. A Magistrate in deciding the question of possession under S. 145 is precluded by previous order of a Criminal Court relating to the subject of the dispute if he finds that there has been a change of possession since the previous order of the Criminal Court was passed. 33 C. 33, 1925 L. 479=95 I. C. 479=27 C. 815=27 P. L. R. 630.
 18. If the house is attached, possession is deemed to be with the Court and neither party can enter to remove moveable on premises. 1936 A. 141=37 Cr. L. J. 345.
- 4. Breach of peace.**
1. It is necessary for an order under S. 145 that there should be likelihood of breach of peace arising from the dispute between the parties with regard to the land in question. 1930 C. 715=34 C. W. N. 899=129 I. C. 610.
 2. Magistrate cannot initiate proceedings under S. 145 where the dispute between parties is likely to cause breach of peace not at the time but only at some future date. 1929 C. 341=30 Cr. L. J. 977, 33 C. 33 or 33 C. 352, 7 C. 385.
 3. The finding of breach of peace is necessary for purposes of preliminary injunction. It is not necessary that the Magistrate should record a finding to that effect without passing his final order. 1923 L. 253=24 Cr. L. J. 631.
 4. Directions under S. 145 by Magistrate after finding that there was no likelihood of the breach of peace are without jurisdiction. 1923 M. 472=74 I. C. 447 Cr. L. J. 783=17 M. L. W. 429.
 5. Where material before the Magistrate did not disclose any imminent danger of breach of peace in evidence that might be taken later on in the course of trial it could not give him a jurisdiction which he did not otherwise possess. 1917 Cr. 597, 21 C. 29.
 6. Where likelihood of breach of peace has disappeared all necessity ceases for making any orders passed on account of dispute. 1 L. 451.
 7. Where party was acting properly and within his rights there is no reason to suppose that any breach of peace was likely to be committed by him. 3 W. N. 463.
 8. The Magistrate must enquire whether a dispute likely to cause a breach of peace exists and must record a judicial decision thereon. 25 P. W. R. 1917 Cr.

Dispute relating to Immoveable Property—(contd.)

9. The Magistrate should also record the ground of his belief as to the existence of likelihood of breach of peace. 4 Cal. 650.
10. Preliminary order can be made even if the breach of peace is likely to occur two or four months later. 1932 N. 134=33 Cr. L. J. 937.

5. Burden of proof.

The *onus* lies on the plaintiff to prove nature of defendant's possession. 1923 P. C. 128=74 I. C. 747=2 P. 676.

6. Compromise.

1. Proceedings under S. 145 cannot be compromised nor can they be referred to arbitration. 1929 N. 235=121 I. C. 47, 32 C. 552, 15 C. W. N. 568, 1921 C. 637. *Cont.* 1934 O. 115.
2. Compromise as to possession will not transfer title or operate as estoppel. 45 A. 162.
3. Agreement between the parties to get the case decided on document or without adducing evidence is outside the scope of S. 145. 71 I. C. 999.

7. Cost. S. 148, Cr. P. C.

1. Cost may be awarded when Magistrate permits the withdrawal of the proceedings. 1928 S. 193=111 I. C. 441=29 Cr. L. J. 657=22 S. L. R. 386.
2. High Court can award costs in revisional proceedings under S. 145. 1926 B. 91=94 I. C. 709=27 Cr. L. J. 661. *Cont.* 48 M. 262. 1922 M. 532.
3. The Magistrate while awarding costs should ascertain the actual expenditure of the successful party. 35 I. C. 524=17 Cr. L. J. 348.
4. Question of costs need not be treated as a separate issue. It should be determined judicially. 1934 C. 95=35 Cr. L. J. 489, 23 C. 302 Expl.
5. Order as to costs can be passed simultaneously with final order in presence of aggrieved party. Fresh notice is not necessary. 1934 C. 80 (1)=35 Cr. L. J. 478.

8. Decree of Civil or Revenue Court.

1. Order under S. 145 or 146 does not interfere with the subsequent order under S. 40 of the Land Revenue Act. 90 I. C. 399=1926 O. 179=26 Cr. L. J. 1551.
2. The mere fact that in the Revenue record, the holding was joint is not sufficient to stop inquiry under S. 145. 2 L. 372, 17 B. L. R. 382, 20 C. W. N. 518.
3. Decision of a Civil Court as to proprietorship does not bar Magistrate from deciding question of possession. 1928 N. 284=111 I. C. 662, 86 I. C. 806=1925 P. 593, 75 I. C. 535=1924 P. 509.
4. Magistrate must give effect to the decree of a Civil Court. 91 I. C. 75=27 Cr. L. J. 43, 77 I. C. 1005=1922 P. 210, 75 I. C. 363, 33 C. 34. *See* 60 I. C. 430.
5. Magistrate cannot go behind decree of a Civil Court. 73 I. C. 53=1923 C. 176=24 Cr. L. J. 517=27 C. W. N. 267, 66 I. C. 817.
6. Order of the Civil Court as to possession is binding on the Criminal Court. 71 I. C. 785=1922 P. 13=24 Cr. L. J. 241, 71 I. C. 999.
7. Possession given by Court can be maintained. 1934 N. 217, 1934. P. 565.

9. Emergency.

1. Sub-Divisional Magistrate is the sole judge of emergency. 1934 O. 87 (1)=147 I. C. 672=35 Cr. L. J. 472.
2. In case of emergency Magistrate can order the Police to take charge of moveable property in a building when the dispute is regarding both. 1933 L. 409=34 P. L. R. 368.

10. Fresh Proceeding.

Order in previous proceedings under S. 145 will not bar initiation of fresh proceedings. 1935 C. 494=157 I. C. 674.

11. Moveable Property.

1. Moveable property is not ordinarily within the purview of S. 145 but in case of

Dispute relating to Immoveable Property—(contd.)

emergency Magistrate can order the Police to take charge of moveable property building when the dispute is regarding both. 1933 L. 409=34 P. L. R. 368= Cr. C. 650, 13 Cr. L. J. 222 Rel. on.

2. If a house is attached, the possession is deemed to be that of Court. Neither p can remove moveables without the order of Magistrate. 1936 A. 141=37 L. J. 346.

12. Nature of proceedings.

1. The proceedings under S. 145 are *quasi* civil proceedings. Both parties should given opportunities to adduce evidence. 1925 Cal. 263=25 Cr. L. J. 303.
2. Proceedings under S. 145 take place on behalf of the Crown on a report made to Magistrate. The process should issue at Government expenses. 1925 N. 142= I. C. 933=25 Cr. L. J. 1109.
3. An *ex-parte* order cannot be made. 1934 C. 393.

13. Object.

1. It is one of the objects of S. 145 to protect or maintain any body's possession. sole object is to prevent an imminent breach of peace. 1925 N. 142.
2. The object of S. 145 is to finally terminate the dispute between the parties so a effectively put a stop to any breach of the peace. 1925 P. 593=86 I. C. 805.
3. Protracted investigation is not within the view of S. 145, as it tends to defeat object. 1922 P. 226=66 I. C. 419=23 Cr. L. J. 275.

14. Orders which cannot be made under S. 145.

1. Order in the term "the opposite party not to interfere with the possession of first party in any way" is not one in accordance with the law. 2 P. L. T. 267.
2. A Magistrate has no jurisdiction to order a division of crops on the land between parties. 8 C. L. J. 242.
3. A Magistrate cannot order that a person shall be in possession until he has reaped the crop and then he shall give up possession to another. 1 C. L. R. 136.
4. An order of the Magistrate that two path ways on the land should be made over the first party and declaring second party to retain possession is illegal. 17 C. N. 793=14 Cr. L. J. 391.
5. A Magistrate can under S. 147 give a party the right of way in the land under dispute. 48 B. 512=1924 Bom. 452=26 B. L. R. 436.
6. A Magistrate is not competent to pass an order directing the method by which possession is to be exercised or the agency by which the person in possession is collect the profit. 36 C. 986.
7. Civil Court decreed joint possession to the petitioners and the opposite party apply for partition. The Collector through a Magistrate got the property attached under S. 145, holding that there was a dispute about the whole area. Held, if the proceedings were without jurisdiction. 1928 L. 818=110 I. C. 807=29 C. L. J. 775.
8. If the land in dispute is not within the jurisdiction of the Magistrate he cannot take proceedings under S. 145. 52 M. 241=1928 M. 1230.
9. If order is passed on no enquiry, it is without jurisdiction. 1922 M. 437.
10. If the Magistrate does not make an order in writing stating the grounds of his being satisfied about a dispute likely to cause a breach of peace, he acts without jurisdiction. 1925 L. 368=86 I. C. 801=26 Cr. L. J. 1177=26 P. L. R. 187.
11. The mode of possession or how the possession is to be exercised is not within the proviso of S. 145. 1926 C. 1022=97 I. C. 73=30 C. W. N. 873.
12. When the Magistrate has ample ground for apprehending breach of peace and he issues an order under S. 145 (1), the mere omission to frame his order in accordance with law is cured by S. 537 as no failure of justice is caused. 193 O. 316=36 Cr. L. J. 656, 55 A. 301=1933 A. 264 and 54 A. 1002=1932 A. 63 foll. 45 A. 124=1923 A. 81, 1933 R. 98, 25 M. 61, 1927 P. C. 44=28 Cr. L. J. 259 Ref.

*Dispute relating to Immoveable Property—(contd.)***15. Order without notice.**

1. If no notice is issued the order under S. 145 becomes *ultra vires*. 1930 L. 895 = 32 Cr. L. J. 139, 1922 P. 77 = 24 Cr. L. J. 345.
2. When one of the members of one of the parties is not served with a notice the proceedings are bad so far as that member is concerned. The whole order will not be invalidated, 1926 P. 67 = 89 I. C. 151 = 26 Cr. L. J. 1237.

16. Party.

1. An order passed against the father is binding on the son. 1923 A. 151 = 45 A. 306 = 71 I. C. 402, 4 P. 799 = 1926 P. 103 = 90 I. C. 513.
2. The omission to implead a tenant in possession of a portion of disputed land does not make the proceeding defective. 65 I. C. 557 = 1922 P. 371 = 23 Cr. L. J. 125.
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9. A person who applies on the ground that he is interested in the land in dispute as a tenant does not become a party. 37 C. 285, 19 Cr. L. J. 653, 25 C. W. N. 214.
10. A person who is not party to proceedings under S. 145 is not bound by order passed by Magistrate. 1935 L. 115 (2) = 1935 Cr. C. 181.

17. Period of possession.

1. Two months from the date of order do not mean two months from the date of complaint. 1929 O. 526 = 1929 Cr. C. 641.
2. If the opposite party is admittedly in possession at the date of order action under S. 145 is not to be taken. 1930 L. 422 = 126 I. C. 577 = 31 Cr. L. J. 1075.
3. A Magistrate cannot take into consideration the effect of an alleged dispossession more than two months prior to the date of his order. He is to decide which of the parties is in possession at the time when the Magistrate decides the question of possession. 15 B. 152, 1940 S. 52 = 120 I. C. 90 = 30 Cr. L. J. 1124.
4. If the Magistrate delays in passing a preliminary order through the *bona fide* complainant who was forcibly dispossessed, he should not be deprived of the benefit of S. 145 by reason of delay caused in the Magistrate's Court. 30 Cr. L. J. 144 = 113 I. C. 336 = 1929 M. 198 = 52 M. 66, 1927 M. 816 = 28 Cr. L. J. 782.
5. On the date when proceedings under S. 145 were instituted and for two months before the members of the first party were in possession having dispossessed the second party, held, that possession could not be given to the second party under S. 145. 49 C. 177, 65 I. C. 444 = 1922 M. 356 = 23 Cr. L. J. 92.
6. In case of forcible dispossession more than two months prior to preliminary order, the possession of opposite party must be maintained. 1935 A. 35 = 152 I. C. 496 = 36 Cr. L. J. 102.

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18. Police report.

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Dispute relating to Immoveable Property—(contd.)

the whole of it. 30 Cr. L. J. 1027=1929 C. 468=119 I. C. 372, 28 A. 406.

2. Police report must be the result of their inquiry and not merely copy of reports received. The Magistrate must state his own satisfaction of the truth of report. 1935 N. 78=17 N. L. J. 231, 1926 N. 371=27 Cr. L. J. 68 and 1928 N. 81=28 Cr. L. J. 929 Dist. 33 C. 352 and 33 C. 33 Ref.

19. Possession.

1. Magistrate's duty is to find peaceful possession. Ouster of a person lawfully in possession by a trespasser does not confer on the latter any rights which can be recognised under this section. 4 C. 417.
2. S. 145 does not cover a case of joint possession. 1934 N. 196.
3. The recent occupation of a trespasser is not a possession which a Magistrate can direct the party to retain under this section. 8 P. R. 1876.
4. Court should take into consideration present possession—Order in previous proceedings under S. 145 will not bar initiation of fresh proceedings. 1935 C. 494=157 I. C. 674.

20. Symbolical possession.

The Criminal Court need not record the symbolical possession of the decree-holder. 49 C. 177, 1925 C. 186=81 I. C. 928=25 Cr. L. J. 1104.

21. Preliminary order.

In preliminary order under S. 145 Magistrate should briefly state reasons as to how he was satisfied as to likelihood of dispute. Omission is not fatal but only irregularity curable under S. 537. 1934 N. 112=151 I. C. 348, 1927 R. 177, 36 M. 275 and 32 A. 132 Rel. on. 1922 C. 382 Exp.

22. Review of order.

A Criminal Court has no authority to review a final order passed under S. 145, Cr. P. C. 1935 R. 447, 35 C. 350 Foll.

23. Transfer of case.

1. S. 526 does not empower the High Court to transfer proceedings under S. 145 of the Cr. P. C. Such proceedings cannot be described as a criminal case in which a person is accused of an offence. 1925 L. 48=76 I. C. 868=25 Cr. L. J. 276.
2. Although a case in clause 8, S. 526 included proceedings under S. 145 a party in a proceeding in S. 145 cannot apply for adjournment under clause 8. 6 P. 553.
3. The fact that the trying Magistrate is believed to have made up his mind that there is no likelihood of breach of peace is not sufficient ground for transfer. 1923 O. 161=76 I. C. 562=25 Cr. L. J. 194.

24. Revision.

1. Revision against an order under S. 145 abates on the death of petitioner. 23 P. R. 1919 Cr.
2. High Court will interfere in revision when proceedings are irregular and Magistrate acts without jurisdiction. 40 P. R. 1917 Cr.
3. High Court will not interfere with irregular proceedings under S. 145 on revision. 68 P. L. R. 1914, 1933 O. 253. See 123 P. L. R. 111.
4. Where there was evidence that both parties were attempting to cultivate the land, Held, that this was likely to cause breach of peace and the mere fact that the Magistrate had not made this clear in his order did not justify the High Court interfering in revision. 1925 N. 448=87 I. C. 923=26 Cr. L. J. 1035, 1922 A. 31.
5. Where the Magistrate failed to decide as to which party was in possession on the date of preliminary order, High Court will interfere in revision. 1923 M. 142, 2 L. 372, 23 Cr. L. J. 620, 18 M. 41, 16 Cr. L. J. 239, 7 Cr. L. J. 450.
6. Mere omission by Magistrate to state that he was satisfied from the Police report that there was likelihood of the breach of peace is not revisable. 59 I. C. 401.
7. High Court cannot interfere with the decision of the Trial Court on the factum of possession as long as there is evidence in support of that finding. 93 I. C. 695=27 Cr. L. J. 471=27 P. L. R. 102, 23 I. C. 651, 19 Cr. L. J. 113.

Dispute relating to Immoveable Property—(contd.)

8. Finding based on evidence in mutation proceedings is bad and is open to revision. 1922 O. 25=69 I. C. 268=23 Cr. L. J. 684.
9. Where the Magistrate had gone at length into the question of ownership and his order did not explain how a breach was apprehended it should be set aside on revision. 1927 L. 822=100 I. C. 712=28 Cr. L. J. 328=28 P. L. R. 107.
10. An arbitrary refusal to examine more than a certain number of witnesses effects the exercise of jurisdiction and the order is revisable. 61 I. C. 718=22 Cr. L. J. 430.
11. On a difference of opinion in matters under S. 145 the Senior Judge's opinion prevails as the jurisdiction exercised by High Court is under S. 107 of the Government of India Act and not under Ss. 435 and 439, Cr. P. C. 22 Cr. L. J. 99.
12. Refusal to adjourn a case is not sufficient to set aside an order. 1932 S. 145.
13. If no prejudice is caused whole proceedings should not be set aside. 1932 A. 446.
14. Where there was no question of law and on facts the reasons given by Magistrate were not unsound, High Court refused to interfere. 1934 P. 33=35 Cr. L. J. 611.
15. Refusal to summon witnesses cited by complainant even before prosecution evidence has begun, amounts to grave error. 1936 N. 192.

25. Security for keeping peace.

1. It may sometimes be necessary to bind the parties under S. 107 even though proceedings under S. 145 have been taken. 61 I. C. 240=22 Cr. L. J. 384.
2. S. 145 does not apply when one party is clearly in possession and the other party wants to take forcible possession. The proper remedy is to take proceedings under S. 107. 59 I. C. 374=22 Cr. L. J. 86.
3. One of the parties within two months prior to the proceedings obtained sanction from the municipality and proceeded to dig a tank on the land in dispute, held that it was a forcible and wrongful possession. 20 C. W. N. 978.
4. First party was in possession more than two months preceding the date when proceedings under S. 145 were instituted although the second party obtained possession from the Civil Court one year ago, held that the Magistrate should pass order in favour of the first party. 49 C. 177 (181)=1922 C. 364.
5. It is not necessary that actual force of violence should have been used to some person before the dispossession can be said to be forcible. There can be forcible possession by a show of criminal force. 25 C. W. N. 601.
6. For S. 145 there should be a forcible as well as wrongful dispossession, for some wrongful dispossession the remedy lies in the Civil Court. 3 P. 809 (813-14).

26. Title.

Questions of title are of little importance except in so far as they determine actual possession. 1934 C. 95=35 Cr. L. J. 489.

27. The ingredients of S. 145.

1. Where there is no likelihood of the breach of peace proceedings under S. 145 are incompetent. 1927 C. 944, 64 I. C. 288, 1926 S. 85.
2. The two essential conditions for S. 145 are firstly that there should be dispute over land or water and secondly such dispute is likely to cause breach of peace. 1926 S. 53=89 I. C. 156=26 Cr. L. J. 1292.
3. Religious nature of dispute leads to no inference that there is likelihood of breach of peace, although past conduct of the parties is good evidence. 75 I. C. 990=1924 L. 678=25 Cr. L. J. 78.
4. The Magistrate's jurisdiction ceases when apprehension of the breach of peace does not exist. 1923 C. 577=76 I. C. 963=25 Cr. L. J. 291.

28. The local inquiry and local inspection. S. 148, Cr. P. C.

1. Decision based on local inspection without recording its result is bad in law. 1922 P. 294=81 I. C. 33.
2. Inquiry of Commissioner who is appointed to survey is not local enquiry but it is a mere ministerial Act. 1 P. 75=1922 P. 224=23 Cr. L. J. 152.

Dispute relating to Immoveable Property—(concl'd.)

3. The fact that in the course of Magistrate's local inspection he found hundreds of people who were all in favour of second party is no ground for passing order in favour of second party. 1927 P. 301=102 I. C. 779=23 Cr. L. J. 603.
4. The order based on unrecorded local inspection and judgment in another criminal case must be set aside. 1921 C. 272=65 I. C. 855=23 Cr. L. J. 199.
5. Local inspection is not a legal substitute for an evidence where the evidence is practically ignored. 61 I. C. 712=22 Cr. L. J. 424.
6. The Magistrate must place on record the result of local inspection. 72 I. C. 951=1923 P. 366=24 Cr. L. J. 487=4 P. L. T. 297.
7. The object of local inspection is to understand and appreciate the topography of the land in dispute in order to aid the Magistrate in appreciating the evidence offered in Court. 77 I. C. 492=25 Cr. L. J. 412=1922 P. 249, 22 Cr. L. J. 424.
8. As a rule it is better to have the local investigation carried out by some other person although the trying Magistrate himself can make the local inspection. 15 C. L. J. 267=12 Cr. L. J. 319.
9. The deputed Magistrate must make the enquiry himself, he cannot delegate it to somebody else. 20 Cr. L. J. 107=48 I. C. 987.
10. When the first class Magistrate recorded no evidence himself but solely acted upon the evidence it cannot be a subject matter of a local enquiry. Held, that this defect or irregularity is cured by S. 537. 18 Cr. L. J. 715=40 I. C. 715.
11. A Magistrate cannot pass his order merely on the report of the Subordinate Magistrate without examining any witnesses. 10 A. L. J. 465=13 Cr. L. J. 777.

DISQUALIFICATION OF JUDGE AND MAGISTRATE. S. 556, Cr. P. C.

1. Appeal—disqualification of Judge. See Appeal.

1. A Sessions Judge who files complaint under S. 476 is disqualified from hearing the revision application made to him owing to complaint under S. 476 having been dismissed. The Judge or Magistrate who proceeds under S. 476 is a party to the case. 1927 Bom. 35=99 I. C. 85=28 Cr. L. J. 53.
2. A witness made two conflicting statements in a trial before a Sessions Judge who ordered the prosecution. The Sessions Judge cannot hear appeal from the conviction. 8 L. 496=1927 L. 671=106 I. C. 342=29 Cr. L. J. 6.
3. Complaint was filed by the District Judge under S. 69 of the Provincial Insolvency Act and the insolvent was convicted. The same Sessions Judge is disqualified from hearing the appeal. The consent of the party cannot effect the absolute disqualification imposed. 1922 L. 30=67 I. C. 622=23 Cr. L. J. 446.

2. Business or friendly relations.

If a Magistrate is in close business or friendly relationship with a party, it is on the whole undesirable that he should take part in hearing a case in which the interests of such a person are grossly affected. 8 P. 575=1929 P. 151=116 I. C. 762.

3. Conducting identification proceedings.

Where the Committing Magistrate conducted all the Jail identifications in person and went into the witness box during the committal proceedings held, that although the procedure is open to objection yet where the Magistrate is not to decide but solely to commit, there is nothing objectionable to the course adopted by him and the commitment is not vitiated. 1927 O. 369=106 I. C. 721, 1932 L. 196.

4. Directing prosecution.

1. Where a District Magistrate as Inspector of Factories ordered enquiry to be made and directed prosecution of the accused under the Factories Act, he is disqualified from trying the case. 1 L. 35, 24 M. 238 Dist. 5 P. W. R. 1912 Ref.
2. Where a Cantonment Magistrate ordered the prosecution of the accused as Secretary and proceeded to try the case, held, the case ought to be transferred to another Magistrate. 20 A. L. J. 911.
3. A Magistrate who upon information furnished to him, directs the issue of a warrant under S. 6 of the Gambling Act, is disqualified from trying the case. 13 Bur. L. T. 154=61 I. C. 835=22 Cr. L. J. 451.

qualification of Judge and Magistrate—(contd)

4. When after the close of the trial Magistrate orders the Police to send up a charge sheet in respect of a witness he is disqualified from trying him. 1921 B. 363.
 5. Upon a report from Tahsildar a Magistrate authorised the Tahsildar to prosecute the accused and the Tahsildar lodged a complaint before the same Magistrate who tried the case, held, that the Magistrate was not disqualified since he only authorised the prosecution and not directed it. 24 M. 238.
 6. A Magistrate who as president of Town Committee sanctioned the prosecution, can try the case himself, but it is desirable that some other Magistrate should try it. 1 R. 517=25 Cr. L. J. 273=1924 R. 87=76 I. C. 865.
 7. A Magistrate taking a mere formal part in the prosecution is not disqualified from trying the case. 36 C. 869, 50 C. 135=1922 C. 298.
 8. The mere fact that the Magistrate is a Municipal Commissioner does not necessarily disqualify him from holding trial in which Municipal matter was involved, but it is a different matter when Magistrate is practically one of the prosecutors and the Judge. 10 C. 1030, 23 C. 44.
 9. If a Magistrate as Vice-President of the Municipality sanctioned or concurred in sanctioning the prosecution of the accused he is disqualified from trying him. 18 Bom. 442, 5 P. R. 1895 Cr., 23 Cr. L. J. 704, 14 N. L. R. 14.
 10. The District Magistrate is not disqualified from hearing a case merely because he happens to be the Chairman of the Municipal Board. 1899 A. W. N. 74 *Cont.* 23 C. 44, 15 M. 83.
 11. A Magistrate incharge of opium and excise administration of a District is not precluded from trying offences against the Opium Act. 15 A. 192.
 12. A District Magistrate is not precluded from trying an offence under the Police Act, merely because he is head of the Police. 22 A. 340.
 13. A Magistrate as President of the Ootroi Sub-Committee directing the prosecution of accused for evading payment of ootroi is debarred from trying the case even though the accused had consented to be tried. 32 A. 635, 67 I. C. 622.
 14. Cantonment Magistrate can try the complaint lodged by Cantonment Board even if the Magistrate is member of the Board. 1928 L. 946=111 I. C. 326=29 Cr. L. J. 822.
 15. The mere fact that the Magistrate issued a search warrant prior to the institution of a case does not disqualify him from trying the case. 1926 A. 428=95 I. C. 319=27 Cr. L. J. 783=24 A. L. J. 568.
 16. In a prosecution under S 282, Companies Act, when the Magistrate is a shareholder of the Company, he is disqualified to try the case. 53 B. 416=1929 B. 404=122 I. C. 141=31 B. L. R. 925.
 17. A Court which sanctions or directs a prosecution is not thereby rendered incompetent to try the offence or hear an appeal, although there may be special circumstances which render it improper to do so. 1924 N. 23=26 Cr. L. J. 1481.
 18. A Magistrate asked his fellow passengers in the Railway carriage to desist from smoking and on their refusal arrested and tried them. Held, he is morally disqualified from trying the accused. Rattan Lal 339.
 19. In a Sessions trial a witness was produced, who was ordered to be prosecuted under S. 411 by the City Magistrate. He committed him to the Court of Sessions. Held, that the same Judge could not try him without the permission of the High Court. 1935 S. 1=155 I. C. 448=36 Cr. L. J. 821. 2 Q. B. D. 558, *Rel on.*
- 5. Local enquiry or Directing Investigation.**
1. A Magistrate holding enquiry under S. 202, Cr. P. C., is not disqualified from trying the case. 24 C. 167.
 2. The fact that the investigating Magistrate expressed an opinion in the report, is no bar to his holding the trial. 4 C. W. N. 604.
 3. A Magistrate taking an active part in forwarding the Police enquiry and collecting evidence is disqualified from trying the accused. 23 C. 328.

Disqualification of Judge and Magistrate—(contd.)

4. Police inquiry was ordered on a petition that accused had caused a false entry in a death Register. He could not take cognizance on Police report of an offence under S. 471. 1934 P. 156.

6. Local inspection.

1. There may be circumstances under which it would be advisable to direct a transfer from the Court of Magistrate who has made a local enquiry. 1930 A. 737=123 I. C. 685=31 Cr. L. J. 555=1930 A. L. J. 606.
2. A Magistrate in making a local inspection created some evidence and introduced it into the case. Held, he acted beyond his jurisdiction. 1929 P. 160=116 I. C. 767.
3. The judgment of a Magistrate is not vitiated by the fact that he inspected the spot and stated in his judgment what he saw there. 1923 M. 694=25 Cr. L. J. 7.
4. Recording result of local inspection after delivery of judgment is irregular. 1925 C. 353=81 I. C. 193=25 Cr. L. J. 705.
5. Inspection of the spot by the Magistrate does not disqualify him from trying the case. 13 P. R. 1901 Cr., 37 C. 34.
6. In inspecting the spot the Magistrate should be careful not to allow any one on either side to say anything to him which might prejudice his mind. 39 C. 476.
7. Where the Magistrate did much more than viewing the place for the purpose of understanding and deciding the evidence and imported in his judgment matters of opinion and inference based upon circumstances not on the record the procedure was irregular and the accused should be tried by another Magistrate. 37 C. 340.
8. When the Magistrate noted the position of the accused and other men at the time of the alleged occurrence which he could not possibly note from locality he was disqualified from trying the case. 3 C. W. N. 607.

7. Magistrate as witness.

1. Trial by a Magistrate of an accused in a case wherein the Magistrate is himself a witness is illegal. 2 C. 405, 21 P. L. R. 1904, 20 Cr. L. J. 45.
2. A Magistrate holding a local investigation and obtaining information from various sources about the offence is incompetent to try the case. 21 C. 950.
3. A Magistrate cannot import his personal knowledge in a judgment. If he does so, he makes himself a witness in the case and renders himself incompetent to try it. 20 C. 857.
4. The Magistrate should not try an offence under S. 174, I. P. C., when the offence has been committed before him in his capacity as Settlement Officer. 2 A. 405.
5. The examination of the trying Magistrate as a witness does not prevent him from deciding the case. 1927 O. 296=103 I. C. 401=28 Cr. L. J. 673.
6. The mere fact that the existence of a village feud may be within the knowledge of a S. D. O. does not necessitate the transfer of the case to another Magistrate from him. 1927 O. 31=99 I. C. 97=28 Cr. L. J. 65.
7. A Magistrate who was cited as a witness recorded his own evidence and was cross-examined and the accused took no steps to get the case transferred from his Court. Held, that the evidence being of formal nature he was not personally interested within the meaning of S. 566. 1926 O. 557=97 I. C. 953=27 Cr. L. J. 1193.
8. An accused has right to examine the Magistrate issuing warrant under the Public Gambling Act, as a witness and he is materially prejudiced by the trial of the case by the very Magistrate issuing the warrant. 1924 L. 247=73 I. C. 521.
9. If a Magistrate has personal knowledge under S. 190 C. is not with the provisions of S. 191. 25 Cr. L. J. 249.

8. Pecuniary and other interests.

1. A Magistrate who is a shareholder of a Company is disqualified from trying the case. 29 Bom. 502.
2. Partial interest even to a small extent is a sufficient disqualification, 53 Bom. 716.

Disqualification of Judge and Magistrate—(concl'd.)

3. A Magistrate who is servant of a corporation is deemed to have such an interest in the result of the prosecution by the corporation as to disqualify him from trying the case. 10 C. 194, 7 C. 322, 18 B. 442.
4. The mere fact that the Magistrate is the master of the complainant does not disqualify him to try the case. 9 B. 172, *See* 95 I. C. 764.
5. Where the complainant was the servant of the Magistrate and the Magistrate's wife was driving in the dog-cart for passing which the accused was charged with rash and negligent driving the Magistrate was disqualified to try the case. 14 B. 572.
6. The mere fact that the District Magistrate is in charge of the Court of Wards, does not disqualify him from trying the case of theft arising out of a dispute between landlord and a tenant in the estate. 46 C. 854, 28 C. 297.
7. A public officer whose duty it is to see that the law is obeyed cannot be said to be personally interested in the prosecution and trial of offender. 15 A. 192.
8. Magistrate who took no active interest in the arrest of an accused and Police proceeding is not disqualified from trying the case. 20 Cal. 857, 23 Cal. 323.
9. If one of the charges against accused is a contemplated offence against the Magistrate, he should not deal with his trial application. 1935 L. 230=35 Cr. L. J. 1180.

9. Prosecution by Local Bodies.

1. The Magistrate in his capacity as Municipal Commissioner invited the attention of the executive officer with regard to keeping of swine and the Health Officer instituted prosecution. Held, that the convictions by that Magistrate were not improper. 1923 A. 483=71 I. C. 359.
2. Where a Cantonment Magistrate ordered the prosecution of the accused as Secretary and proceeded to try the case, held, the case ought to be transferred to another Magistrate. 20 A. L. J. 911.
3. A Magistrate who as President of Town Committee, sanctioned the prosecution, can try the case himself, but it is desirable that some other Magistrate should try it. 1 R. 517=1924 R. 87=76 I. C. 865=25 Cr. L. 273.
4. The mere fact that the Magistrate is a Municipal Commissioner does not necessarily disqualify him from holding trial in which Municipal matter was involved, but it is a different matter when Magistrate is practically one of the prosecutors and the Judge. 10 Cal. 1030.
5. If a Magistrate as Vice President of the Municipality sanctioned or concurred in sanctioning the prosecution of the accused he is disqualified from trying him. 18 B. 442, 5 P. R. 1896 Cr., 23 Cr. L. J. 704.
6. The District Magistrate is not disqualified from hearing a case merely because he happens to be the chairman of the Municipal Board. 1899 A. W. N. 74, *Cont.* 23 Cal. 44, 15 M. 83.
7. A Magistrate as President of the Octroi Sub-Committee directing the prosecution of accused for evading payment of octroi is debarred from trying the case even though the accused had consented to be tried. 32 A. 635.
8. Cantonment Magistrate can try the complaint lodged by Cantonment Board even if the Magistrate is member of the Board. 1923 L. 946=29 Cr. L. J. 822.

10. Tendering pardon to approver.

- A District Magistrate is not precluded from trying the case of approver to whom pardon was tendered with his sanction, although the Magistrate tendering the pardon is debarred under S. 337 (4), Cr. P. C. 30 P. R. 1919 Cr.

DIET MONEY.

There is no provision in the Code, under which the Court can order payment of diet money to a witness. That power is vested in the Court under the general rules of the High Court and therefore a suit for recovery of such money is maintainable in a Civil Court. S. 547, Cr. P. C., does not apply to such a case. 1926 C. 259=90 I. C. 488=29 C. W. N. 1033.

*Distinct Offences.***DISTINCT OFFENCES.** S. 233, Cr. P. C. S. 71 I. P. C.**1. Aggregate sentence.**

1. Aggregate sentence of 20 years on conviction of several offences is illegal. 105 P. L. R. 1901.
2. Aggregate sentence within specified limits is not competent for conviction at one trial of distinct offences. 14 P. R. 1856 Cr.

2. Alternative charge. See Charge.

1. Alternative charge and conviction for distinct offences is not possible. 43 P. R. 1887 Cr.
2. There is no misjoinder in charging the accused with the main offence, namely, murder with S. 201 to 203, I. P. C. 1930 M. 870=32 Cr. L. J. 253.
3. A person was charged in the alternative with having made two contradictory statements and was convicted in the alternative either under S. 182 or 193. The Magistrate being unable to find which of them was false, held, that there were two distinct offences to which two separate charges were necessary. 10 B. 124.

3. Concurrent sentence. See Sentence—11.**4. Consecutive sentence. See Sentence—13.****5. Cross cases. See Counter cases.**

There were two cross cases arising out of a riot and although two separate records were prepared, only one joint trial was held and prosecution evidence in each case was treated as defence evidence in the other. The procedure is illegal and the trial must be quashed. 1925 L. 149=81 I. C. 39=25 Cr. L. J. 551.

6. Cumulative sentence. See Sentence—13.

1. Cumulative sentence for distinct offences is illegal, 8 P. R. 1895 Cr., 15 P. R. 1896 Cr.
2. Cumulative sentence for distinct offence of rioting and hurt is justified. 32 P. R. 1885 Cr. See also 8 P. R. 1895 Cr.
3. Separate sentence for more than one offence in the same transaction is legal. 8 P. R. 1888 Cr.
4. If the act of accused coupled with his knowledge or intention constitutes a graver offence and is also punishable under a less grave offence, he is not liable to cumulative sentence. 11 B. H. C. R. (Cr. C.) 13.

7. Distinct offences—What are—.

1. Theft and escape from lawful custody. 3 L. B. R. 221=4 Cr. L. J. 389.
2. Kidnapping a boy and assaulting the mother who demanded the boy. 26 M. 454.
3. Simple hurt and grievous hurt under S. 325. 50 C. 94=1922 C. 573.
4. Abetment of falsification of document and fraudulent destruction of document. 26 M. 125.
5. Offences under Ss. 411 and 458, I. P. C. 51 P. R. 1905 Cr.
6. Theft and receiving stolen properties. 28 C. 10, 1923 L. 394.
7. Receiving stolen properties and habitual dealing in stolen properties. 8 C. 634.
8. Criminal misappropriation and cheating. 13 C. W. N. 1089.
9. Offences under Ss. 167 and 466, I. P. C. 8 C. 450.
10. Offences under Ss. 411 and 489 (c), I. P. C. 29 C. 387.
11. Offences under Ss. 182 and 500, I. P. C. 37 C. 604.
12. Theft and receiving illegal gratification for the restoration of stolen properties. 14 Bur. L. R. 67.
13. Offences of belonging to a gang of dacoits and the offence of committing dacoity. 1852 A. W. N. 178.
14. Embezzlement of money (S. 409) and falsification of accounts (S. 477-A) covering items other than those embezzled. 38 A. 42.

distinct Offences—(contd.)

15. Receiving stolen property on different occasions for the articles were the proceed of a burglary. 2 P. L. T. 47.
16. Two attempts at cheating committed on two different dates. 2 C. L. J. 618.
17. Wrongful confinement and torture committed at several distinct times and places. 1919-M. W. N. 199.
18. Misappropriation of three sums of money from three distinct persons. 6 C. L. J. 757.
19. Cheating three different persons. 41 C. 65, 1922 O. 250=23 Cr. L. J. 687.
20. Misappropriation of two sums of money collected on different dates. 40 C. 846.
21. Theft and causing hurt to the complainant sometimes after to deter him not to go to the Police Station. 1924 A. 211=81 I. C. 612=21 A. L. J. 859.

8. Distinct offences—What are,—not—

1. Making of any number of false statements in the same deposition, is one aggregate case of perjury. 36 C. 808.
2. If a person is found in possession of a number of stolen articles he is guilty of a single offence and it makes no difference whether the articles belonged to a single owner or different owners. 45 A. 485, 50 C. 594, 3 P. 503=1925 P. 20.
3. The mere fact that the property stolen on two different occasions is found at one and the same time in the possession of the accused is not sufficient to prove that the accused has committed two different offences under S. 411. 15 A. 317, 15 C. 511.
4. Stealing of several bullocks from the same man at the same time is only one offence. 1881 A. W. N. 154.
5. Misappropriation of several books of account in respect of the same estate though on different occasions is one offence. 17 C. W. N. 429.
6. Where a person falsely entered the name of his private servant in the muster roll register and committed criminal breach of trust by unlawfully paying wages for a year. Held, that each act constituted distinct breach of trust and falsification of account and the joinder of charges was illegal. 130 I. C. 350=32 Cr. L. J. 540.
7. Offences under Ss. 380—457 committed on different dates are distinct offences, each requiring a separate trial 1932 B. 277=33 Cr. L. J. 619.
8. Misappropriation of several sums of money on several occasions in regard to one individual is one offence. 14 Cal. 128. See 27 C. 839.
9. Receiving bribe partly on one day and partly on another is one offence. 5 C. W. N. 332.
10. Theft of a box and bicycle from one person committed at the same time is one offence. 21 Cr. L. J. 682.
11. Theft of two articles belonging to two different persons committed in one enterprise is only one offence. 90 I. C. 151.
12. When a charge of conspiracy is established, the accused could be jointly tried for offences committed in pursuance of conspiracy. 1932 A. 73=137 I. C. 73.
13. Accused were charged under Ss. 302—201, I. P. C. and were acquitted under S. 302, but convicted under S. 201. Held, there was no misjoinder of charges. 1932 A. 71.
14. The accused was charged with having used as genuine a forged pass book, the charge also specifying three forged counterfoils therein. Held, that though the charge was improper, the accused was not prejudiced and the conviction should not be set aside. 1932 C. 39=55 C. L. J. 349.

9. Procedure.

1. If for other distinct offences separate charge is not framed the irregularity is cured by Ss. 255—537. 66 I. C. 672=1921 S. 47=16 S. L. R. 15.
2. The objection as to violation of S. 233 can be taken by the High Court in revision. 1921 P. 291.
3. When the accused defended the complainant on several occasions and it is not clear from the charge as to which incident each one of the two accused was called upon

Distinct Offences—(concl'd.)

to meet, such a charge is not in compliance with S. 233. 1930 Sind 62=119 I. C. 532=30 Cr. L. J. 1073, 11 C. 106, 30 C. 102.

4. The breach of the provisions of S. 233 is an illegality vitiating the trial. 25 M. 61, 130 I. C. 350, 1932 B. 277=34 B. L. R. 590. See 1932 A. 73=137 I. C. 73.

5. S. 233, Cr. P. C. applies to summons cases also. 35 L. W. 661.

10. Separate sentences. S. 71, I. P. C. See —3.

1. Separate sentences can be passed under S. 147 and under S. 325, read with S. 149, 134 I. C. 1041=1931 C. 606=33 Cr. L. J. 1.

2. If accused is convicted under S. 143 and under Ss. 341—149, there should be only one sentence. 1930 L. 1044=129 I. C. 221=32 Cr. L. J. 249.

Separate sentences can be passed under Ss. 147 and 323. 1933 M. 338=55 M. 481. 1928 M. 18 Foll. 20 Cr. L. J. 145, 16 C. 725, 40 C. 511, 17 B. 250, 7 A. 29, 7 A. 757 Ref. on. 1922 M. 405 and 1927 M. 970 Not Foll.

DISTRICT MAGISTRATE—

1. Additional.

1. Additional District Magistrate is subordinate to District Magistrate. 25 P.R. 1908 Cr.
2. District Magistrate can revise proceedings of Additional District Magistrate. 25 P. R. 1908 Cr.

2. Bail by— See Bail 5.

3. Definition of— S. 10, Cr. P. C.

1. The term Zillah Magistrate used in Bombay Regulations means a District Magistrate. 3 B. H. C. R. 11, 7 B. H. C. R. 59.
2. A Deputy Commissioner in a non-Regulation Province is a District Magistrate. 16 W. R. 1.
3. A Presidency Magistrate is not included in the term of District Magistrate. 32 M. 103

4. Delegation of Powers. See Delegation.

5. Instructions to Subordinate Magistrates.

Subordinate Magistrates are not legally bound by District Magistrate's general instructions in particular cases. 38 M. 489 (490)=16 Cr. L. J. 629.

6. Jurisdiction of—

1. Acquittal by a District Magistrate without any appeal against Subordinate Magistrate's order is not competent. 5 P. R. 1869 Cr.
2. Conviction and sentence on investigation by a Subordinate Magistrate is illegal. 65 P. R. 1866 Cr., 17 P. R. 1867 Cr., 25 P. R. 1905 Cr.
3. District Magistrate has no power of quashing sentence and ordering retrial on reference under S. 349 (2), Cr. P. C. 14 P. R. 1900 Cr.
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10. Transfer of cases by— See Transfer—8.**DISTURBING RELIGIOUS ASSEMBLY. S. 296, I. P. C. See Procession.****1. Causing disturbance.**

Mere spreading of false rumour although resulting in serious disturbance does not amount to causing disturbance. 51 I. C. 197=20 Cr. L. J. 421=17 A. L. J. 820.

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1. The carrying of flags through public streets in a procession of certain Lodhas to a temple is a religious assembly and attack on it is an offence under S. 296. 34 A. 78, 26 M. 554, 32 M. 527.
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4. All the four Schools of Mohammadans have equally right to pray and a person uttering *Amin* loudly in prayer is not guilty under S. 296. 12 A. 494 (502-506).

Distinct Offences—(could.)

to meet, such a charge is not in compliance with S. 233. 1930 Sind 62=119 I. C. 532=30 Cr. L. J. 1073, 11 C. 106, 30 C. 102.

4. The breach of the provisions of S. 233 is an illegality vitiating the trial. 25 M. 61, 130 I. C. 350, 1932 B. 277=34 B. L. R. 590. See 1932 A. 73=137 I. C. 73.
5. S. 233, Cr. P. C. applies to summons cases also. 35 L. W. 661.

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1. Separate sentences can be passed under S. 147 and under S. 325, read with S. 149, 134 I. C. 1041=1931 C. 606=33 Cr. L. J. 1.
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DISTRICT MAGISTRATE—**1. Additional.**

1. Additional District Magistrate is subordinate to District Magistrate. 25 P. R. 1908 Cr.
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Disturbing Religious Assembly—(concl'd.)

5. The case would be different if *Amin* is spoken loudly for the purpose of disturbing others engaged in prayer. 7 A. 461, 13 A. 419.
6. A religious assembly does not possess the right to perform a worship on the highway. 26 M. 554, 33 P. R. 1909 Cr.
7. If the worship is unauthorised or is colourable one, S. 295 does not protect such religious worship or ceremony. 23 C. 60.
8. Disturbance does not imply that the worship or ceremony should be actually stopped or interrupted. 1 Weir 259.
9. Every one has the right of conducting religious procession through public street. Knowledge of forcible opposition does not make it unlawful. 1925 O. 636.
10. A dispute arose over a Tazia procession. Mohammedans had no right to take procession through that grave. Held, Hindus were not guilty for obstructing them. 1933 O. 196=34 Cr. L. J. 793.

3. Procedure.

A body of men disturbing a religious procession may be guilty of rioting. 15 I. C. 806.

DIVORCE. See Maintenance—15. Bigamy—14.

Power of divorce is recognized among *Khatiks*—low class Sudras. 181 P. L. R. 1914.

DIVORCED WIFE. See Enticing away married woman.**DIWALI GAMBLING. See Public Gambling Act.**

1. To issue warrant to raid houses where gambling goes on at the time of Diwali is highly undesirable as the Police are merely encouraged to run in number of perfectly innocent persons in order to get reward. 1930 O. 403=123 I. C. 65.
2. The presumption raised by the Act is not as strong when the gambling takes place openly on the Diwali occasion, as when it takes place at other times in a private house. 1922 O. 224=71 I. C. 62=24 Cr. L. J. 14=25 O. C. 111.
3. Diwali gambling is no offence if it is not in contravention of the Act. Where the only evidence was that the owner of the house had in front of him a small pot containing As. 15 and there was no reason to suppose that the sum represented his stake and the game played were quite trifling. Held, that it was only a case of house and no offence was committed under the Act. 1 W. N. 757=32 Cr. L. J. 82.
4. Allowing the use of house for Diwali gambling without demanding any rent, etc., is not keeping a common gambling house. 50 I. C. 171=20 Cr. L. J. 283.

DOCK.

It is entirely an act of indulgence on the part of the Court to allow an accused person to remain outside dock. 15 I. C. 1000.

DOCTOR'S CERTIFICATE. See Age, certificate.

1. A certificate by a qualified doctor is sufficient evidence of accused's inability to attend, unless the certificate is to be disregarded for any reason. 1925 L. 101=81 I. C. 126=25 Cr. L. J. 638.
2. The certificate of doctor is not *per se* admissible being hearsay evidence. To make it admissible, the author must be produced to prove it. 47 B. 74=1923 B. 183=24 B. L. R. 803.

DOCUMENT. Ss. 29, 30, 175, 204, 477, I. P. C.**1. Admission of—after close of case.**

Admission of document after close of case and without notice or opportunity to the other party to adduce rebutting evidence is illegal. 1934 P. 86=147 I. C. 774=13 P. 153=35 Cr. L. J. 481.

2. Alteration in.—See Forgery—2.**3. Antedating. See Forgery—3.**

Document—(contd.)

4. Concealing, defacing or destroying. S. 477, I. P. C.

1. The fact that document is unstamped or inadmissible for want of registration is immaterial. 12 M. 148.
2. Accused tore up promissory note delivered to him by the complainant, who had come to demand payment, he was guilty under S. 477, I. P. C. 12 M. 54.
3. Tearing up a Pattah is an offence under S. 477. 3 W. R. 38.
4. Accused tore a paper containing a settlement of account between the accused and the complainant. 12 M. 148.
5. Suppression of a document may amount to a secretion. 58 C. 1051=1931 C. 184.
6. Fraudulent secretion of will is an offence under S. 477. 4 R. 251.
7. The grant of letters of administration is no bar to a further prosecution under S. 477. 4 R. 251=1926 R. 202=97 I. C. 1054=27 Cr. L. J. 1230.
8. Accused concealed the will and did not get probate. He gave an affidavit that testator died intestate. His explanation was held sufficient. Held, he could not come within the purview of S. 477. 1934 C. 217=35 Cr. L. J. 716.

5. Contents of—. S. 144, Ev. Act.

Contents of a document cannot be proved, if objected to, unless the document is produced. S. 144, Ev. Act.

6. Definition of. S. 29, I. P. C.

1. Letters imprinted on the trees and intended to be evidence that the trees had been passed by the Forest Ranger and so could be removed from the place are a 'document'. 1925 B. 327=87 I. C. 838=26 Cr. L. J. 1014.
2. A draft complaint purporting to be written by a fictitious person charging a Raja with the murder of a Faqir was a 'document' and being false document, it was a forgery. 2 B. L. R. (A. Cr.) 12.

7. Destruction of documentary evidence. S. 204, I. P. C.

1. The disfigurement or destruction of a document is a serious offence. But there must be evidence of Criminal intention. 17 I. C. 1008=13 Cr. L. J. 913.
2. A person has the right to destroy or secret his property but he cannot do so without incurring the penalty of law, if his intention was to prevent the document from being produced or used as evidence. 24 P. R. 1889 Cr., 35 C. L. J. 158.
3. A 'Panchayat Nama' drawn up by the Police Officer during investigation was destroyed by him for interlineations and scratches and got it re-written by the same scribe and signed by the anchors. He is not guilty under S. 204. 14 Bom. L. R. 1163=13 Cr. L. J. 913.
4. A Sub-Inspector tore up the report of dacoity and substituted that of a simple theft. His intention was to keep from the knowledge of his officers that a dacoity was committed. He is guilty under Ss. 204 and 218. 20 A. 307.
5. Defendant was required by the Arbitrator to show the bond to the witness but he ran away with it. Held, he is guilty under S. 204. 3 M. 261.
6. The fact that a man perjures himself by denying the existence of a document, which to his knowledge is in his custody, is a cogent piece of evidence. 55 C. 1051.

8. Inspection of—.

1. In a warrant case, before a charge is framed, the accused has no right to call for inspection of documents in the possession of the complainant, but not produced by the prosecution in support of their case. 28 I. C. 101=15 Cr. L. J. 245, 5 Bom. L. R. 978, 8 S. L. R. 267. *Cont.* 1935 S. 13=36 Cr. L. J. 551.
2. The jurisdiction of the Court to order the production of a document or thing carries with it the jurisdiction to allow the right of inspection. 1935 S. 13=36 Cr. L. J. 551=154 I. C. 762. 5 Bom. L. R. 978 Rel. on.

9. Omission to produce—before public servant. S. 175, I. P. C. See—10.

1. The intentional non-production of a document by a person legally bound to produce it is an offence under S. 175, I. P. C., and not under S. 174, C. P. C. 12 B. 63.

Document—(contd.)

2. If the Court fines a person without preparing any record of the facts and the statement of offender, his sentence cannot be maintained. 4 M. H. C. R. 223.
 3. Accused cannot be compelled to produce a document incriminating himself and his refusal is not punishable under S. 173. 12 C. W. N. 1016.
 4. A Sub-Registrar has no power to call for original document which was registered in his office to compare it with the copy of the deed in the Registering Office which the Registrar suspected to have been tampered with. The refusal to produce was punishable. 2 C. L. J. 21.
 5. Court issued a summons to a junior member of the joint Hindu family to produce account books of a partnership. He was held justified in failing to produce it as the father was the manager of the family. 1899 A. W. N. 171.
 6. The offence under S. 173 must be tried or disposed of by a Court other than that in respect of whom the contempt was committed. 13 M. 21.
 7. A witness was summoned to produce document. He attended but did not produce it, saying that he could not find it. He, he was not guilty. 10 B. 63.
- 10. Production of—or summoning by accused.**
1. Accused has right to file documents along with his written statement and Court must consider them although they have not been proved in the regular way. 1923 M. 1135=29 Cr. L. J. 1041, 10 Cr. L. J. 492.
 2. When a document is in the possession of accused, e. g., account books, and he does not produce it, the inference is that if produced it will not support his plea that period of defalcation covered more than one year. 1934 P. 132=35 Cr. L. J. 693=148 I. C. 519.
 3. Accused can call for relevant document from a witness. 16 Cr. L. J. 245.
 4. Accused is entitled to production of Court record instead of being put to the expense of obtaining copies. 1923 L. 420=24 Cr. L. J. 686.
- 11. Production of—** S. 94, Cr. P. C.
1. Under S. 94 any party can at any stage apply to call for the production of a document or other thing and he is entitled to its production if he satisfies the Court that it is desirable for the purpose of inquiry or trial. 1935 S. 13=154 I. C. 762=36 Cr. L. J. 581. 1914 S. 135=28 I. C. 101=16 Cr. L. J. 245 Expl.
 2. S. 94 and S. 257, Cr. P. C., are not antagonistic but interdependant. Under S. 257 accused can call for the production of a document after charge unless his application is for the purpose of delay or vexation, but under S. 94 he can call for even before or after charge. 1935 S. 13=154 I. C. 762=36 Cr. L. J. 581.
 3. Whether the production of a document or thing is desirable is to be determined by Magistrate. His discretion must be exercised judicially. 5 B. L. R. 980, 1935 S. 13.
 4. The object of trial in every case is to ascertain the truth by estimating evidence. Nothing that is calculated to assist it in doing so ought to be excluded, unless for reasons of public policy, the law expressly requires its exclusion. 11 Bom. H. C. R. 120.
- 12. Refusal to produce—after notice.** S. 164, Ev. Act.
1. It is doubtful if S. 164 Ev. Act applies to criminal proceedings. 1933 C. 65, 58 C. 96=1930 C. 370.
 2. In a case under S. 408 complainant called upon accused to produce certain documents. He evaded but produced them at the time of cross-examination. Held, cross-examination could not be refused. 1933 C. 65=60 C. 341.
- 13. Secrecion of.** S. 477, I. P. C. See—4.
- 14. Using forged document as genuine.** See S. 471, I. P. C.
- 15. Valuable security.** See Valuable security.
- DOCUMENTARY EVIDENCE—** See Document.
- DOOR—STRIKING AT—** See Rioting.

Persons striking at a door, when the complainant fled away to save himself, are guilty of rioting. 1923 M. 603=72 I. C. 356, 61 I. C. 833.

DOUBT.

1. About evidence. See Evidence.
2. As to accused being lunatic. See Lunatic.
3. As to framing of charge. See Charge—11.
4. As to jurisdiction—. S. 185, Cr. P. C. See Jurisdiction.
5. Benefit of. See Benefit of doubt.

DRAWING BOY BY NECK.

Accused put his *safa* round the neck of a boy on his refusal to accompany him to a certain place and dragged him for 50 or 60 yards, as a result of which he died. Held, that accused was not guilty under Ss. 302—304, 304-A., or 325 but under S. 357, I. P. C. 1931 L. 275=134 I. C. 772=32 Cr. L. J. 1248.

DRAINAGE OF WATER. See Easement—2.

DRAWING. See Lottery—4.

DRIVING ON WRONG SIDE. See Rash Driving—7.

DROWNING—

1. Death from causes connected with —

1. A person may have been stunned by the fall into the water or even may have been actually killed by this means, or by his body striking some solid object in its fall. *Taylor's Med. Jur. 1928, Vol. II, P. 630.*
2. He may have been so intoxicated (or otherwise rendered insensible) as to have been unable to help himself. *Ibid, P. 631.*
3. The fright at finding himself in dangerous position may have caused such a shock as to have actually killed him by sudden stoppage of the heart, especially if this organ were weak or definitely diseased. *Ibid, P. 631.*
4. The cold to the skin may equally have caused internal congestion of organs incompatible with life. *Ibid, P. 631.*
5. Cramp in the muscles of the limbs may have prevented a struggle for life. *Ibid, P. 631.*
6. Such cramp may have spread rapidly to or even started in the glottis or the respiratory muscles. *Ibid, P. 631.*
7. He may have died from some totally independent cause, such as apoplexy, fits, epileptic or otherwise, etc., and his position at the moment of death may have been such as to cause him to fall into the water. *Ibid, P. 631.*
8. He may have been killed and thrown in. *Ibid, P. 631.*

2. Post mortem appearance in—

1. The sub-pleural hæmorrhages (petechiæ) noticed under the heading of asphyxia are seldom observed in drowning, but when present they offer strong corroborative evidence of this form of death. *Taylor's Med. Jur. 1928, Vol. I, P. 638.*
2. In examining the abdomen, it will commonly be found that the stomach contains water, which appears to enter into this organ by the act of swallowing during the struggle for life. *Ibid, P. 639.*
3. In some instances no water whatever is found in the stomach. The absence of water may probably indicate a rapid death, in which there has been no power to swallow. *Ibid, P. 639.*
4. (a) On opening the head, the brain displays a darker colour than usual. (b) There is an unusual accumulation of black blood in the pulmonary arteries and veins. The left ventricle is only half filled with the same kind of blood, sometimes completely empty. (c) Some water mixed with frothy matter, and occasionally coloured with blood, is found in the trachea. (d) Little or no water is found in the stomach; and when it is present, it can in no way have contributed to death. There is even less chance of water being found in this organ, if the body have been thrown into the water after death. *Ryan's Med. Jur. 1836, Pp. 348-349.*

Drowning—(contd.)

3. Time required for death in.—

1. One minute and a half complete submersion is fatal, provided that ordinary respiratory efforts are made while submersion is complete. *Taylor's Med. Jur. 1928, Vol. 1, P. 632.*
2. If respiratory efforts (by which water or air and water enter the mouth) are completely suspended, simple deprivation of air for as much as four minutes need not be fatal. *Ibid, P. 632.*
3. For as air escapes from the lungs, water penetrates into the minute air-tubes, and so no air can enter to supply the place of that which has already expended its oxygen on the blood. Hence this fluid must circulate, in the first few minutes after submersion, in a state unfitted for the continued support of life (unaerated); but the person lives, and is for a short time after immersion susceptible of recovery. *Ibid, P. 629.*

4. Was death caused by—

1. If materials are found grasped within the hands of the deceased which have evidently been torn from the banks of a canal or river, or from the bottom of the water in which the body is found, we have strong presumptive evidence that the person died in the water. *Taylor's Med. Jur. 1928, Vol. 1, P. 640.*
2. When a dead body is thrown into the water, and has remained there some time, water, fine particles of sand, mud, weeds, etc., may pass through the windpipe into the large air-tubes. Water in these circumstances, however, does not penetrate into the substance of the lungs as by aspiration during life. *Ibid, P. 642.*
3. The general impression among non-medical persons appears to be that, whether in drowning or suffocation, there ought to be some particular visible change in some parts of the body to indicate at once the kind of death; but this notion is founded on false premises. *Ibid, P. 643.*
4. It may be thus summarised, if, after careful and complete examination, water (and things in the water of the locality) is found aspirated into the lungs, death was certainly due to drowning. *Ibid, P. 644.*
5. If there is no evidence of aspiration of water the person was not drowned, but died from something else which it may or may not be within the reach of evidence to determine. *Ibid, P. 644.*
6. The absence of water from the stomach cannot, however, lead to the inference that the person had not died from drowning because in some instances the victim may be deeply unconscious and unable to swallow. *Ibid, P. 644.*
7. That a large quantity of water of the same nature as that in which the body is found is strong presumptive evidence of immersion during conscious life, and therefore of death from drowning. *Ibid, P. 645.*
8. That small quantities give no very certain indication unless the inspection is made very shortly after death. *Ibid, P. 645.*
9. That the quality, i. e., dissolved or suspended matter is of much more importance than the quantity. *Ibid, P. 645.*

5. Was it due to accident, suicide or homicide.

1. Dead bodies taken out of wells often present considerable marks of violence when the deceased persons have fallen in accidentally, or have thrown themselves in intentionally. The presence of these marks must not create a hasty suspicion of murder. *Taylor's Med. Jur. 1928 Vol. 1, P. 649, Lyon's Med. Jur. 1935, P. 321.*
2. Fractures of bones may be accidental, as in diving into shallow water with a hard supporting basis. *Ibid, P. 650.*
3. The violence inflicted by fishes, rates, mulluses, etc. on a body in the water is generally fairly easy to distinguish. The edges of the raw surface are more eroded than ragged or sloughy there may be the actual marks of the teeth, or possibly even shell-fish *in situ*. *Ibid, P. 651.*
4. If the marks of ligatures bear the evidence of violent constriction, especially on both wrists, or on the fore part of the neck, the presumption of murder becomes strong. *Ibid, P. 653.*

Drowning—(contd.)

5. The supposed external signs of death by drowning are very deceptive, and, if they prove anything, they prove only that the body has been a longer or shorter time in the water. *Criminal Investigation, Third Edition P. 437.*
6. Again, the lowering of the temperature supposed to be observed on the corpses of drowned persons proves nothing. *Ibid. P. 437.*
7. As to the extreme paleness which is said to be a characteristic sign of drowning, it has certainly been occasionally noted by experts, but most frequently it is non-existent. Also it is often found in corpses where death has been caused from quite different causes, hence this proves nothing. *Ibid, P. 437.*
8. Perhaps the strongest piece of evidence is the great contraction of the penis, or in the case of a woman of the breast nipples. When this is found it must be admitted that the person has entered the water while yet alive or perhaps immediately after death. *Ibid. P. 438.*
9. A withered umbilical cord, which the water cannot soften, leads to the conclusion that the body of the infant has been exposed to the air several days before being placed in the water; in water or damp earth the umbilical cord decays but does not dry up. *Ibid P. 438.*
10. It is so common as to be considered an almost certain test of suicide, that a Hindu woman before throwing herself into the water, draws her cloth tightly between the legs and fastens it firmly at the waist so as to prevent any indecent exposure of the person on discovery of her body. The same feeling renders it most improbable that a woman committing suicide in the manner suggested in the next paragraph would divest herself of her clothing. *Ibid, P. 435.*
11. It is impossible to decide whether a person has fallen into the water by accident, or, has thrown himself in, or is the victim of homicide. *Ryan's Med. Jur., 1836 Pp. 349—354.*

6. Water in stomach—Whether body thrown alive ?

1. Whether death is due to asphyxia from the entry of water into the air passages or to spasm of the glottis, water will generally be found in the stomach. *Lyon's Med. Jur., 1935, P. 320.*
2. It is highly improbable that after death water can enter the stomach, hence the presence of this *post-mortem* appearance indicates that death was due to drowning. *Ibid, P. 320.*
3. To be of value as an indication of drowning the water must resemble in character that from which the body was recovered. *Ibid, P. 320.*
4. If the body has been thrown into the water after death there is little or no chance of the water being found in the stomach. *Ryan's Med. Jur., 1836, Pp. 349—354.*
5. Absence of frothy mucus is not a conclusive proof that the body was dead before submersion. *Ibid.*
6. Buoyancy of human body is another factor which determines whether the body found in the water was drowned or thrown in after death. *Ibid.*
7. If the body has been drowned while living the following will be the appearance when taken out of the water.—The whole body is cold and pallid; the face especially the eyes are half open and the pupils much dilated; the mouth and nostrils contain a good deal of frothy fluid; the tongue is protruded between the teeth and approaches to the under edge of the lips. *Ibid.*

DRUNKEN BRAWL—See Murder—51. Wound—14.G.

DRUNKENNESS. Ss. 85, 86, I. P. C. . . .

1. Affecting sentence.

1. Voluntary drunkenness is no reason for not inflicting sentence. 7 L. 141=1925 L. 428=95 I. C. 234=27 Cr. L. J. 764.
2. Accused who was a habitual *Ganja* smoker, murdered a child by dashing him several times on the ground. He was awarded a lesser sentence. 1923 C. 460.
3. Intoxication may be ground for leniency in sentence. 1923 L. 294.

Drunkenness—(concl'd.)

4. Drunkenness may be pleaded in mitigation of sentence. 28 P.R. 1917 Cr., 12 Cr. L. J. 477=12 I. C. 85.
 5. Drunkenness does not make the offence more heinous. (1871) 16 W. R. 36.
 6. Although S. 86 attributes to a drunken man the same knowledge as sober man, it does not give him the same intention. It is a sufficient excuse for not exacting the extreme penalty of Law. 35 P. W. R. 1917 Cr., 27 C. W. N. 290, 41 P. R. 1886 Cr., Cont. 7 L. 50=1926 L. 232=27 Cr. L. J. 630.
 7. If the accused followed the deceased and cut him then and there, it is not extenuating circumstance. 1934 R. 361. 1926 L. 428 Dist.
- 2. As defence.**
1. Drunkenness to be defence must be such as to result in incapacity to intend the crime charged with. 1929 L. 637=116 I. C. 707=30 Cr. L. J. 652, 8 P. 911=1930 P. 168=31 Cr. L. J. 243, 1932 L. 244, 7 L. 50.
 2. Evidence merely establishing that the accused was a drunkard is not sufficient unless it is proved that drunkenness incapacitated the accused to form an intent, it cannot be pleaded as a defence or palliation. 7 L. 50=1926 L. 232=27 Cr. L. J. 630.
 3. For drunkenness to operate as a ground of immunity the accused's mind should be so much affected by the drink that he must be incapable of understanding what he is doing. 32 I. C. 641=17 Cr. L. J. 49=8 Bur. L. T. 220.
 4. Voluntary drunkenness is a circumstance to be considered in determining whether act was pre-meditated. 41 P. R. 1866 Cr.
 5. If the plea of drunkenness is proved, it negatives intention to murder. 23 P. R. 1917 Cr.
 6. Ordinary drunkenness makes no difference to the knowledge with which a man is credited and if the accused knew what the natural consequences of his act were, he must be presumed to have intended to cause them. 1930 P. 168=8 P. 911=121 I. C. 452=31 Cr. L. J. 243.
 7. Voluntary drunkenness is a defence only when it causes incapacity in the accused to form the intent necessary to constitute the crime. 1932 L. 244=32 Cr. L. J. 378=137 I. C. 86 (1).
 8. If the accused knew the nature of offence, followed the girl with a knife in his hand and thereafter tried to stab his brother as well, the plea of drunkenness was of no avail. 1931 M. W. N. 113, 33 P. L. R. 130.
 9. No further intention than what can be ascribed to a sober man can be ascribed to a drunkard. 1929 L. 433=120 I. C. 183=31 Cr. L. J. 44.
 10. Voluntary drunkenness may be relied upon to show that the intention was absent. 1928 M. 196=106 I. C. 559=29 Cr. L. J. 63=55 M.L.J. 228.
 11. If a drunkard does not know the nature of his act, it cannot be presumed that he intended the consequences. 17 I. C. 800=13 Cr. L. J. 864.
 12. Voluntary drunkenness is no excuse for crime. 41 P. R. 1866.

DUTY OF COURT OR MAGISTRATE. See Court's duty.**DUTY OF PROSECUTION.** See Burden of proof, Explanation by accused.**1. Assisting Court.**

1. The duty of prosecution is to assist the Court in arriving at the truth and not to secure conviction and the prosecution must place all material evidence before the Court. 38 I. C. 945=21 C. W. N. 33=44 C. 477.
2. The duty of the Public Prosecutor is to represent not the Police but the Crown and his duty should be discharged by him fairly and fearlessly. 34 I. C. 241, 8 C. 121 (124), 42 C. 422 (428).
3. Prosecution must place all material irrespective of the question whether it helps the accused or goes against him. The rule is not merely a technical one but founded on common sense and humanity. 8 P. 279=30 Cr. L. J. 675=1929 P. 275.
4. The duty of Crown counsel is not to secure conviction but to call such evidence as

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Duty of Prosecution—(contd.)

may throw light on the case. 42 C. 957, 30 I. C. 123.

5. It is the duty of Local Government to supply information, when there is allegation regarding the custody of approvers. 12 L. 623=1931 L. 473=132 I. C. 515.
6. It is not the duty of Prosecution to produce every person examined by Police. But in murder cases witnesses supporting the plea of *alibi* must be produced. 1934 A. 908.

2. Burden of Proof to prove guilt. See —7.

1. Prosecution must prove their case. Because an accused loses his head or gets frightened and does not tell the truth, he cannot on that account be convicted. 1922 A. 24=65 I. C. 842=23 Cr. L. J. 193, 45 A. 323.
2. Prosecution is not only to establish *prima facie* case but to go further to establish the guilt of the accused conclusively. 44 I. C. 455=19 Cr. L. J. 344.
3. The *onus* of proving everything essential to establish guilt is on the prosecution. The gravest suspicion is not sufficient for conviction. 1930 O. 321=31 Cr. L. J. 1078, 1923 O. 373, 1933 O. 372, 1932 C. 833.
4. An area of 1,100 bighas was attached and the accused cut *ghalsi* within that area. Prior to cutting accused obtained possession of 345 bighas. He was prosecuted for theft. Held, that the *onus* was on the prosecution to prove that accused did not cut from his area. 1928 P. 249=29 Cr. L. J. 259.
5. Prosecution must succeed on the strength of its own case and not on the weakness of defence. 54 M. 931=1931 M. 687=33 Cr. L. J. 51, 1931 L. 361=32 P. L. R. 83=134 I. C. 782=32 Cr. L. J. 1233.
6. If the prosecution proves some facts but not all, the Court must see that the offence is proved. 1932 P. 215=33 Cr. L. J. 864, 1932 C. 833.
7. Case for prosecution must be proved by evidence of Crown witnesses. The conviction cannot be based on partial admission of accused in defence. 1928 O. 373.
8. Prosecution must prove every link in the chain of evidence against the accused. 1932 L. 243=33 Cr. L. J. 411.
9. In civil cases a mere *preponderance* of probability is sufficient, but in criminal cases *moral certainty* beyond doubt is necessary. 1929 N. 113, 19 Cr. L. J. 344.
10. It is not the duty of accused to prove his innocence. 1920 P. 533, 60 C. 656.
11. Case must be proved by *positive affirmative* evidence and not suspicion. 1931 L. 406, 1923 L. 42, 9 L. 531, 1927 L. 862, 1929 P. 112, 1934 L. 693, 1933 A. 394, 7 L. 84.
12. Guilt of accused is not only to be proved beyond a possibility of doubt, but also to be proved strictly in accordance with law. 33 Cr. L. J. 514—667, 1921 P. 406, 26 Cr. L. J. 1042.

3. Changing ground.

1. The prosecution cannot be permitted at the last moment without notice to the accused to change its ground. 51 A 463=1928 A. 696.
2. Prosecution should not be allowed to change its case. It should not be allowed to put in witnesses or documents to discredit the accused's defence in the Sessions Court, after knowing the nature of defence in the Committing Magistrate's Court. 1927 M. 533=100 I. C. 365=28 Cr. L. J. 285.

4. "Padding" Evidence.

Prosecution should not deceive Court by Padding cases. 1936 L. 330=37 Cr. L. J. 562.

5. Production of evidence.

1. Public Prosecutor should produce the whole of material evidence and all eye witnesses whether favourable or hostile to the prosecution. 8 P. 625=1929 P. 343=120 I. C. 37=30 Cr. L. J. 1136, 8 P. 279=116 I. C. 70, 1931 M. W. N. 727, 1933 O. 265=145 I. C. 470.
2. Omission to call eye witnesses is a circumstance against the prosecution. 1929 M. W. N. 587, 6 C. 121.

Duty of Prosecution—(concl'd.)

3. It is the duty of the Prosecution to see that matters such as previous conviction are brought definitely to the notice of the Court at the proper time. 1929 A. 270.
4. If material witnesses are withheld and no reason is given by the prosecution for not examining them. Held, it is sufficient to discredit the prosecution revision. 1928 P. 98=28 Cr. L. J. 906=105 I. C. 234, 42 C. 422, 12 P. R. 1916.
5. Prosecution must produce all witnesses excepting those who are unnecessary or untruthful. 1924 M. 239=75 I. C. 987=25 Cr. L. J. 75.
6. It is of course not for the Police or Public Prosecutor to champion a particular theory and to suppress the evidence of a reliable witness simply because his testimony is inconsistent with it. 2 P. 309=1923 P. 413, 11 Cr. L. J. 410.
7. It is the duty of the Public Prosecutor to produce in Sessions Court witnesses examined before the Committing Magistrate. 3 L. 144=1922 L. 1.
8. If the prosecution has called witnesses who establish the guilt of the accused no point can be made for the defence out of the fact that one more available eye witness was not called. 1932 B. 279=34 B. L. R. 571=33 Cr. L. J. 613.
9. The search witnesses and search list should invariably be produced by the prosecution. 1932 A. 185=140 I. C. 246=33 Cr. L. J. 943.
10. Prosecution is not bound to cite every witness who knows something about the case. Court cannot call such witness at the instance of defence as prosecution witness. 1935 R. 506.

6. Threatening accused or his Pleader.

It is highly improper for persons in charge of a prosecution to threaten or intimidate accused or his Pleader. 52 I. C. 54=20 Cr. L. J. 566.

7. Weakness of defence.

1. Weakness of defence cannot help prosecution, which must prove the guilt. 1925 O. 78=84 I. C. 49, 1923 M. 365=24 Cr. L. J. 426, 19 Cr. L. J. 689, 46 A. 64, 1931 L. 361, 1922 A. 24=23 Cr. L. J. 193, 1932 L. 243, 1933 O. 226=34 Cr. L. J. 935, 1933 O. 257=34 Cr. L. J. 661, 1933 O. 333=35 Cr. L. J. 45, 28 B. 533, 1928 N. 257, 1920 P. 553, 1933 L. 871, 1933 L. 808, 51 C. 458.
2. Conviction should be based on the prosecution evidence and not on the partial admission of accused in defence. 1928 O. 373=29 Cr. L. J. 763.
3. Conviction must rest on the prosecution evidence and not on the absence of explanation from the accused. 1928 N. 257=109 I. C. 497=29 Cr. L. J. 561.
4. Even in revision accused can say that prosecution has not proved its case. It is not for the defence to point out to the prosecution any missing link in the chain of proof. 1935 B. 233=37 B. L. R. 362.
5. Falseness of defence does not help prosecution. 1923 M. 365, 57 P. R. 1866, 37 P. R. 1867, 3 L. 144, 1921 L. 89, 12 Cr. L. J. 584, 21 P. R. 1890, 1933 L. 946, 1925 L. 42, 1921 C. 531=23 Cr. L. J. 220, 17 Cr. L. J. 23.

DYING DECLARATION. S. 32, Evidence Act.**1. Admissibility.**

1. A statement by a dying person not about the circumstances of his death but about a dacoity that was taking place at the time of his death is not admissible under S. 32 (1) in a trial for dacoity. Nor can those statements be admissible under S. 32 (3) unless they would have exposed him to Criminal prosecution. 14 Cr. L. J. 510.
2. A statement to Magistrate is admissible under S. 32 (1) as a dying declaration, though it contains a complaint. 36 C. 659.
3. The accused were charged under S. 330, with having caused hurt to one R for the purpose of extorting confession, who committed suicide. Held, that ill-treatment was the cause of suicide, and the statement of the deceased was admissible under S. 32 (1). 20 P. R. 1916 Cr.=42 P. W. R. 1916 Cr.
4. Evidence Act makes dying declaration relevant facts as written statements or written records of verbal statement of deceased, which becomes substantive evidence of the cause of deceased's death. 31 I. C. 359=16 Cr. L. J. 759.

Dying Declaration—(contd.)

5. A statement recorded in the absence of an accused person is not admissible under S. 33, Evidence Act. Nor is it admissible under S. 32 (1) unless proved by the Magistrate or by some one who heard it made. 20 I. C. 220=14 Cr. L. J. 396, 9 P. R. 1900 Cr.
6. Dying declaration is an exception to general rule against admissibility of hearsay evidence. 3 P. R. 1870 Cr.
7. Statement made during Police investigation amounting to dying declaration is admissible. 17 P. R. 1886 Cr.
8. Statement of deceased as to accused stabbing another person is inadmissible. 17 P. R. 1901 Cr.
9. Written record taken in hospital by the Committing Magistrate is inadmissible unless proved by taking the statement of the Magistrate. 239 P. L. R. 1912.
10. Notes of Police Officer relating to dying declaration are not admissible in evidence, unless signed by the deponent, but he can refer to them to refresh his memory. 15 Cr. L. J. 243=23 I. C. 195.
11. The statement of a woman, who was alleged to have been raped and who committed suicide three days later, is inadmissible as it was not the cause of her death. 1930 M. W. N. 702=1931 M. 233=131 I. C. 456=32 Cr. L. J. 751.
12. Statement by deceased before third class Magistrate not competent to record statement under S. 164, Cr. P. C., is relevant under S. 32 (1). 1930 L. 60=120 I. C. 274=31 Cr. L. J. 79.
13. Where a person after assault dies in hospital, not of injury but of pneumonia, the dying statement is inadmissible in a trial under S. 324. 1930 O. 249=126 I. C. 511=31 Cr. L. J. 1025.
14. Declaration made by a dying person, though he lingered on for some days, is admissible. 1929 L. 64=113 I. C. 177=10 L. L. J. 463=30 Cr. L. J. 65.
15. A dying declaration which contradicts itself in its various parts is inadmissible. 108 I. C. 526=29 Cr. L. J. 418.
16. A dying declaration as to the cause of death is admissible even where the charge is not one of homicide. 6 P. 747=1928 P. 162=106 I. C. 698=29 Cr. L. J. 106.
17. Dying declaration of one of the dacoits as to the circumstances of dacoity before a Magistrate is admissible against him, so far his implication in the crime is concerned but is not admissible against other dacoits. 1925 A. 227=26 Cr. L. J. 547.
18. Statement by a person as to circumstances of transactions resulting in her death are admissible when cause of her death is in question. 120 I. C. 81=1927 S. 250=30 Cr. L. J. 1121.
19. Statement as to circumstances of transaction resulting in death made before injury was inflicted is admissible. 50 B. 683=1926 B. 513=97 I. C. 660, 20 P. R. 1916 Cr., 1921 N. 115=26 Cr. L. J. 1121. 4 L. 451 and 1924 L. 253 Diss.
20. Acceptance of a dying declaration in part and rejection of the rest is not admissible at all. 52 C. 987=1925 C. 876=88 I. C. 1000, 1930 C. 228=50 C. L. J. 584.
21. A dying declaration reduced to writing but not signed by the deponent is not admissible but must be proved by the oral evidence of persons who heard it. 15 Cr. L. J. 243=23 I. C. 195.
22. In the course of an investigation a Police Officer recorded statements of villagers in his diary. He was subsequently murdered and diary was sought to be used in evidence. Held, it was admissible under S. 32 (2), Evidence Act, as entries were made in the discharge of professional duties of Police Officer. 1932 A. 442.
23. Statement made by a person who is dead as to cause of death is admissible though he was not aware of his impending death when he made the statement. 1935 L. 94=1935 Cr. C. 92. 50 B. 683=1926 B. 513=27 Cr. L. J. 1140 Foll. 4 L. 451=1924 L. 253=25 Cr. L. J. 1140 not foll.
24. In a trial for robbery, statement of a person before death regarding the circumstances of robbery is relevant under S. 32 (1) even though death was caused

Dying Declaration—(contd.)

remotely by the wounds received at robbery as they became sceptic. 1935 R. 418. 25 B. 45 Dist.

25. Statement by an injured person in a dacoity was held inadmissible as he died of pneumonia and not due to injuries. 25 B. 15.
26. Statements made by deceased long before the actual incident of murder are not admissible under S. 32 (1). 1933 N. 136 (141)=34 Cr. L. J. 505, 1924 L. 253=4 L. 451 and 1931 M. 689=54 M. 931 Rel. on. 1926 B. 513=50 B. 683 and 1924 N. 115 (2) Expl. and Dist.
27. Statement of deceased as to cause of his death is admissible not only against person actually causing death but even against others concerned in the transaction. 1935 R. 187=37 Cr. L. J. 621, 47 P. L. R. 1917 and 2 Weir 750 Foll. 17 P. R. 1901 and 7 B. L. R. 33 Dist.
28. Dying declaration may be made to Magistrate, Police Officer, public servant or a private person. It may be oral or made by signs. 7 A. 385, 49 C. 600, 5 L. 305.

2. Before injuries—statements made.

1. Deceased made two statements one 10 days and the other 8 months before her death. Held, that S. 32 does not cover such statements. Statements made by a dying person as to the injuries which have brought about that condition are admissible. 4 L. 451=1924 L. 253=25 Cr. L. J. 1140. But see 1935 L. 94. 50 B. 683.
2. It is not necessary that the statement must be made by "dying man." 1935 L. 94.
3. Statements made by deceased some days prior to murder, which prove the motive of, or preparation for, the offence are inadmissible. 1933 N. 136=34 Cr. L. J. 505, 54 M. 931=1931 M. 689=33 Cr. L. J. 51 Cont. 50 B. 683, 1933 O. 53, 1935 L. 94.
4. S. 32 (1) is wide enough to include statements made by deceased person to another, before receiving the injuries, as to the circumstances under which he was accompanying the accused to the place where murder was committed. 50 B. 683=1926 B. 513, 1933 O. 53=34 Cr. L. J. 101, 1935 L. 94.
5. Deceased reported to the Police about assault on him by the accused. Next morning accused stabbed him. Held, that report was admissible under S. 32 (1). 1924 N. 115=26 Cr. L. J. 1121, Cont. 1933 N. 136=34 Cr. L. J. 505.
6. Statements made by a person about his own ill-treatment, before he committed suicide, are admissible. 20 P. R. 1916.

2.-A. Contradiction or corroboration of. S. 158 Ev. Act Sec—13.

A statement made to the Police can be used to contradict a subsequent confession made under S. 164, Cr. P. C. if after his death, that confession has been used under S. 32 (3) Ev. Act. 1926 L. 122=26 Cr. L. J. 1425.

3. By accused.

Dying declarations of persons accused of crime are inadmissible in evidence. Law only provides for the dying declaration of victims. 1935 O. 477.

4. By Punjabi.

Dying declaration of inhabitants of Punjab is unsafe as basis of conviction. 1925 L. 549=26 Cr. L. J. 890, 1929 P. L. R. 536, 4 L. 451.

5. Cause of death.

1. Deceased made a statement prior to her death, which made reference to the motive of accused, it is inadmissible under S. 32 because it is not a statement as to the cause of her death or as to circumstances resulting in death. 54 M. 931=1931 M. 689=134 I. C. 1143=33 Cr. L. J. 51, 1924 L. 253=4 L. 451.
2. Dying declaration is admissible only when the declarant's cause of death is in issue. A statement of deceased as to accused stabbing another person is inadmissible. 17 P. R. 1901, 4 L. 451, 1931 M. 233, 1930 O. 249, 1924 N. 115.

6. Declarant surviving.

1. A woman mortally wounded, made a dying declaration naming certain persons as assailant. She made a statement in Court that she did not recognize the assail-

Dying Declaration—(contd.)

ant. Held, that her previous statement was inadmissible under S. 11, Evidence Act against the persons named before the Magistrate. 21 Cr. L. J. 183.

2. It is not necessary that the statement should be made by 'dying man'. 1935 L. 94, 50 B. 683.
3. Dying declaration does not cease to be one merely because the declarant lingers for a few days and then dies. 1929 L. 64.
4. If the declarant survives it is inadmissible under S. 32, though it may be used under S. 157 or S. 155 Evidence Act. 4 Bom. L. R. 434.

7. False.

When a person made a false dying declaration but did not communicate it to the authorities the intention to procure conviction of capital offence cannot be presumed. 1930 P. 550=129 I. C. 87.

8. First information report as—

1. First information report is admissible under S. 32 (1) as the statement of a person (since deceased) relating to the circumstances of the transaction which resulted in his death. 1930 L. 450=123 I. C. 12=31 P. L. R. 83=31 Cr. L. J. 475.
2. F. I. R. can be tendered under S. 32 (1) as a declaration as to the cause of informant's death. 54 C. 237, 1931 L. 103, 1927 C. 17=25 Cr. L. J. 899.
3. B made a report to Police that he was snipped by C as he refused to deliver keys and next day was found murdered by C. Held, the report discloses the motive for the murder and is admissible. 88 I. C. 353=1924 N. 115=26 Cr. L. J. 1121.
4. The silence of accused himself in his first information report regarding guilt of accused is a circumstance of which the accused must get benefit. 1922 L. 28.

9. Presumption about record of.—S. 80 Evidence Act.

1. When a dying declaration is taken as a deposition in judicial proceedings or under S. 164, Cr. P. C., the presumption under S. 80 arises and declaration is admissible without further proof. 1934 A. 340=152 I. C. 249.
2. But it has been held that dying declaration must be proved by the Magistrate who took it down. 1931 M. 430=54 M. 678, 1930 C. 228, S. C. 211, 49 C. 358, otherwise it is inadmissible. 6 C. W. N. 921, as S. 80 does not raise any presumption that the statement was made by a particular person. 9 P. R. 1900 Cr.
3. If there is a certificate appended to dying declaration that it was read over and signed by Magistrate, there is a presumption under S. 80. 16 Cr. L. J. 759.

10. Procedure in Recording—

1. Form of dying declaration should show distinctly the questions put to the declarant and his answers to them. It should be clear how much was suggested by the Magistrate and how much was the production of the person making the statement. 52 C. 987=88 I. C. 1000=1925 Cal. 876=29 C. W. N. 738.
2. Where dying declaration is elicited by questions, the questions and answers should be set out and if possible it should be taken in the presence of accused who should be allowed to cross-examine. 6 C. W. N. 72, 52 C. 987.
3. A third class Magistrate is not authorised to record statements under S. 164, Cr. P. C. The statement is yet relevant under S. 32 (1). 124 I. C. 274=1930 L. 60=31 Cr. L. J. 79.
4. Statement of a deceased must be taken in the presence of the accused, if not so taken the writing cannot be admitted to prove the statement, which may be proved by a person who heard it. The writing may be used for refreshing the witnesses' memory. 8 C. 211, 13 P. R. 1886 Cr., 6 C. W. N. 921.
5. Statements relating to the cause of death made during investigation of a criminal case and recorded by Police are admissible against the accused. 17 P. R. 1886 Cr.
6. He should not be prompted or aided. 1934 A. 908.

11. Proof of—

1. Dying declaration can be proved by examining the person recording it or person

Dying Declaration—(contd.)

who heard being made. 1930 C. 224=50 C. L. J. 581=125 I. C. 743.

2. The statement may be proved by a person who heard it and the writing may be used for the purpose of refreshing the witnesses' memory. 8 C. 211, 13 P. R. 1865, 6 C. W. N. 921, 52 C. 415=84 I. C. 890=1925 C. 821, 1924 L. 12=67 I. C. 577, 34 C. 698, 36 C. 659.
 3. If the witness who heard a dying declaration made and swears that the written statement correctly reproduces the words used by the deceased and was read over to the deceased and admitted by him to be correct. Held, it is sufficient proof. 49 C. 358=1922 C. 382=71 I. C. 645=24 Cr. L. J. 221.
 4. Dying declaration recorded by a Magistrate is not evidence unless proved by the Magistrate, though he is himself the Committing Magistrate. Dying declarations are not covered by the provisions of Chap. XXI of Cr. P. C. 239 P. L. R. 1912=14 Cr. L. J. 131=18 I. C. 893, 17 P. R. 1911 Cr.
 5. Dying declaration may be proved by one who heard it or recorded it. 31 I. C. 359.
 6. A dying declaration made to Police Officer is exempt under S. 162 Cr. P. C. and can be proved by him. 1923 C. 463, 1930 L. 60, 13 P. R. 1886, 3 P. R. 1870, 1927 C. 17=54 C. 237.
 7. To prove a dying declaration, it is not necessary that the witness should repeat in his own words what the deceased had said. It is enough if he proves the recording of that statement. 1930 L. 450=31 Cr. L. J. 475, 1926 L. 310.
 8. Dying declaration properly recorded by a Magistrate is "evidence" and can be admitted under S. 80, Evidence Act without proof. 1934 A. 340, 8 C. 211. See 34 C. 698.
 9. "Written statement by person who is dead" means that written statement must have been actually written or dictated by deceased. 1936 R. 42=37 Cr. L. J. 293, 1931 M. 430 and 1922 C. 382 Rel on.
 10. The dying declaration made on oath before a Magistrate, signed by him, is not admissible without legal proof. 11 B. H. C. R. 247.
- 12. To doctor or other persons.**
1. Statement made by accused to the doctor just before his death is admissible as dying declaration but in order to convict the accused, there must be independent corroboration of facts and circumstances to prove the offence. 1929 P. 249.
 2. Statements made by accused to Sub-Inspector and then to a private person and then to a Magistrate as to the cause of his death are admissible under S. 32. 1935 L. 94.
- 13. Value of—conviction on—**
1. It is unsafe to convict a person merely on the dying statement when it is not recorded in the deceased's own words and contains a note of the substance of what deceased told the Police. 1930 A. 532=31 Cr. L. J. 862.
 2. If a third person is present at the time of recording dying declaration and prompts the deceased to give out names of certain accused, it would be unsafe to attach any weight to such a dying statement. 1926 L. 498=96 I. C. 215=27 P. L. R. 484=8 L. L. J. 296=27 Cr. L. J. 903.
 3. No reliance would be placed on the dying declaration when it is made at a time when the deceased must have been well aware of the fact that the accused has been named as his assailant. 99 I. C. 322=28 Cr. L. J. 114.
 4. Reliability of dying declaration depends upon circumstances in which declaration was made and nature of its record. 52 C. 897=1925 C. 876=88 I. C. 1000.
 5. Dying declaration of inhabitants of Punjab is unsafe as basis of conviction. 1925 L. 549=86 I. C. 826=26 Cr. L. J. 890.
 6. Dying declaration though conflicting with initial report is not wholly unreliable. 1924 L. 413=71 I. C. 593=24 Cr. L. J. 177.
 7. If the circumstances attending dying declaration are doubtful, its evidentiary value is lessened. 17 P. R. 1886 Cr.
 8. A dying declaration, inconsistent with the other prosecution evidence and full of

Dying Declaration—(contd.)

- material contradiction and discrepancies, is useless. 20 P. W. R. 1909 Cr.=11 Cr. L. J. 131.
9. A trustworthy dying declaration and corroborated by surrounding circumstances is sufficient to sustain a conviction. 4 P. W. R. 1909 Cr.=9 Cr. L. J. 156.
 10. A dying declaration made after receiving extreme unction should generally be believed to be true and acted upon. 12 Cr. L. J. 528=12 I. C. 296.
 11. Where the statement of a deceased accomplice is not made in the presence of accused, little weight is to be attached to it as corroborative evidence. 9 I. C. 978.
 12. When the deceased could not make a proper statement and leading questions are put to him, such a dying declaration has no value. 1930 O. 60=31 Cr. L. J. 689.
 13. Silence of deceased and his relatives when he was alive as to the guilt of the accused is a circumstance against the prosecution and the accused should get the benefit of the doubt. 188 P. L. R. 1915, 92 I. C. 209, 1922 L. 28.
 14. Dying declaration by signs is admissible. 1924 L. 581=26 Cr. L. J. 328.
 15. A tutored or "touched up" dying declaration has no value. 1934 L. 805.
 16. A conviction based on dying declaration alone, if true and genuine, is sufficient to support conviction. No corroboration is necessary. 1935 Pesh 41=1935 Cr. C. 250.
 17. Dying declaration of the inhabitants of Punjab is unsafe basis of conviction. 1925 L. 549=86 I. C. 826=26 Cr. L. J. 890.
 18. A dying declaration is evidence of murder as well as of robbery. 1928 P. 162=6 P. 747=106 I. C. 698.
 19. When deceased admitted having implicated an innocent person, his dying declaration regarding others needs corroboration. 1934 R. 98=35 Cr. L. J. 905.
 20. Informant of intended dacoity was mortally wounded in pursuit of alleged dacoits. Oral statements made from the period of giving information to that of being shot is admissible as dying declaration. 1933 O. 53=34 Cr. L. J. 101.
 21. Deceased denounced accused as assailant long after the attack and just before death. There was no corroborative evidence except motive. Accused must be given the benefit of doubt. 1933 R. 95=34 Cr. L. J. 747.
 22. "The tongues of dying men enforce attention like deep harmony; where words are scarce, they are seldom spent in vain; for they breathe the truth that breathe their words in pain" quoted in 1931 M. 180=32 Cr. L. J. 357.
 23. It is unsafe to convict on uncorroborated dying declaration. 1934 O. 405=35 Cr. L. J. 1113, 1929 P. 249, 1925 L. 549=26 Cr. L. J. 890.
 24. Deceased received several serious injuries and there was no definite medical evidence that he could have been able to speak. Evidence of witnesses to oral dying declaration should be discarded. 1933 O. 333.
 25. Where there is doubt about the recognition of accused by the deceased, conviction on dying declaration alone is bad. 1936 R. 324.
 26. If a dying declaration contradicts itself in its various parts, it is valueless. 29 Cr. L. J. 418=108 I. C. 526.
 27. The fact that dying declaration was read over to and signed by, the dying man adds to its evidentiary value. 54 M. 678=33 Cr. L. J. 115.
 28. Dying declaration must be accepted or rejected as a whole. 52 C. 987=1925 C. 876, 1930 M. W. N. 1211, *Cont.* 58 B. 31=1933 B. 479 (2).
 29. A statement made to Police can be used to contradict his subsequent confession made under S. 164, Cr. P. C. if after his death that confession is used under S. 32 (3), Evidence Act. S. 158, Evidence Act, 1926 L. 122=26 Cr. L. J. 1425.
- 14. Written by II or III Class Magistrate.**
1. A third class Magistrate is not authorized to record a statement under S. 164, Cr. P. C. The statement is yet relevant under S. 32 (1), Evidence Act. 1930 L. 60=120 I. C. 274=31 Cr. L. J. 79.
 2. Dying declaration recorded by second class Magistrate is admissible. 134 I. C. 117

Dying Declaration—(concl'd.)

= 32 Cr. L. J. 1118 = 1932 L. 14.

3. If the statement recorded by Magistrate otherwise becomes admissible, the fact that Magistrate was not competent to record it is immaterial. 1932 L. 14 = 32 Cr. L. J. 1118, 1930 L. 60.

DYSENTERY—DEATH—BY—. See Culpable homicide.

E.

EASEMENT—DISPUTES AS TO—. S. 147, Cr. P. C. See Mischief—15.1. **Applicability of S. 147—.** See Dispute about immoveable property—1.

1. If plaintiff is entitled to flow of water for purposes of irrigation through a village of the defendant, who obstructed such a flow by erecting *bund*, the Magistrate can remove obstruction under S. 147, Cr. P. C. 36 C. 923, 15 Cr. L. J. 267, 5 C. W. N. 67.
2. Right to enter shrine (Samadh) by the followers of Radhaswami sect is covered by S. 147. 1930 A. 452 = 127 I. C. 422 = 31 Cr. L. J. 1217.
3. S. 147 applies to disputes as regards entry into a temple or mosque. 1930 A. 452.
4. If the real dispute is as to the right to worship in the temple and not the possession of temple, the proper section under which action should be taken is 147 and not 145. 1925 M. 779 = 88 I. C. 2 = 26 Cr. L. J. 1057, 29 M. 237, 11 M. 323.
5. User of public street by one community which is resisted by another falls under S. 147. 1927 M. 985 = 105 I. C. 660 = 23 Cr. L. J. 948 = 48 M. L. J. 528.
6. A right to take a car in procession along a public road to a temple is a right of user of land which falls under S. 147 (1). 1925 B. 536 = 89 I. C. 846.
7. Dispute as to right to use wells falls under S. 147. 1924 N. 294 = 77 I. C. 289.
8. A right of way which is limited by the exclusions of vehicular traffic, can be declared under S. 147. 64 I. C. 131 = 1921 P. 227 = 22 Cr. L. J. 739 = 2 P. L. T. 681.
9. S. 147 is not confined to easements acquired by uninterrupted enjoyment for 20 years. 13 C. W. N. 859. It includes profits *a frendra*. 23 C. 55.
10. A right to fish comes under S. 147. 23 C. 55, 14 N. L. R. 35.
11. A right to moor boats and dry fishing nets on the land of another falls under S. 147: 21 Cr. L. J. 697.
12. 'Land and water' as used in S. 147 does not necessarily refer to private property as is used in S. 145. 1927 M. 985 = 105 I. C. 660 = 28 Cr. L. J. 948.
13. If the matter which is in dispute has already been decided by a Civil Court, a Magistrate has got no jurisdiction to enquire into a claim contrary to that Court's decree. 1927 B. 654 = 102 I. C. 546, 11 B. 584.
14. An order stating that Hindus must be allowed to pass through a public street with their procession and Mahomedans are prohibited from interfering in any manner with the use of the street by Hindus, can legally be passed under S. 147. 1927 M. 985 = 105 I. C. 660 = 28 Cr. L. J. 948 = 53 M. L. J. 523.
15. There is no right to restrain another from fishing in a sea. 1935 M. 350 = 68 M. L. J. 417.
16. Dispute as to possession of temple and right to perform *pūja* therein falls under S. 147. 1933 M. 245 = 34 Cr. L. J. 88.

2. **Drainage of water.**

In case of dispute as to right to drain off surplus water by cutting off an along, Magistrate issued notice under S. 144, Cr. P. C. Held, that notice should be considered as one under S. 147, Cr. P. C. 1936 P. 59 = 37 Cr. L. J. 378. 19 Cr. L. J. 859 = 47 I. C. 65, Rel on.

3. **Exercise of Right.**

1. Magistrate passing an order under S. 147 must expressly find that party in whose favour the order is passed exercised the right within three months before the institution of inquiry. 61 I. C. 647 = 22 Cr. L. J. 463, 61 I. C. 705 = 1924 P. 754.

Easement—Disputes as to—(contd.)

- 20 Cr. L. J. 558.
- 2. No specific user need be proved within the period of three months. Evidence of general user up to the date of obstruction is sufficient. 1926 P. 348=95 I. C. 761=27 Cr. L. J. 841.
- 3. Where the non-exercise of right within the proper period is due to circumstances beyond the control of the person claiming the right, the proviso to S. 147 (2) does not apply. 1925 B. 536=89 I. C. 846=26 Cr. L. J. 1422.
- 4. The mere fact that petitioners did not exercise the right during previous year is not sufficient to show that the right does not exist. 1925 Bom. 536.
- 5. A very small gesture on the part of people obstructed might be counted as "exercise." 1931 M. 495=32 Cr. L. J. 972=133 I. C. 5.

4. Inquiry.

- 1. Three months should be calculated not from the date of the order but before the institution of the enquiry. 1930 A. 452=127 I. C. 422, 1930 P. 349.
- 2. Institution of inquiry in S. 147 does not mean the date when formal proceedings are drawn up but it means the date on which the complainant first brings his grievance to the notice of Magistrate or Police. 1930 P. 349=31 Cr. L. J. 791.
- 3. The District Magistrate can refer the case to a Subordinate Magistrate for inquiry and he should inquire into the matter as under S. 145. 3 B. L. R. 416.
- 4. If the case is likely to involve a longer complicated inquiry the Magistrate should bound the parties under S. 107, as are likely to disturb the peace. 23 C. 557.
- 5. If the settlement of dispute involves issues of right which should be determined by a Civil Court, the Magistrate should proceed under S. 107. 29 M. 97, 4 C. W. N. 779, 36 C. 923.
- 6. The inquiry should be on the same principles as under S. 145, Cr. P. C. 38 C. 387.
- 7. An order passed under S. 147 on proceedings taken under S. 133 without any action in accordance with S. 145 is without jurisdiction. 15 C. W. N. 667.
- 8. The Magistrate should not usurp the functions of a Civil Court. The inquiry should be of a summary nature. 1926 P. 348=95 I. C. 761=27 Cr. L. J. 841.
- 9. Inquiry under S. 143 is a judicial one. 21 C. 727.
- 10. Magistrate's order to the Police to enquire and report about the obstruction is no institution of inquiry. 53 C. 851=1926 C. 1051=27 Cr. L. J. 1089.
- 11. It is not necessary that Magistrate should call the Police Officer to give evidence with regard to the correctness of the report. 53 A. 215=1931 A. 14.

5. Legality of order.

- 1. An order stating that the Hindus should take procession through a public street and Mahomedans must not interfere with the use of street by Hindus is a legal order S. 147. 1927 M. 985=105 I. C. 650=23 Cr. L. J. 948=1927 M. W. N. 789.
- 2. The mere fact that the Magistrate cannot pass an order in favour of petitioner under sub-section (2) is no reason for passing an order in favour of the opponents, prohibiting the petitioners from the exercise of their right. 1925 B. 536=26 Cr. L. J. 1422.
- 3. A party against whom proceedings are instituted is entitled to produce evidence to prove that the case does not fall under S. 147. 105 P. L. R. 1909.
- 4. An order passed on mere written statement without taking any evidence in proof of allegation is bad in law. 30 C. 918.
- 5. An order passed without giving the parties an opportunity of calling evidence is bad in law. 20 Cr. L. J. 110.
- 6. If the allegations of a party are admitted by the other party, no evidence is necessary in addition to written statement. 7 C. W. N. 351.
- 7. A Magistrate can order the removal of an obstruction to a right of way. 5 C. W. N. 335.

Easement—Disputes as to—(contd.)

8. An order for the removal of obstruction to a right to the flow of water caused by erection of *bunds* is legal. 36 C. 923, 5 C. W. N. 67, 20 Cr. L. J. 209.
 9. If the obstruction is caused to public way or thoroughfare, the Magistrate should proceed under S. 133, 4 M. 121, 23 I. C. 499. See 26 M. L. J. 233 and 16 Cr. L. J. 767, 39 C. 560.
 10. S. 147 does not enable the Magistrate to pass a declaratory order. 5 C. 194.
 11. The Magistrate cannot remove obstruction through the agency of Police. 36 C. 923.
 12. An order can be passed between parties to the proceedings only. 20 Cr. L. J. 110.
 13. An order is bad in form, if it contains no restriction of time for which it is to operate. 14 B. 25.
- 6. Parties—**
1. A Magistrate is not competent to add parties to a proceeding under S. 147. 5 C. W. N. 67.
 2. It is sufficient if persons who claim for themselves the right, though that right be derived from others (e.g., right to fish in a *bhil*) are made parties. The proprietors of *bhil* may not be added as parties. 23 C. 55.
- 7. Prohibitive order.**
1. Magistrate can make a prohibitive order against a party who is found not to have any right he claims. 1929 P. 351=10 P. L. T. 376, 20 Cr. L. J. 251.
 2. Magistrate has no power of directing one of the parties to do a positive act such as demolishing a wall. 1925 C. 991=88 I. C. 1041=26 Cr. L. J. 1265.
 3. A Magistrate can pass a prohibitory and not a mandatory order to do some positive act. Order to remove tin chapar within 4 feet of the west well of Dispensary is illegal. 1934 C. 556. 1925 C. 991 Rel. on. 1933 C. 752 Ref.
- 8. Procedure.**
1. If a witness states that there would be a fight if the other party demolishes a *bund*, it is sufficient material for the Magistrate to take action. 1926 L. 550=95 I. C. 465=27 Cr. L. J. 801.
 2. Proceedings under S. 145 can be converted into one under S. 147. 1925 C. 1022=85 I. C. 654=26 Cr. L. J. 558.
 3. The Court amended the proceedings and included the whole of pathway, although it originally related to a portion of it and the Court did not give any notice to the other party. Held, that the final order was not binding on the party affected. 1925 C. 263=81 I. C. 162=25 Cr. L. J. 674.
 4. Taking of *ex parte* evidence without giving opportunity to the other party is illegal. 1924 P. 717=77 I. C. 807=25 Cr. L. J. 455=4 P. L. T. 419.
 5. Finding of fact cannot be traversed in revision. 1926 M. 154, 1922 P. 214.
 6. Magistrate need not find that the right of easement is established. 1930 M. 865=59 M. L. J. 430=1930 M. W. N. 987=129 I. C. 68=32 Cr. L. J. 215.
 7. If the Magistrate stays proceedings, he cannot revive them unless there is a fresh dispute likely to cause breach of peace. 15 C. W. N. 271.
 8. Magistrate cannot summarily deal with the case after local inspection. He must take evidence. 4 C. W. N. 779.
 9. Magistrate can make a local inspection prior to taking evidence in the case but finding must be based on evidence duly recorded and not on the impression formed on local inspection. 24 Cr. L. J. 487.
 10. Actual notice should be given to the parties. Notice to servant is insufficient. 21 C. 727, 105 P. L. R. 1909.
 11. If civil suit is instituted to establish right of easement, the Magistrate should drop the proceedings. 1932 N. 83=33 Cr. L. J. 556.
 12. If the right to use thoroughfare was stopped by the Magisterial officer three years back, the complainant is barred by the proviso from demanding an inquiry.

Exemption—Disputes as to—(contd.)

133 I. C. 5=1931 M. 495=32 Cr. L. J. 972.

9. Revival of proceedings.

When during the pendency of proceedings under S. 147, the parties referred the dispute to arbitration and the Magistrate ordered the stay of proceedings, and after one year again continued the proceedings. Held, that the Magistrate could not revive the proceedings unless there was a fresh dispute likely to cause a fresh breach of peace. 15 C. W. N. 271.

10. Right to Fishery.

Right to fishery is in the nature of exemption and comes within the ambit of S. 147 and not S. 145. 1934 P. 86=35 Cr. L. J. 481, 23 C. 557 and 20 Cr. L. J. 199. Rel. on.

ECCHYMOSIS—See Wound—6.**EDITOR. See Newspaper, Defamation 32. Sedition—13.****ELECTION. S. 171-A to 171-F., I. P. C.****1. 171-A—Candidate—S. 171-A., I. P. C.**

Acts amounting to offence under S. 52, Madras District Municipality Act, do not amount to an offence under the Penal Code. 1929 M. 910=122 I. C. 32=57 M. L. J. 551.

2. Undue influence. S. 171-C., I. P. C.

1. Where a candidate for election was prevented from coming out of his house and going to the voters by accused—his rival candidate and the latter's supporters who were picketing the former's house, the accused is not punishable under S. 171-C. 7 L. 218=1926 L. 297=93 I. C. 692=27 P. L. R. 190=27 Cr. L. J. 468.
2. Telling people not to vote for it would lead to increase of taxes and confiscation of voters' property is no offence under S. 171-C and F. 1922 M. 337.
3. Candidate remarking that gosha woman need not vote does not fall under S. 171-C. 1934 M. 27=146 I. C. 572.

3. Personation at— S. 171-D., I. P. C.

1. A voter asked for a ballot paper by giving wrong name of his father. Held, he is guilty under S. 171-D. 1929 L. 52=117 I. C. 883=30 Cr. L. J. 853.
2. When a person obtains a voting paper by putting a thumb impression in the name of another and passes it on in that name, he commits forgery. 47 A. 268=26 Cr. L. J. 362=1925 A. 230=84 I. C. 714=22 A. L. J. 1106

4. Undue influence and personation at— S. 171-F.

1. Candidate identified the voter without ascertaining his identity. He is guilty of abetment of personation at election. 1928 A. 150=30 Cr. L. J. 933.
2. The fact that abetting of personation at election was done by a M. L. C. is no justification for enhancing the sentence. 1928 A. 150=118 I. C. 577.
3. The offender can be tried under S. 171-F. or under S. 465, I. P. C. for false preparation of signature at an election. 47 A. 268=1925 A. 230=84 I. C. 714.
4. Fraudulently obtaining signature slip when accused did not give out his name but produced a certain piece of paper which bore a certain number is not an offence under S. 17-F read with S. 511. 1925 A. 226=26 Cr. L. J. 359.
5. Where the corrupt intention is absent the offence of persuasion cannot be committed. 1930 M. 246=121 I. C. 763=1930 M. W. N. 174=31 Cr. L. J. 329.
6. Candidate attesting voting slip after honestly making due enquiries of voter's identity in polling officer's presence is not guilty of abetment. 1926 A. 226.

5. Misconduct. S. 171-G., I. P. C.

1. If the election manifesto contains words that K and his son have no property and they would not shrink from committing even murder and K has been making forgeries and are eating unjustly Government and temple money, the accused should be proceeded against under S. 500 and not under S. 171-G. 1932 M. 511=138 I. C. 604=33 Cr. L. J. 665.

Election—(concl'd.)

2. S. 171-G does not apply to defamatory statement made about persons who are not candidates. No previous sanction is necessary. 1936 M. 316=37 Cr. L. J. 629.
 3. Statement that complainant committed fraud in respect of money and was removed by general body is statement of facts. But, that he removed from voter's list names of those who did not vote for him was only general imputation of misconduct. 1936 M. 316, 1932 M. 511 Poll.
 4. That complainant if elected would take no part in panchayat proceedings except to nod his head is not a statement of fact and is not punishable under S. 171-G. 1936 M. 316=37 Cr. L. J. 629.
 5. Statements of facts are those statements of the falsity of which *prima facie* proof is possible. 1932 M. 511=33 Cr. L. J. 665.
6. Sentence.

The system of election in India is still in its infancy, if not in its experimental stage. The Court should take lenient view in awarding punishment. 1928 A. 150=118 I. C. 577=30 Cr. L. J. 933.

7. Election Manifesto. See Defamation—12.

ELECTRICITY ACT (IX OF 1910).**S. 12.**

1. There is no law authorising the District Magistrate to grant permission to an Electric Company to lay electric line over the land of a person. 1929 L. 226.
2. The ordinary rule of law is that whoever owns the site is the owner of everything up to the sky and down to the centre of the earth and such owner can therefore object to the laying of electric wires on his land although the line may be laid more than 30 feet above the land. 114 I. C. 692=1929 L. 226.
3. A person can move the company for removing the wire, but he can make additions in the house to make it accessible. 1934 P. 523.

S. 21.

S. 21 has no application to charges to be made for energy supplied. 58 C. 1458.

S. 23.

1. S. 23 gives the licensee option of adopting any one of the three methods mentioned. 35 C. W. N. 933=1932 C. 14=58 C. 1458.
2. The consumer and the supplier may enter into any agreement as to the charge for supply of energy subject to the limitations mentioned in S. 23. 35 C. W. N. 933.
3. Consumer can use test lamps to discover defect in machinery. 1934 A. 320.

S. 37.

1. Accused removed the seal which the Company had affixed to the metre placed upon the premises of the accused. The conviction under rule 106 read with S. 37 (4) is justified. 1929 L. 567, 1934 N. 245.
2. The power to make general rules for the whole of British India or any considerable part of it cannot make local control unnecessary. 54 M. 364=1931 M. 152.
3. Rule 106 is *ultra vires*. 1934 R. 178.

S. 39.

A person getting Electricity except through the metre is guilty of theft. 27 I. C. 591. Circumstantial evidence is sufficient proof. 1933 A. L. J. 1175.

S. 50.

A licensee—Company—is a person aggrieved within the meaning of S. 50, 1929 L. 867. But not the Executive officer of a Board. 35 P. L. R. 758.

ELOPEMENT. See Abduction—9.**EMASCULATION.** See Culpable Homicide—9.

A person who emasculates himself is not guilty under S. 309, I. P. C. 22 P. R. 1878 Cr.

EMERGENCY ORDER. See Ss. 144-145, Cr. P. C.

ENCROACHMENT. See Criminal trespass—21, Public Nuisance.—13, Trespass on burial places.

ENFORCEMENT OF MAINTENANCE ORDER. See Maintenance—16.

ENGLISH LAW. See Interpretation of statute—6.

ENHANCED PUNISHMENT. S. 75, I. P. C.

1 Applicability.

1. S. 75 does not apply to attempts punishable under S. 511. 106 I. C. 340=29 P. L. R. 51=29 Cr. L. J. 4, 1926 A. 44=88 I. C. 724, 64 I. C. 142, 7 A. 123, 34 P. R. 1894 Cr., 1933 L. 433 (1).
2. S. 75 does not apply to an accused who commits a second offence after the date of the first offence but before his conviction for the latter. 1926 B. 365=95 I. C. 54=27 Cr. L. J. 726=28 B. L. R. 484.
3. S. 75 is not applicable when the two convictions are not for offences comprised in Chapters XII and XVII. If a person with a previous conviction is again convicted under S. 304 he would be awarded enhanced sentence. 235 P. L. R. 1911.
4. S. 75 is not applicable to convictions under special or local law. 17 P. R. 1904 Cr., 10 C. L. R. 392, (1877) 1 Weir 39.
5. S. 75 is not applicable to attempt not specially made offences in chapters XII and XVII of the Code. 14 P. R. 1906, Cr. See 13 P. R. 1919 Cr., 29 P. L. R. 54, 22 Cr. L. J. 750, 23 A. L. J. 926.
6. S. 75 is not applicable where second conviction is in respect of an offence of a date prior to that of previous conviction. 39 P. R. 1882 Cr.
7. S. 75 does not apply to previous conviction by the Court of a Native State. 54 I. C. 624=28 Cr. L. J. 144, 2 P. R. 1884, (1889) 1 Weir 40.
8. S. 71 does not apply to conspiracy under S. 120-B 1933 N. 252.
9. Offence under S. 511 must be punished entirely irrespective of S. 75. 17 A. 123, 17 A. 120, 14 P. R. 1906, 13 P. R. 1918.

2. Charge. S. 221 (7) Cr. P. C., S 255 (A) Cr. P. C.

1. If the date and place of previous conviction is not stated in the charge the Court can add it at any time before sentence is passed. 7 M. L. T. 77, 19 W. R. 41.
2. If the fact, date and place of previous conviction are not mentioned in the charge accused cannot be legally sentenced to enhanced punishment. 139 P. L. R. 1911.
3. Unless a separate charge under S. 75 is framed and recorded there is not sufficient compliance with the law. 9 M. 284, 40 P. W. R. 1911.
4. Reading the previous conviction to jury before the close of trial is sufficient to vitiate it. 5 C. 768, 11 A. 393.
5. Where a Magistrate frames charge under S. 392 and does not charge the accused specifically under S. 75 though he admits previous conviction but eventually convicts him under S. 369 without amending the charge. The conviction is invalid as S. 369 is not a minor offence in relation to S. 392. 1930 L. 544=32 Cr. L. J. 301.
6. If the previous conviction is not specified in the charge, the defect is not curable under Ss. 535—537. 29 P. R. 1917 Cr
7. Accused must be called upon to plead to charge of previous conviction under S. 255-A. Cr. P. C., 4 B. L. R. 177, 1932 5 107=33 Cr. L. J. 902.

3. Essentials and Evidence.

1. A previous conviction of the accused in Native State cannot be proved in British India for the purpose of S 75. 1930 M. W. N. 173, 17 P. R. 1913 Cr., 2 P. R. 1854 Cr., 54 I. C. 624—21 Cr. L. J. 144.
2. Intention of the accused and his character and attitude towards society rather than the value of the property stolen should be considered in awarding sentence after previous conviction. 23 P. W. R. 1908 Cr., 4 P. L. R. 1914.
3. If accused is convicted under S. 326, I. P. C., for the second time, the Magistrate can take into consideration the previous conviction at the time of awarding

Enhanced Punishment—(contd.)

- sentence independently of S. 75. 6 R. 391=111 I. C. 453=1928 R. 200=2 Cr. L. J. 869.
4. In case of trivial offences enhanced sentence on account of previous conviction should not be awarded. 11 L. 115=1929 L. 787=121 I. C. 419=1930 L. 100=31 P. I. R. 333, 1929 L. 768=119 I. C. 429=30 Cr. L. J. 1082.
 5. One previous conviction does not necessarily mean that the convict is a habitual criminal though previous conviction can be taken into accounts to award punishment. 1926 L. 336=94 I. C. 365=27 Cr. L. J. 621=27 P. L. R. 287.
 6. If the previous conviction is under S. 380 and the subsequent under S. 448, S. 75 is not applicable. 1924 P. 665=84 I. C. 346=26 Cr. L. J. 282.
 7. Enhanced sentence is not necessary in all cases of previous conviction. Punishment should be proportionate to the offence. 54 I. C. 623=21 Cr. L. J. 143.
 8. Before passing an enhanced sentence under S. 75 the improvement or otherwise in accused's character subsequent to prior conviction must be considered. 45 I. C. 847.
 9. Conviction by Council of Elders under the Frontier Regulations amounts to a previous conviction. 42 I. C. 141=18 Cr. L. J. 909=11 Bur. L. T. 205.
 10. Previous conviction can be used in determining the quantum of sentence even in the case not provided for in the I. P. C. 1929 M. 306=30 Cr. L. J. 471.
 11. Previous conviction for theft should not be taken into account in increasing sentence for a subsequent offence of cheating by personation. 1927 L. 220.
 12. A previous conviction under S. 369 cannot be taken into consideration for enhancement of sentence. 1923 L. 286=75 I. C. 368=24 Cr. L. J. 944.
 13. An accused person though he has several convictions behind him is entitled to have his case treated as it was not a foregone conclusion that he is guilty. 1930 A. 17=120 I. C. 202=31 Cr. L. J. 8=1930 A. L. J. 82.
 14. Binding over under S. 110, Cr. P. C., is no ground for enhanced punishment. 1923 L. 294, 110 I. C. 804=29 Cr. L. J. 772, 1930 S. 58=31 Cr. L. J. 763=125 I. C. 46, 1934 S. 195.
 15. If must be something apart from the nature of the offence such as youth, age, illness, sex and the interval of time which has lapsed between the accused person coming out of prison and the commission of the offence that should be considered for reduction of sentence. 1929 M. 841 (2)=53 M. 80.
 16. Where a subsequent offence was a technical theft, the Court would not be justified in passing more than a nominal sentence. 4 P. L. R. 1914.
 17. Where two sentences were passed in respect of two offences and matter arose out of the one of the same act it was doubted whether sentence was justified. 1924 B. 385=83 I. C. 342.
 18. Accused, a previous convict, entered an open thorned enclosure in which goats were kept, but the owner being disturbed, he was arrested there. Held, he was guilty under Ss. 379—511 I. P. C., and therefore S. 75 had no application. 13 P. R. 1919 Cr., 14 P. R. 1906 Cr.
 19. Magistrate is not bound to consider the previous convictions of accused outside British India. These convictions cannot be made the basis of charge under S. 75. 1935 M. 198=68 M. L. J. 176=1934 M. W. N. 1355.
 20. It is the intention of the accused and not the value of the property which should be considered in awarding sentence. 28 P. R. 1903 Cr.
4. Jurisdiction.
1. The jurisdiction of the Magistrate is not enlarged by S. 75. The fact that the enhanced punishment is legal does not, therefore, apply though it is legal even though inflicted by a Magistrate not possessing the power to inflict it. 6 Bom. L. R. 548, 41 P. R. 1872.
 2. Whenever Magistrate considers the infliction of sentence beyond his competency he should commit the case to Court of Sessions. 11 A. 393, 2 B. H. C. R. 126.

*Enhanced Punishment—(contd.)***5. Old previous conviction.**

1. Previous conviction of 18 years old is no ground for heavy sentence. 1931 Cr. L. J. 763=125 I. C. 46.
2. A previous conviction which took place a considerable time before a s offence, does not warrant the applicability of S. 75 which is directed at habitual offenders. 1929 L. 278=114 I. C. 719=30 Cr. L. J. 376, 192=99 I. C. 416.
3. S. 75 does not apply if the previous conviction was recorded 12 years before. 617=96 I. C. 400, 106 I. C. 448=29 Cr. L. J. 32, 1934 S. 195.
4. Where a period of 8 years lapsed between serving the last punishment and the commission of the offence the punishment of transportation was reduced to 5 years. 53 M. 80, 1926 M. 465.
5. Previous conviction of 13 years old should not be considered. 1932 S. 107.

6. Procedure.

1. The section does not empower the Sessions Judge to amalgamate a sentence; he is empowered to pass upon a prisoner with a sentence which he has undergone and then commute the amalgamated sentence condemning him to a longer period of imprisonment than he is liable for the last offence. C. R. 36.
2. Person jointly tried is also to be committed to the Court of Sessions if the previous conviction is being committed. S. 348 Cr. P. C.

7. Proof of previous conviction. Ss. 511—3, Cr. P. C. S. 310 Cr. P. C.

1. Previous conviction must be proved strictly and in accordance with law 1128, 17 Cr. L. J. 179.
2. Although accused admits previous conviction it should be proved according to Cr. P. C. 1929 L. 768=30 Cr. L. J. 1082, 129 I. C. 300.
3. Previous conviction should be proved by copies of judgments and the examination of the accused in respect of those convictions. 28 C. 689, 28 B. 129.
4. If the accused denies a previous conviction it should be proved by certificate and by the identity of the accused. 1881 A. W. N. 144.
5. Mere "*Kai fiat*" from the Record Office is not sufficient. 15 W. R. 53.
6. Previous conviction may be proved by finger impressions. 32 C. 759, 1 C. 33, 3 N. L. R. 1, 6 C. P. L. R. 3, 3 P. L. R. 1906, 21 C. W. N. 469.
7. In order to prove previous conviction accused's finger prints may be proved similar to those of the person previously convicted. Expert evidence on this alone is not sufficient. The finger prints on record must be proved to be the person last convicted. 39 I. C. 302=16 Cr. L. J. 462.
8. Previous conviction can be proved (1) by certified extracts from judgment certificate by Jail authority, (3) warrant of commitment. Identity of accused also be proved. 1928 L. 107=105 I. C. 673=28 Cr. L. J. 1961.
9. The practice of prosecution not to inform Magistrate about previous conviction before trial is right. But where Magistrate is intimated of these, he should consider evidence of such conviction. 1935 B. 37=154 I. C. 577=36 Cr. L. J. 527.
10. Mere admission of accused is not sufficient. Some documentary evidence of previous conviction must be on record. 1934 L. 693, 28 C. 689.
11. Previous conviction before Court Martial cannot be considered under S. 75. Pesh. 6=141 I. C. 445.

8. Trivial offence.

In case of trivial offence of stealing cotton, with a previous conviction under S. 75 sentence of 2 years is sufficient. 1933 L. 147, 1929 L. 768, 1930 L. 100, 1931 L. 717 Ref.

9. Whipping.

1. S. 75 does not give authority for passing a sentence of whipping in addition

Enhanced Punishment—(concl'd.)

other punishment. 1894 P. J. L. B. 78.

2. But now provision is made for passing a sentence of whipping under the Whipping Act, VII of 1864, Ss. 3 and 4.

ENHANCEMENT OF SENTENCE. Ss. 423—439, Cr. P. C.**1. After expiry of Sentence.**

Where accused has completed his sentence, the practice of Chief Court (now High Court) is not to enhance the sentence and send him back to jail except in exceptional cases. 1 L. 453. 16 Cr. L. J. 712 Ref.

2. By Appellate Court. S 423, Cr. P. C.

1. No Appellate Court can enhance the sentence passed by the lower Court. 4 W. R. 20, 2 Weir 486.
2. When High Court exercising its powers as appellate Court thinks that sentence should be enhanced, it can exercise its revisional powers under S. 439 because the matter has come to its knowledge. 1935 P. C. 35=153 I. C. 936=39 C. W. N. 350.

3. By Appellate Court—What amounts to—.

1. If accused is convicted and sentenced by lower Court on two charges and Appellate Court reverses the conviction on one of the charges, the retention of the same sentence amounts to an enhancement of sentence. 22 B. 760, 24 C. 316, 45 P. R. 1887, 31 P. R. 1916 Cr. 30 M. 48, 49 A. 484. See 1928 M. 651=111 I. C. 399.
2. Accused was convicted of rioting and theft and was sentenced to four months for rioting and two months for theft. The District Magistrate on appeal acquitted the accused of rioting and upheld the sentence of six months and the conviction for theft. Held, it amounted to enhancement of sentence. 24 C. 316, 45 P. R. 1887 Cr., 22 B. 760, 30 M. 48, 24 C. 316, 1923 Bom. 345, 3 N. L. R. 67.
3. Substitution of rigorous imprisonment in place of simple amounts to enhancement of sentence. 45 A. 594=1924 A. 130=76 I. C. 1032=25 Cr. L. J. 312.
4. The Appellate Court in altering a sentence cannot award a sentence which the original Court could not have passed. It amounts to enhancement of sentence. 45 A. 594, 39 C. 157, 12 M. 45, 7 N. L. R. 109, 2 Weir 487, 1936 L. 729.
5. If the term of imprisonment is reduced and solitary confinement is added by the Appellate Court, it amounts to enhancement of sentence. 1890 A. W. N. 170. Cr.
6. The addition of a sentence of whipping by the Appellate Court, although a sentence of imprisonment is reduced, amounts to enhancement. 2 Weir 487, 15 W. R. 7, 114 I. C. 523=1928 R. 265.
7. Appellant was convicted of causing simple hurt and was sentenced to fine only. The Appellate Court altered the conviction under S. 325, I. P. C. and in order to make the sentence legal under that section recorded a sentence of one day's rigorous imprisonment. Held, that the Appellate Court had no power to enhance the sentence. 2 Weir 486.
8. The Lower Court imposed fine and imprisonment and the Appellate Court in lieu of imprisonment, imposed an additional fine. Held, it amounted to enhancement of sentence. 2 Weir 487, 1936 L. 729=37 Cr. L. J. 950.
9. Alteration of sentence of fine into one of imprisonment is an enhancement of the sentence. 18 A. 301, 18 E. 751.
10. A sentence of fine is lighter than a sentence of imprisonment. 23 B. 439.
11. Where an Appellate Court reduced a sentence of 4 months' rigorous imprisonment into one of 3 months but added a sentence of fine or in default six weeks' rigorous imprisonment, it amounted to enhancement of sentence. 17 A. 67, 1887 A. W. N. 100, 23 A. 497.
12. Accused was sentenced to 2 months' rigorous imprisonment and a fine of 50 Rupees or in default one month's imprisonment and the Appellate Court changed it to an imprisonment of one month with a fine of 200 Rupees or in default 2 months' rigorous imprisonment. Held, it amounted to enhancement of sentence. 3 P. 638 (638)=1924 P. 553, 1925 L. 343=95 I. C. 476. Cont. 23 B. 439.

Enhancement of Sentence—(contd.)

13. One week's imprisonment awarded by a first class Magistrate after it being served out was altered by Appellate Court into a fine of Rs. 50 and in default one week's imprisonment. Held, it amounted to enhancement of sentence 5 P. W. R. 1916 Cr.=34 I. C. 324=17 Cr. L. J. 212.
 14. Substitution of 30 stripes for a sentence of one year's rigorous imprisonment is ordinarily not an enhancement of sentence but substitution of 30 stripes for 7 months' rigorous imprisonment is enhancement. 7 R. 319=1929 R. 177=119 I. C. 209=30 Cr. L. J. 986, 17 A. 67, 23 B. 439, 27 C. 175, 30 M. 103, 36 A. 485.
 15. Alteration of a sentence of imprisonment to one of whipping is an enhancement of sentence and is not authorised by S. 423 (1) (b) and S. 423 (3). 1928 R. 265=114 I. C. 523=30 Cr. L. J. 323.
 16. If the accused is ordered to furnish security, it cannot be enhanced by Appellate Court. 1923 O. 44=64 I. C. 236=9 O. L. J. 28
 17. Altering a sentence of 3 months' imprisonment to one month's imprisonment and 100 Rupees fine may in the case of a poor man amount to enhancement, but generally it is not enhancement. 7 P. R. 1915 Cr., 21 C. 622, 29 M. 190, 30 M. 48.
 18. If a sentence of fine is substituted for that of imprisonment, no general rule can be laid down whether it is enhancement. 1934 A. 1031.
 19. Whipping cannot be ordered in addition to imprisonment for theft. Substitution of legal sentence for whipping by the Appellate Court amounts to enhancement. 1935 R. 64=12 R. 607=36 Cr. L. J. 366=153 I. C. 516.
- 3. By Appellate Court.—When does not amount to—**
1. Alteration of 3 months' rigorous imprisonment to one month and a fine of Rs. 60 and in default two months' imprisonment is not enhancement. 1930 M. 193=31 Cr. L. J. 203, 23 B. 439. 1924 P. 563, 23 A. 497 and 36 A. 485 Dist.
 2. Substitution of 30 stripes for a sentence of one year's rigorous imprisonment is not enhancement of sentence. 1924 R. 177=7 R. 319=30 Cr. L. J. 986.
 3. An additional order passed by the Appellate Court to furnish security to keep the peace does not amount to enhancement of sentence 21 P. R. 1905 Cr., 20 Cr. L. J. 302=50 I. C. 350, 20 Cr. L. J. 760.
 4. An order passed by Appellate Court directing the accused to pay the costs of the complainant under S. 545-A, Cr. P. C., does not amount to enhancement of sentence. 22 M. 153, 47 M. 914=1925 M. 136=25 Cr. L. J. 1213, 26 M. 421
 5. Where the Appellate Court altered the original sentence of one year's rigorous imprisonment and Rs. 50 or in default six months' imprisonment to a sentence of six months' rigorous imprisonment and a fine of Rs. 500 or six months' further imprisonment. Held, that there had been no enhancement of sentence 12 L. 449, 30 M. 103. 23 B. 439 and 1924 P. 563 Foll. 23 A. 497 Not Foll.
- 4. By Revisional Court. (High Court) S. 439 Cr. P. C.**
1. High Court can enhance a sentence not as a Court of Appeal but as a Court of Revision. 11 C. 530.
 2. High Court has power to enhance a sentence, as to alter its nature 6 A. 622.
 3. High Court when hearing an appeal against a conviction may alter the finding under S. 423 and then as a Court of Revision enhance the sentence. 37 M. 119.
 4. Sessions Judge convicted the accused of culpable homicide not amounting to murder and sentenced him to seven years' rigorous imprisonment, the High Court altered the conviction to one of murder and sentenced him to transportation for life. 11 P. R. 1871 Cr., 1 R. 436=76 I. C. 711=1924 R. 93=25 Cr. L. J. 247.
 5. The High Court will enhance the sentence, only if it is manifestly inadequate. 7 P. R. 1889, 17 P. R. 1898, 1928 L. 951=29 Cr. L. J. 764, 10 S.L.R. 207.
 6. The mere fact that High Court would have inflicted a heavier punishment if the case would have come before it for trial is no ground for enhancement of sentence. 1928 L. 951, 7 P. R. 1889, 89 I. C. 452, 1928 L. 1925, 1934 L. 613, 7 P. R. 1919 Cr.
 7. Where evidence of previous conviction was not adduced at the trial and was dis-

Enhancement of Sentence—(contd.)

- covered after conviction, the High Court will not interfere and order a retrial, in order to enable the Prosecution to supplement the record by producing fresh evidence on the question of punishment. 19 P. R. 1905 Cr., 36 P. R. 1884 Cr., 43 P. R. 1905 Cr., 21 W. R. 47.
8. The High Court will not enhance the sentence, when the convicted person has undergone the full term of imprisonment or has paid the fine imposed on him, although the order of Lower Court is wrong in law. 20 P. W. R. 1913 Cr., 1 L. 453, 14 P. W. R. 1909 Cr., 11 Cr. L. J. 99. *Cont.* 1925 B. 256=93 I. C. 1053.
 9. The High Court is slow to interfere in cases, where the interference would involve the imprisonment of persons already discharged from Jail. 7 P. R. 1889 Cr.
 10. When the High Court considers the question of enhancement of sentence, it generally accepts the conviction as conclusive. 32 B. 162.
 11. When High Court enhances the sentence beyond the limit of the power of trying Magistrate, it should satisfy itself whether conviction is correct. 16 Cr. L. J. 712.
 12. If no sentence has been passed by the trying Magistrate but accused has been released on probation under S. 562, Cr. P.C., the High Court cannot substitute a sentence of imprisonment or whipping in revision. 37 A. 31, 20 Cr. L. J. 92=48 I. C. 979.
 13. The power of enhancement can be exercised under S. 439 if the sentence is legal one. A sentence of imprisonment for a period passed by accused as under-trial prisoner is not a legal sentence. 27 P. R. 1919 Cr.
 14. The trial Magistrate sentenced the accused to 6 months' rigorous imprisonment under S. 457, I. P. C., without giving due consideration to his previous conviction which was 2½ years old. Held, that the sentence need not be enhanced. 1929 A. 270=115 I. C. 868=30 Cr. L. J. 529.
 15. If prosecution is negligent in bringing facts (previous conviction) justifying enhanced sentence to Court's notice, the High Court should not enhance. 1929 A. 267=115 I. C. 614=30 Cr. L. J. 505.
 16. A Kori branded his wife with hot iron tongs. He was convicted and fined. The District Magistrate moved the High Court for enhancement of sentence. The parties put in a compromise before the High Court. Held, that the case was a fit case to be compounded in view of the nearness of relationship between parties. 1929 N. 278=118 I. C. 681=30 Cr. L. J. 960.
 17. High Court is precluded from converting the finding of acquittal under S. 302 into one of conviction if there is no appeal by the Government. 1926 A. 332=94 I. C. 132=27 Cr. L. J. 564=24 A. L. J. 414.
 18. High Court may enhance sentence even if the District authorities consider the sentence sufficient. 1928 A. 417=30 Cr. L. J. 222.
 19. Sentence cannot be enhanced except on very serious grounds. 1925 S. 188.
 20. On conviction under S. 324, I. P. C., only fine was imposed, though imprisonment was necessary. The origin of quarrel was not satisfactorily established and complainant was the aggressor. Five months since conviction elapsed, the sentence should not be enhanced to one of imprisonment. 1929 L. 102=118 I. C. 540=30 Cr. L. J. 939, 29 P. W. R. 1913 Cr., 7 P. R. 1889 Cr.
 21. Where the sentences are inadequate but not grossly inadequate, the High Court should not interfere in revision. 1931 L. 132=32 Cr. L. J. 943, 7 P. R. 1889, 17 P. R. 1898, 7 P. R. 1919 Cr., 19 P. W. R. 1910 Cr., 313 P. L. R. 1913 Ref.
 22. When the High Court purports to set aside the sentence under one count but enhances the same under another, it is its duty to comply with the provisions of Cl. (2), S. 439. 1931 C. 450=132 I. C. 247=32 Cr. L. J. 890.
 23. An attack on a Police constable, in the discharge of his duty should be more severely punished, but when the lower Court treated it as an attack on ordinary man, the High Court will not interfere unless the sentence is manifestly inadequate. 1931 L. 31 (1)=130 I. C. 432=32 Cr. L. J. 539, 7 P. R. 1889, Cr.
 24. The dismissal of appeal by the High Court does not preclude the High Court from enhancing the sentence in the exercise of its revisional jurisdiction. 10 P. 872.

Enhancement of Sentence—(contd.)

25. It is not necessary for the Chief Court to interfere even if the Court had committed an illegality. 5 P. R. 1906 Cr.
26. Except in the case provided in Cl. (3) of S. 439 the High Court's powers of enhancement of sentence are not restricted. It can inflict any sentence irrespective of the limits of powers exercisable by the trial Court. 1935 O. 239=154 I. C. 93; 1 L. 453=1920 L. 213=21 Cr. L. J. 557, and 1915 S. 33=30 I. C. 1000=16 Cr. L. J. 712. Rel. on.
27. A woman was given the benefit of S. 562 for an offence under S. 317 I. P. C. High Court enhanced it to 2 years' rigorous imprisonment in its revisional jurisdiction. 1935 Pesh. 48=1935 Cr. C. 349.
28. High Court can exercise its revisional jurisdiction for enhancing the sentence, when hearing an appeal. 1935 P. C. 35=153 I. C. 936.
29. High Court will enhance the sentence if the sentence passed by lower Court is improper. 1935 L. 337=156 I. C. 786.
30. Under the combined provisions of Ss. 423—439 Cr. P. C., High Court has power to alter a conviction under S. 326 to one under S. 302 I. P. C. 1933 L. 661, 37 M. 119 and 1924 R 93 foll. 1928 P. C. 254 Expl.

5. Delay in applying for—

1. There is nothing in S. 439 to restrict a rule for enhancement to any particular time after the conviction. 10 P. 872=135 I. C. 22=33 Cr. L. J. 155.
2. It is inexpedient to enhance the sentence, though inadequate after the lapse of nine months. 13 Cr. L. J. 121=13 I. C. 777.
3. In case of inadequate sentence, District Magistrate or Sessions Judge should be moved at the earliest possible moment after the trial and if possible before the accused has served out his sentence. 1928 P. 201=107 I. C. 536=29 Cr. L. J. 261.
4. When accused was given the benefit of S. 562, Cr. P. C., in a case under S. 408, I. P. C., High Court refused to interfere when moved after a long lapse of time, 1928 L. 926=107 I. C. 775=29 Cr. L. J. 291.

6. Maximum sentence awardable in—

High Court can enhance a sentence up to the maximum sentence prescribed by law for the offence, even though it may exceed the sentence that can be passed by the trial Court. 1935 A. 959, 1 L. 453=1920 L. 213.

7. Private complainant's application for—

1. A person was convicted on plea of guilty and the rule was issued for enhancement of sentence on the application of complainant. The Crown did not appear to support it. Held, that in such a case rule should ordinarily be discharged unless it is clear beyond doubt that it should be made absolute. 1927 C. 785=121 I. C. 305=33 C. W. N. 605=50 C. L. J. 176.
2. Private party cannot apply for enhancement. He may move Government for enhancement. 1926 R. 106=95 I. C. 594=27 Cr. L. J. 816, 1924 B. 320, 104 I. C. 242=1927 O. 321, 15 Bom. L. R. 202.
3. It is a safe rule, that High Court should not interfere at the instance of private party. 54 C. 994, 1925 A. 419=113 I. C. 768.
4. Although private complainant has no right to apply for enhancement, in proper cases, the High Court may act of its own motion and may properly make use of the information through whatever channel that information comes. 1925 S. 254 (1)=19 S. L. R. 64.
5. If a private complainant considers a sentence unduly lenient, he should draw the attention of the Government to the fact. He is not entitled to move the High Court. 48 B. 358 (360)=1924 B. 320=81 I. C. 614.
6. High Court will take action on the application of private complainant if it is supported by a report from the District Magistrate. 11 Cr. L. J. 593.
7. The High Court can enhance sentence on an application of private complainant, when it appears that enhancement is not unfairly and vindictively urged and when

Enhancement of Sentences—(contd.)

notice is given to the other accused and he has the advantage of being heard through a Pleader. 8 R. 578=1931 R. 52=129 I. C. 510=32 Cr. L. J. 353.

8. Where a complainant wishes to apply for enhancement of sentence passed on the accused by the Sessions Judge, it is not intended that he should apply to the District Magistrate to move the Local Government, but he can apply direct, as the Local Government will apply when public interests require such a course to be taken. 53 A. 223=1931 A. 13=32 Cr. L. J. 312.

8. Procedure.

1. Enhancement of sentence is a very serious matter and the application must be supported by the Government Pleader. 1928 N. 58=105 I. C. 820=28 Cr. L. J. 996.
2. If appeal is dismissed summarily or after hearing, the accused in showing cause why his sentence should not be enhanced, cannot go into merits. 1930 Bom. 593=32 Bom. L. R. 1286=129 I. C. 159, 28 Bom. L. R. 1051.
3. According to the general practice of Lahore High Court, a convict is not sent back to jail by increasing his sentence after he has undergone his sentence and released. 1929 L. 194=112 I. C. 769=30 Cr. L. J. 2.
4. If High Court has given finding on the guilt of accused, the question of guilt cannot be opened when notice to show cause why sentence should not be enhanced is served. 8 L. 521=1927 L. 217=100 I. C. 234, 50 B. 783 Foll. 49 B. 450 Diss. from. 1934 B. 471, 54 B. 822, 10 L. 241=1929 L. 797.
5. If an application for enhancement of sentence is preferred, accused can show cause even against conviction. 1926 N. 321=85 I. C. 469=26 Cr. L. J. 821, 1928 A. 150=118 I. C. 577. See 8 L. 521, 50 B. 783.
6. If the accused pleads guilty, Court may take evidence for the purpose of enhancing sentence. 62 I. C. 590=25 C. W. N. 212.
7. Where it is proposed to enhance a sentence, the High Court will re-open both the conviction and sentence of the lower Court. 30 I. C. 1000=16 Cr. L. J. 712.
8. It is not expedient to enhance the sentence, though inadequate, after the lapse of nine months. 13 Cr. L. J. 121=13 I. C. 777, 1928 P. 201=107 I. C. 536.
9. Notice can be given when admitting appeal. Notice and appeal should be dealt with together. 1934 B. 198.
10. Accused is entitled to appeal against his conviction and sentence, although he pleads guilty, when a notice for enhancement of sentence is issued to him. 1935 R. 49=12 R. 616=35 Cr. L. J. 336.

9. Reasons for—

1. Where accused attempted to murder his relation by giving him Dhatura poison who narrowly escaped death, sentence of 5 years' rigorous imprisonment should be enhanced. 1929 O. 150=115 I. C. 846=30 Cr. L. J. 544.
2. An M. L. C. abetted personation at an election. The fact that he is M. L. C. aggravates his offence. 1928 A. 150=118 I. C. 577=30 Cr. L. J. 933.
3. Accused gave a beating to his wife with a heavy stick who died two days after, a sentence of one year's rigorous imprisonment should be enhanced to 3 years. 1930 Bom. 593=32 Bom. L. R. 1286=129 I. C. 159.
4. Husband hit his wife without provocation and caused her death. He was convicted under S. 323, I. P. C. for three months. The sentence should be enhanced. 1929 L. 531=114 I. C. 442=30 Cr. L. J. 300.
5. For a conviction under S. 403, I. P. C., the accused was sentenced to simple imprisonment till the rising of Court and a fine of Rs. 100. It was held that the sentence is too inadequate and should be enhanced. 1928 L. 951=30 Cr. L. J. 240.
6. High Court will enhance sentence only when it is grossly inadequate. 1923 L. 507=103 I. C. 162=29 Cr. L. J. 343.
7. If the Appellate Court finds that graver offence is committed, it is good ground for enhancement of sentence. 92 I. C. 851=1926 N. 323=27 Cr. L. J. 339.
8. If injuries are inflicted in a sudden quarrel, sentence should not be enhanced if it is

Enhancement of Sentence—(concl'd.)

substantial. 1922 L. 23=3 L. L. J. 585, 40 I. C. 708.

9. It is no ground for enhancement of sentence that if the High Court had itself tried the case, it would have awarded a heavier sentence. 7 P. R. 1919 Cr., 7 P. R. 1889 Cr., 313 P. L. R. 1913, 19 P. W. R. 1910.
10. Enhancement of sentence being a serious proceeding, must be supported by the Government Pleader with cogent reasons. 16 Bom. L. R. 202=23 I. C. 733.
11. It is not necessary to interfere even if the lower Court commits illegality. 5 P. R. 1936 Cr.
12. If the sentence is light but substantial the High Court will not interfere. 1934 L. 975.

10. Show cause against—Notice—

1. It is not the practice of Court, save in extreme cases to call upon the accused to show cause why the sentence should not be enhanced 8 P. 181=1929 P. 161=117 I. C. 176=30 Cr. L. J. 737.
2. If the sentence is reduced on appeal by the Sessions Judge, even a single Judge of the High Court can restore the original sentence. 1926 A. 719=99 I. C. 63.
3. If High Court *suo motu* issues a notice for enhancement of sentence and if on the hearing neither the accused nor his counsel is present, sentence cannot be enhanced. 1925 O 476=85 I. C. 383=26 Cr. L. J. 543.
4. It is not the practice of High Court to call on an accused *proprio motu* to show cause why his sentence should not be enhanced but to leave it to the local Government to apply in revision for enhancement if so advised. 1922 N. 65=64 I. C. 277=18 N. L. R. 101.

11. When no Appeal lies.

A sentence from which no appeal lies, can be enhanced by the High Court under S. 439 (6), although it exercises its power in special circumstances. 1935 B. 37=154 I. C. 577=36 Cr. L. J. 527.

ENLARGEMENT OF SPLEEN— See Spleen—1

ENMITY. See Witness—42.

Enhancement of Sentences—(contd.)

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ENLARGEMENT OF SPLEEN—. See Spleen—1

Enticing or detaining a Married Woman—(contd.)

plainants' party accompanying the Police, the accused are not guilty. *Ibid.*

3. Where a warrant of arrest against the married woman was issued in the first instance without recording reasons under S. 90, Cr. P. C., the warrant is wholly illegal and therefore the bond given by sureties cannot be forfeited. 7 P. W. R. 1918, 22 P. W. R. 1907, 6 Cr. L. J. 275.

3. Apostacy. See Bigamy, 3—4—5.

A Mahomedan marriage is immediately dissolved if one of the parties renounces Islam. A Mahomedan wife was taken away after she renounced Islam. Held, no offence was committed. 1933 A. 433=34 Cr. L. J. 869. 33 A. 90 App.

4. Charge.

Where accused were not charged with knowledge or reason to believe that the abducted woman was a married woman and they knew what they were charged with, the defect is curable. 1927 L. 432=101 I. C. 451=28 Cr. L. J. 419.

5. Civil suit for damages for—

In a case of seduction of wife, the husband has to prove that she was in his service and he was deprived of her services. He is not entitled to damages for mere mental pain or anxiety. 1935 A. 855=156 I. C. 556.

6. Complaint. S. 199, Cr. P. C. See Adultery—6.

1. No Court shall take cognizance of this offence unless upon complaint made by husband or by some body having care of the woman. 22 P. W. R. 1909 Cr.=32 P. R. 1910 Cr., 1935 P. 357=36 Cr. L. J. 856.
2. Absence of oral or written complaint is fatal to conviction under S. 498, I. P. C. 1924 M. 323, 4 P. R. 1888 Cr., 30 C. 910, 32 P. R. 1910 Cr., 2 P. R. 1918 Cr.
3. The complainant need not state precisely the section of the Code. It is sufficient if he lays before a Magistrate matter which if proved would establish an offence under that section. 1921 O. 149=22 Cr. L. J. 742, 64 I. C. 282, 27 M. 61 Dist.
4. Any person having care of the woman on husband's behalf during the latter's absence can file a complaint. Any express delegation of trust by husband is not necessary. 1926 S. 159=93 I. C. 78=27 Cr. L. J. 414.
5. Complaint must be made to a Magistrate and not to the Police. 1923 M. 59=23 Cr. L. J. 592, 30 C. 910, 13 Cr. L. J. 287. See 17 P. R. 1881.
6. The dissolution of marriage does not take away from the complainant the right to lodge a complaint. 1922 L. 477=64 I. C. 734=23 Cr. L. J. 462.
7. It is not necessary that leave of the Court must expressly be given to the complainant. 1926 S. 159=93 I. C. 78=27 Cr. L. J. 414.
8. The wish in a deposition of the husband to prosecute the accused during the trial at the instance of Police amounts to a complaint. 38 A. 276.
9. Magistrate is incompetent to act upon Police report. 32 P. R. 1910 Cr.
10. If a complainant divorced his wife after abduction and then files the complaint, it will be dismissed. 27 P. R. 1879 Cr.
11. Complaint by husband under S. 497, Penal Code, is not sufficient for conviction under S. 498. 18 P. R. 1873 Cr., 17 P. R. 1874 Cr.
12. On a complaint of an offence under S. 494 conviction under S. 498 is legal. 19 P. R. 1882 Cr.
13. But on a complaint under S. 498, conviction under S. 494 is not legal. 5 P. R. 1879 Cr.
14. Where the husband of a woman absolutely abandoned her and she marries another man by a marriage which is recognized as valid among the people to which the parties belong, the second husband has authority to prefer complaint for enticing the woman under S. 498. 1930 A. 834=1930 Cr. C. 1137.
15. A minor husband can lodge complaint under S. 498. 1922 L. 168.
16. Complaint by a man who purchased a woman is not competent. 26 P. L. R. 382.

Enticing or detaining a Married Woman—(contd.)

17. Omission of husband to prosecute accused for trespass with intent to commit adultery is immaterial. 23 A. 82.
18. On a complaint of kidnapping by husband, accused cannot be convicted under S. 498 when he made no reference to illicit intercourse. 1924 M. 323.
19. A Police Officer's report is not a complaint. 32 P. R. 1910 Cr.
20. Complaint by father of the girl under S. 498 without leave of Court makes the proceedings illegal. 1934 L. 86=35 Cr. L. J. 1032=149 I. C. 1106. 1933 C. 880=34 Cr. L. J. 1092, 1926 S. 159 Dist.
21. On a complaint instituted by father, after all the evidence was recorded, the husband stated that it was instituted with his consent. Held, that the conviction under S. 498 is bad in law. 1934 L. 122=1934 Cr. C. 239.
22. On a complaint under S. 366 accused can be convicted under S. 498. 1934 A. 472. 27 M. 61 Dist.
23. Father lodged the complaint on the ground that husband was ill. In fact he was not ill. The complaint is in contravention of S. 199 and therefore not entertainable. 1933 C. 144 (1)=34 Cr. L. J. 290.
24. Statement made by a person as witness is not complaint. 29 C. 415.
25. Sworn statement is not complaint. 1922 M. 353. Cont. 1924 M. 323, 5 P. R. 1879.
26. If married relationship exists on the date of offence, husband can make complaint. The fact that tie is broken subsequently will not deprive him of his right to complain. 1922 L. 477.
27. Husband's counsel has no right to complain. 11 P. R. 1872.
28. If the husband of the woman is absent at the time of the commission of offence, complaint can be lodged by a person (mother) having care of her on behalf of the husband. 1924 L. 330.
29. An express delegation of trust by husband is not necessary. 1926 S. 159.

7. Compounding. See Compounding of offences.

1. Once a charge under S. 498 has been compounded before an Inspector of Police and the complaint is withdrawn, proceedings before the Magistrate on the complainant's statement that he was forced to enter into a compromise are *ultra vires*. 22 P. L. R. 910.
2. A minor cannot compromise an offence under S. 498. 17 P. R. 1891 Cr.
3. Under S. 345 the only person who is authorized to compound an offence under S. 498 is the injured husband. The order of acquittal on compromise entered into by any other person is erroneous. 1924 L. 330=24 Cr. L. J. 780.
4. A person having care of a woman on behalf of her husband can prefer complaint under S. 498 but cannot compound it. 3 L. L. J. 488.

8. Connivance.

1. A conviction under S. 498 is not bad merely because the husband connived at the taking away or concealing of the wife. 54 I. C. 619=21 Cr. L. J. 139.
2. Mere negligence or inactivity is not sufficient to establish connivance. It must be proved that husband acquiesced in adultery by wilfully abstaining from taking steps to prevent it, although he may not be privy to the actual commission of adultery. 1926 A. 189=91 I. C. 533=27 Cr. L. J. 101.

9. Consent of wife.

1. Willingness or consent of wife is immaterial. 1934 S. 72=35 Cr. L. J. 1254, 2 M. H. C. R. 331, 1 W. R. (Cr.) 45 Ref., 1935 C. 345.
2. If a married woman chooses to remain in accused's house for an immoral purpose, he is not guilty under S. 498. 1934 O. 258=35 Cr. L. J. 932.
3. Accused is guilty even if the advances and solicitations proceeded from the woman and he for sometime refused to yield to her. 2 M. H. C. R. 331.

10. Control of husband.

The enticement must be from the control of the husband. The wife feeling a preferential fondness for the accused drove the husband away and then permitted the accused to live with her. Held, that accused could not be convicted under S. 498. 1934 S. 10=35 Cr. L. J. 816=148 I. C. 753, 1927 O. 318=28 Cr. L. J. 703 Rel. on. 1923 L. 45=23 Cr. L. J. 730 and 1933 O. 256 Dist.

11. Death of husband during trial. See abatement—2.

1. A criminal prosecution under S. 498 does not abate on the death of the injured party, i.e., the husband. 4 L. 7=1924 L. 72=24 Cr. L. J. 29, 25 P. R. 1919 Cr.
2. S. 89 of the Probate and Administration Act has no application to a criminal prosecution. 44 M. 417, 4 L. 7=1924 L. 72=24 Cr. L. J. 29.

12. Detention.

1. To detain means to keep back from somebody or to restrain. Where a woman is living with another to the knowledge of her husband for a period of six years and the husband takes no steps to get her back, it cannot be said that she is detained. 1927 O. 318=103 I. C. 559=28 Cr. L. J. 703.
2. Where a woman was living with another of her own free will and had no desire to return to her husband and when the husband went to claim her, she turned her back on him and walked into accused's house and the accused did not make her over to the husband. Held, that accused was not guilty of detaining her. 56 I. C. 209=18 A. L. J. 311=21 Cr. L. J. 383.
3. Detention does not imply restraint. 1923 A. 194, 23 P. R. 1895 Cr.
4. Mere detention without criminal intent specified in S. 498 is insufficient. 319 P. L. R. 1913=36 P. W. R. 1913 Cr.=14 Cr. L. J. 595=21 I. C. 467.
5. Detention or concealment may be brought about by allurement or blandishments or it may be the result of coercion and restraint. 4 M. H. C. R. 20, 1923 L. 45=69 I. C. 458=23 Cr. L. J. 730.
6. The offence is complete whether the woman is merely enticed away or is merely concealed and detained, provided that accompanying intention is in each case the same. 10 A. 580, 16 P. R. 1891 Cr.
7. Where a woman is abducted and detained an acquittal on a charge of abduction is no bar to trial of accused on a charge of detention. 1924 L. 330=74 I. C. 444=24 Cr. L. J. 780.
8. Detention is a continuing offence and therefore a previous acquittal for detention on one occasion does not bar a subsequent trial. 1921 L. 183=4 L. L. J. 535, 22 P. L. R. 1910 Dist.
9. Acquittal under S. 498 is no bar to trial for subsequent detention of the abducted woman. 106 I. C. 339=29 P. L. R. 52=29 Cr. L. J. 3.
10. If a man keeps the wife of another under his protection in a house, he detains her. 319 P. L. R. 1913=14 Cr. L. J. 595=21 I. C. 467, 10 A. 530, 16 P. R. 1891 Cr., 23 P. R. 1895 Cr.
11. Concealing or detention includes concealing or detention from the husband. 1934 S. 72=35 Cr. L. J. 1254, 4 M. H. C. R. 20 Rel. on.
12. If the wife chooses to live with accused willingly, he is not guilty. 1934 O. 258.
13. Accused detained another's wife for illicit intercourse. Subsequent refusal of wife to accompany husband is immaterial. 1933 O. 256.
14. Where the woman has entire freedom and accused does not obstruct her from going wherever she likes, it is no "detention". 1933 B. 489=147 I. C. 43 (1868). 4 M. H. C. R. 20, (1865) 2 M. C. H. R. 331, 4 Bom. L.R. 435, 1927 O. 318, 1920 A. 43 Ref.
15. For "detaining" there must be evidence that accused did something which had the effect of preventing the woman from returning to her husband. 1936 C. 450.

13. Discarded wife or Discarded husband.

1. A person who entices away a married woman who had long ago been discarded is

Enticing or detaining a Married Woman—(contd.)

not guilty under S. 498. 129 P. L. R. 1915=5 P. W. R. 1915 Cr.=27 I. C. 840=16 Cr. L. J. 216, 1 C. W. N. 498 (500).

2. Where the husband absolutely abandons his wife and she marries another, the second husband can complain about abduction from him. 1930 A. 834=129 I. C. 370=32 Cr. L. J. 315.
3. If the woman had been turned out before enticing away, there is no offence. 15 P. R. 1883 Cr.
4. If the discarded wife is living in her father's house, and not in the custody of her husband or on his behalf, enticing away is no offence. 5 P. W. R. 1915 Cr.=16 Cr. L. J. 216=27 I. C. 840.

14. Divorced wife

1. If the husband is found to have divorced his wife after abduction, he is disqualified to complain under S. 498. 27 P. R. 1879 Cr.
2. A Mohammdan had six wives. The first two were not divorced. The accused in enticing away the sixth wife is not guilty. 1 P. R. 1875 Cr.
3. Among Khatiks who are low class Shudras a divorce can be carried out by a written deed. They do not follow strict Hindu Law. 181 P. L. R. 1914=31 P. W. R. 1914 Cr.=24 I. C. 947=15 Cr. L. J. 539.

15. Enticement.

1. The mere fact that wife went away of her own accord from her husband's house and was accompanied part of her way by the accused is not sufficient evidence of "enticing or taking away." 1935 C. 345
2. The mere fact that girl is living in the same house as accused does not prove that she was enticed away by any one of them. 1934 L. 85=35 Cr. L. J. 1032.
3. Accused is guilty even if advances and solicitations preceded from the woman and he for sometime refused to yield to her. 2 M. H. C. R. 331.

16 Essentials and Evidence.

1. The gravamen of the offence consists in depriving the husband of his proper control over his wife for the purpose specified in S. 498. 1923 L. 45=69 I. C. 458 23 Cr. L. J. 730.
2. Where a girl of 16 travelled with the accused from place to place willingly and stayed with them for six months, there is no abduction. 1925 L. 406=90 I. C. 156=26 P. L. R. 517=7 L. J. 21=26 Cr. L. J. 1500.
3. If a woman is living with another of her own free will and refuses to go back to her husband, there is no offence under S. 498. 1928 A. 154=107 I. C. 689=23 Cr. L. J. 273=26 A. L. J. 403, 56 I. C. 209.
4. It must be proved that woman was enticed away from her husband's house for illicit intercourse. The mere fact that she was seen outside the accused's house is not sufficient. 55 I. C. 863=21 Cr. L. J. 383.
5. Enticing away with intent that the woman should be disposed of in marriage to some one else is an offence under S. 498. 28 I. C. 651=19 Cr. L. J. 315.
6. A complainant cannot prosecute another man under S. 498 unless he establishes that he is the lawful husband. 1 P. L. R. 1910=11 Cr. L. J. 155.
7. Evidence of complainant and his wife even if not subjected to cross-examination is sufficient to warrant a conviction under S. 498. 42 I. C. 702=15 Cr. L. J. 1016.
8. Taking or 'enticing away' would include every form of elopement whether the first proposal came from the paramour or the faithless wife. 2 M. H. C. R. 331, 5 P. W. R. 1915 Cr.=16 Cr. L. J. 216.
9. "Any such woman" in S. 498 means not a woman who has been taken or enticed away but a woman whom the offender knows to be the wife of another man. 16 P. R. 1891 Cr.
10. Wife's complicity in the transaction is no more material on a charge under S. 498 that it is on a charge of adultery. 2 M. H. C. R. 331.

Enticing or detaining a Married Woman—(contd.)

11. If the wife leaves her husband's protection before any attempt is made to take or entice her away, her subsequent seducer cannot be dealt with under S. 493 though he may be guilty of adultery. 5 P. W. R. 1915=27 I. C. 810, 15 P. R. 1883, 2 W. R. 35.
12. In this country where Polygamy is sanctioned, a man may keep his wife in a separate house, maintaining her there. She will be still under his protection even if he may not continuously reside with her. 5 W. R. Cr. 50.
13. A woman of 20 years being disgusted by her lot in the house of her husband, who used to maltreat her, left him and wanted to become a prostitute. The procuress who led her to a brothel is guilty under S. 498. 1 W. R. 45.
14. It is not necessary that the woman should actually have intercourse or that she should be aware of the purpose for which she was taken away. 9 P. R. 1899 Cr.
15. Witnesses who depose that they saw the accused and the abducted woman at different times and places should not be believed, as they are generally bolstered up and their evidence cannot be fully cross-examined. 100 P. L. R. 1916.
16. The fact that woman accompanied the accused of her own free will does not diminish the criminality of the act. 4 Bom. L. R. 435.
17. The person enticing away is guilty, even though the woman and her paramour may never meet, when the intention was that she should have illicit intercourse. 9 P. R. 1899 Cr.
18. There must be an intention that the woman should remain away indefinitely from her husband. 145 P. L. R. 1917.
19. If a Mahomedan wife renounces her religion, her marriage is dissolved and therefore taking her away after conversion is not punishable. 1933 A. 433=34 Cr. L. J. 869, 33 A. 90.
20. The father of accused admitted before an Honorary Magistrate that the abducted girl was with his son and he was ready to pay Rs. 260 and requested him to get the case compromised. Held, that the statement of the Magistrate was inadmissible. 1935 Pesh. 73.

17. Jurisdiction.

Jurisdiction for trial in case of detention or concealment of a married woman is in the district where such detention or concealment took place. 51 P. L. R. 1918, 3 A. 251.

18. Knowledge about marriage.

1. There must be evidence that accused knew that the woman was the wife of another man. Mere presumption that he must have known it is not sufficient. 32 Cr. L. J. 1210=1931 L. 191=134 I. C. 589, 22 Cr. L. J. 412, 1933 C. 880=34 Cr. L. J. 1092, 1920 C. 979 Ref.
2. When the accused lives in a neighbouring village and belongs to the same brotherhood as that of the abducted girl, he must be presumed to have the necessary knowledge that she is the lawful wife of her husband. 1923 L. 395=29 Cr. L. J. 762.

19. Marriage— See Adultery—10, Bigamy 16—17.

1. Marriage must be strictly proved. 100 I. C. 236=28 Cr. L. J. 268=5 Bur. L. J. 190, 55 I. C. 736, 36 A. 1, 5 C. 566, 2 C. W. N. 245.
2. Statement of parties is insufficient to prove marriage. 5 A. 234, 20 A. 165. See 14 N. L. R. 28.
3. Evidence that husband put vermilion on woman's forehead and that there was a feast is insufficient proof of marriage. 1930 C. 447=126 I. C. 761=31 Cr. L. J. 1091.
4. Admission of the accused that the abducted woman is the wife of complainant coupled with the statement of the woman is insufficient to prove marriage. 1925 O. 701=89 I. C. 464=26 Cr. L. J. 1376=5 C. 566.
5. Where a man and woman co-habited for a long time and are taken as wife and husband, it is sufficient to establish marriage among Jats in the Punjab. 146

Enticing or detaining a Married Woman—(contd.)

P. L. R. 1917.

6. Marriage between Khatri male and Brahmani woman is not valid. 1924 L. 243=73 I. C. 239.
7. Marriage of a Hindu with his wife's sister's daughter is not illegal. 43 M. 830.
8. The widow's remarriage in the *karewa* form is a Brahma form of marriage. 1926 A. 1=90 I. C. 358=23 A. L. J. 931=48 A. 126
9. Marriage in Jhanjra form is not valid by custom. 25 P. R. 1888 Cr.
10. Marriage contracted by a minor widow without the consent of her relations is legal. 2 P. R. 1869.
11. Marriage between a Bania and Jhiwri in the Punjab is not valid. 17 P. R. 1893 Cr.
12. Under the 'Alyasantan Law' prevalent in Cinari, whereby a woman is free to contract another marriage provided the marriage expenses are returned to the first husband, the marriage is not a marriage as understood in S. 493. 6 M. 374.
13. Among *Rathis* of Kangra District, marriage with a widow according to Jhanjra form is invalid. 10 P. R. 1919 Cr.=51 I. C. 842, 98 P. R. 1893 Cr.
14. A woman is not the wife of a man under S. 498, if their marriage is voidable under Mohamadan Law. 33 P. W. R. 1910 Cr.=11 Cr. L. J. 154.
15. The mere statement of a complainant that the woman is his wife is insufficient. 15 I. C. 813=13 Cr. L. J. 541, 20 A. 166, 55 I. C. 736. 9 M. 9 Dist.
16. A girl whose marriage is voidable having been performed during her minority, cannot be considered to have exercised the option and ceased to be the wife unless the option is exercised before abduction. The mere fact that marriage is not consummated after she had attained puberty and she had actually left her husband is not sufficient to infer the exercise of the option. 1928 L. 898=110 I. C. 794=29 Cr. L. J. 762.
17. It is not sufficient that they lived as man and wife. 13 C. L. R. 125.
18. Marriage contracted by a widow during period of *iddat* is not valid. 43 P. R. 1882 Cr.
19. The marriage by *Chadar Andazi* ceremony with his paternal aunt by an Arora governed by Hindu Law is not valid. 1928 L. 165=107 I. C. 98=29 Cr. L. J. 210.
20. The marriage of a Brahmin with a Dharala woman of the Sudra caste is valid in Hindu Law. 46 B. 871, 47 A. 169=1925 A. 26=83 I. C. 163.
21. Factum of marriage can be proved by the following evidence.—(i) Statements of husband and wife. (ii) Statements of witnesses who were present at the ceremony. (iii) Evidence of co-habitation. (iv) Admission of party (v) Register of marriages. (vi) Opinion expressed by conduct of the neighbours. 5 P. R. 1894 Cr., 23 P. R. 1895 Cr., 2 P. R. 1873 Cr., 3 P. R. 1881 Cr., 40 P. R. 1882 Cr., 5 P. R. 1894 Cr.
22. There may arise a presumption that by co-habitation for a period of 13 years marriage took place, but persons cannot be convicted on a presumption of that kind. 1930 L. 230=119 I. C. 332=30 Cr. L. J. 1051=30 P. L. R. 643, 3 L. L. J. 317.
23. Marriage during *iddat* is void and accused would not be guilty, if he enticed away such a woman. 83 P. L. R. 1912.
24. A Mohamadan had six wives, accused committed adultery with sixth wife. Held, he was not guilty. 1 P. R. 1875 Cr.
25. Among Jats marriage by *karewa* is valid. 4 N. W. P. H. C. R. 128.
26. For remarriage of woman among low class, no particular ceremony is essential under Hindu Law. Mere taking her as wife and feasting by *bradri* is sufficient. 1934 A. 884.
27. Among low class continuous living as man and wife raises presumption of legal marriage. It is strengthened when described as man and wife in Municipal papers. 1934 A. 884.
28. The fact that the girl went away of her own accord is immaterial under S. 498, 1935 C. 677=39 C. W. N. 1280.

Enticing or detaining a Married Woman (contd.)

29. Accused enticed away his sister-in law by providing means by which she got away from her relation's house and spent the night with her in another house. Held, that he "took" the girl away within the meaning of the section. 1935 C. 677=39 C. W. N. 1280.
30. A conviction on presumption of marriage arising from co-habitation for a number of years cannot be based. 1934 S. 10=35 Cr. L. J. 816. 1930 L. 230=30 Cr. L. J. 1051 Rel on. 1927 R. 261 Ref.
31. When a man and woman have lived together as husband and wife presumption arises under S. 20, Evidence Act, in favour of marriage. 1927 R. 261=28 Cr. L. J. 868.
32. When the validity of marriage is challenged, it must be proved that it was performed according to law and custom. 1933 C. 881=34 Cr. L. J. 1092=7 C. W. N. 143.

20. Procedure.

1. If a girl wife is enticed away from the lawful guardianship of her husband, the accused can be convicted under S. 366 though husband has complained under S. 498. 20 C. 483, 5 A. 233, 24 O. C. 232. See 2 P. R. 1918 Cr.
2. A person convicted under S. 497 cannot upon the same facts be convicted under S. 498. 2 W. R. 35.
3. S. 498 is a continuing offence and the offender is always liable to prosecution for each act of detention and an acquittal in respect of one detention is no bar to a fresh charge for a subsequent detention. 73 I. C. 514=24 Cr. L. J. 636=1921 L. 186.
4. Where a woman is abducted and detained on a charge of abduction is no bar to a trial on a charge of detention. 1921 L. 331=24 Cr. L. J. 780.
5. Magistrate is competent to issue warrant, instead of summons for the attendance of abducted woman but he must record reasons under S. 90, Cr. P. C., otherwise the warrant is nullity. 50 P. L. R. 1418, 38 C. 789, 22 P. W. R. 1907. See 51 C. 1.
6. Omission to record reasons for issuing warrants against abducted woman in the first instance is an irregularity curable under S. 537, Cr. P. C. 59 I. C. 415.
7. On a complaint under S. 366, accused can be convicted under S. 498. 20 C. 483. *Cont.* 29 C. 415, 31 B. 218, 27 M. 61 38 A. 276, 2 P. R. 1918 Cr.
8. Conviction under S. 498 cannot be altered into one under S. 366-A or S. 373. 1934 L. 122.
9. Magistrate dismissed the complaint after making verbal inquiries from accused and complainant's wife. Held, that the procedure was entirely illegal. 1934 O. 88.
10. On a complaint under S. 366 a conviction under S. 498 is legal. 1934 A. 472, 27 M. 61 Dist.
11. On a charge under S. 366-A a conviction under S. 498 without complaint of husband is illegal. 1933 A. 629.

21. Sentence.

1. If the woman abducted is of bad character and married to an immature boy, the sentence should be lenient. 29 P. W. R. 1911 Cr.=12 Cr. L. J. 500.
2. If the woman was an active abettor in her own abductions the accused should be treated with leniency. 1927 L. 91=28 Cr. L. J. 52, 20 P. W. R. 1914 Cr.
3. If the wife is neglected by her husband and they were not on good terms and the husband did not take any action on the commission of the offence all the lapse of many months, it is not necessary to inflict a heavy punishment. 1926 L. 176=91 I. C. 1008=27 Cr. L. J. 192=26 P. L. R. 429.
4. If the woman, not on good terms with the husband, goes to the accused of her own accord a nominal sentence is sufficient. 24 P. R. 1910 Cr.=11 Cr. L. J. 597.
5. A sentence of 6 months is not excessive. 1933 L. 932=35 Cr. L. J. 16.

22. To dispose her of in marriage.

1. A person who entices away a married woman to dispose her of in marriage commits an offence under S. 498. 1931 L. 194=134 I. C. 589=32 Cr. L. J. 1210, 28 I. C. 651=16 Cr. L. J. 315=13 A. L. J. 251.

Escape—(contd.)

Magistrate. 6 A. 129. The decision is not sound.

- 7 Accused a *Daffadar* in charge of one of the gates of the jail, suffered certain convicts to pass out of the gate, not intending that they should escape but to allow them to have interview with their relatives. They taking advantage of his over confidence, escaped. Held, he is guilty under S. 223, though not under S. 225, Penal Code. 19 P. R. 1883 Cr.
8. Contrary to the orders, the accused marched the prisoners at night, when the latter was rescued. Held, it is no negligence on the part of the accused and therefore not guilty. 10 Cr. L. J. 293=3 I. C. 460.
9. A jail warder told the prisoners to do agricultural work and he himself began to water trees at a distant place. Due to the lack of supervision, they effected their escape. Held, he is guilty. 11 P. R. 1919 Cr., 50 I. C. 830
10. A dangerous prisoner was doubly handcuffed and tied to a rope round his waist when being escorted by Constable. The prisoner being allowed to alight to answer the call of nature, gave a false alarm crying "snake" and broke away from the Constables. Held, the Constables were not guilty, as their conduct was not negligent. 43 I. C. 110=15 A. L. J. 883.
11. If the escape resulted from contributory negligence, *a. s.*, absence from Police Station, there is no offence. P. L. R. 1900 page 12.
12. Only simple imprisonment can be awarded for an offence under S. 223. 115 P. R. 1866 Cr.

4. From lawful custody. S. 225-B., I. P. C.

1. If a person is legally arrested and gains his liberty before he is delivered in due course of law, he is guilty. 28 Cr. L. J. 753=1927 L. 708, 31 M. 271.
2. A person who escapes from jail in which he is confined for having failed to furnish security under S. 123, Cr. P. C., is guilty under S. 225-B 43 A. 185, 77 I. C. 814 =1925 S. 193=25 Cr. L. J. 462.
3. Accused was arrested by a process-server in execution of a decree and was released on his promise to pay the decretal amount within a given time or to surrender himself to custody again, is guilty, when he fails to carry out either of the two alternatives. 25 M. L. T. 290=1919 M. W. N. 695=20 Cr. L. J. 208.
4. A person before arrest is entitled to know under what power the Constable is arresting him and if he specifies a power which the Constable has not got, the escape from such custody is not punishable. 47 M. 442=1924 M. 555=81 I. C. 51.
5. A warrant issued by a Revenue Officer for the arrest of a defaulting witness which does not contain the name of the person to be arrested is illegal and escaping from custody is no offence. 51 C. 972=1924 C. 959=26 Cr. L. J. 2. See 45 A. 142.
6. A peon arrested a judgment-debtor and at night slept by his side. The judgment-debtor escaped. Held, he was guilty. 9 L. 214=1927 L. 708=28 Cr. L. J. 755.
7. Accused, who was arrested by a process-server was released by a number of his friends. He disappeared and surrendered himself next morning. Held, he was guilty. 11 L. B. R. 449.
8. A judgment-debtor was brought before a Court under arrest. He applied for two days' time. The Court made him over to the custody of a peon and the judgment-debtor paid his own diet-money for two days. Subsequently he escaped. Held, he was not guilty. 47 A. 409=1925 A. 318=26 Cr. L. J. 865.
9. Escaping from arrest made after sunset in pursuance of a Civil Court warrant is not punishable as the arrest is illegal. 49 M. L. J. 39.
10. Where a bailiff did not touch the accused and merely told him that he was under arrest, the arrest is illegal. 9 S. L. R. 141=17 Cr. L. J. 87=32 I. C. 679.
11. A surety applied for his discharge. The Court discharged him and ordered the arrest of judgment-debtor until he produced another surety. The judgment-debtor left the Court. Held he was not guilty. 30 Cr. L. J. 663=1929 L. 163.
12. If a warrant is not shown to the judgment-debtor, the arrest is unlawful and escape is not punishable. 5 C. W. N. 843, 47 M. 442, 25 C. W. N. 815, 14 A. L. J. 731.

Escape—(concl'd.)

13. If a Police Officer can arrest a person suspected to be a deserter from army, the person rescuing such person is guilty. 20 P. R. 1911 Cr.
14. If the arrest is not justified by law, the escape is not punishable. 89 I. C. 400=1925 L. 623=26 Cr. L. J. 1360.
15. Refusal to accompany bailiff and sitting down on ground after arrest does not amount to attempt to escape. 1933 L. 123 (1)=34 Cr. L. J. 632, 33 P. R. 1918 Cr.
16. Complaint under S. 225-B can be made by any person who is aware of the offence having been committed. 1933 L. 884=35 Cr. L. J. 86.
17. When no name or description of person to whom warrant is given appears on the warrant, release of person is no offence under S. 225 B. Inability of person arrested to read the warrant is immaterial. 1932 A. 692. 1932 A. 227 and 1926 P. 237 Rel. on.
18. Escape by persons detained for offences not punishable under Penal Code, is punishable under Penal Code. 3 M. H. C. R. App. 11.
19. A person cannot be convicted of escape unless the custody in which he was detained was lawful. 25 Cr. L. J. 462, 47 M. 442, 51 C. 902, 45 A. 142, 47 A. 409.

5. Jurisdiction.

A person escaping from custody must be tried for the offence in the district within which he escaped. 1 B. H. C. R. 139.

6. Unlawful return from transportation. S. 226 I. P. C.

If a person escapes from custody while being transported he is not guilty under S. 226 but S. 224. 4 M. H. C. R. 152.

EUROPEAN BRITISH SUBJECT.

1. A subject of the King born in England, naturalized or domiciled or any of its self-governing colonies is a European British subject. 14 I. C. 197.
2. A European British subject is liable to be tried in the High Court of Bombay for an offence under Penal Code, committed in a Native State. 8 Bom. H. C. R. 92.
3. Accused was the great-grandson of John Turnbull, said to have been serjeant in the service of the King, but there was insufficient evidence to establish lawful marriage between him and a native Christian woman. Held, that the evidence was insufficient. 6 M. H. C. R. 7.
4. No other special privileges are given to Europeans other than European British subject. 1933 N. 136=34 Cr. L. J. 505.

EVENT LEADING UP TO ASSAULT.

Events preceding and leading up to assault on deceased must be considered. 1934 R. 44=35 Cr. L. J. 855.

EVIDENCE. See Witness.**1. Admissibility of.— See Admissibility—4.****2. Appreciation of.—****A. By Appellate Court.**

1. The lower Court is the proper and in general the final Judge of the credibility of evidence. 1930 M. 194=126 I. C. 613, 1929 M. W. N. 696.
2. The finding of the trial Court on the oral evidence should not be lightly interfered, as that Court is in a much better position to gauge the truth and value of the evidence than the Appellate Court. 1927 P. C. 266=107 I. C. 349. 1927 S. 219, 1923 P. C. 62, 1932 S. 143.
3. Although as a rule very great value would be attached by High Court to the finding of fact by the Lower Appellate Court, yet it can upset the finding on the facts. 2 R. 495=1925 R. 71=88 I. C. 167.
4. In a matter of appreciation of evidence the opinion of the Trial Judge should not be lightly disturbed on appeal. 39 B. 386, 43 C. 707, 125 P. L. R. 1914.

B. By Trial Court. See—6. See Discrepancy—3.

1. Where witnesses alter their statements in the Court of Sessions in order to make

Evidence—(contd.)

- them fit in with the medical or other evidence which has been adduced in the Magistrate's Court, their statement must receive very careful scrutiny. 1929 O. 218=120 I. C. 820=31 Cr. L. J. 181=6 O. W. N. 270.
2. If the deposition is different in Sessions Court from that of Committing Court, the latter is to be invariably preferred. 1928 P. 329=103 I. C. 81=29 Cr. L. J. 325.
 3. The evidence against each accused in a joint trial should be scrutinised. 1924 M. 350=81 I. C. 310=25 Cr. L. J. 790=45 M. L. J. 728.
 4. A few casual and somewhat ambiguous phrases in a deposition cannot destroy the very clear effect of the whole deposition. 1923 N. 265=79 I. C. 422.
 5. The absence of external marks of injury is not necessarily destructive of the case that the injury was caused by brick. It is possible that blow in the abdomen is less likely to leave a mark than one on a less elastic and resilient part of the body. 1923 P. 413=74 I. C. 705=2 P. 309=24 Cr. L. J. 801.
 6. Men without deliberately intending to falsify facts are extremely prone to believe what they wish, to confound what they believe with what they heard and to ascribe to memory what is merely the result of imagination. 1922 O. 178=66 I. C. 222=8 O. L. J. 439.
 7. Where oral evidence is itself convincing, the absence of documentary evidence in support of it is immaterial. 1924 L. 265=69 I. C. 331, 3 L. 48.
 8. The evidence of *alibi* of witnesses who were not persons who would remember the date precisely should not be believed unless supported by documentary evidence. 1923 L. 232=81 I. C. 347=25 Cr. L. J. 811.
 9. Generally when the evidence is given by the witness in his own language, the Vernacular record is always treated as more reliable and entitled to greater weight though the maxim may not be safely applied to the Magistrate taking down the evidence simultaneously in English who understands the language. 1923 L. 167=73 I. C. 513=24 Cr. L. J. 625.
 10. When the story of confession was not told by the witness until after a fortnight of the occurrence, the evidence is unreliable. 1 P. 630=1922 P. 582=71 I. C. 219=24 Cr. L. J. 91=4 P. L. T. 76.
 11. There is no distinction between what a prudent man would believe out of Court and what a Judge may believe. 1922 N. 146=65 I. C. 561=23 Cr. L. J. 129.
 12. Cases ought to be decided upon tangible evidence, be it positive or circumstantial. The Court is not justified in convicting the accused upon facts which are not on record, and are in conflict with the medical evidence and which are the result of nothing but speculation. 1930 A. 45=120 I. C. 268=31 Cr. L. J. 37.
 13. It is not safe to assume that a case must be false if some of the evidence in support of it appears to be doubtful or is clearly untrue. There is on some occasions a tendency among litigants to back up a case by false or exaggerated evidence. 24 C. W. N. 626, (P. C.)
 14. In India where references to time are generally mere approximations there is a large margin of honest error. 15 Bom. R. L. 297=19 I. C. 328.
 15. When an attempt is made to charge a dead person in a matter in which if he were alive, he might have answered, the evidence ought to be looked at with great care. 12 C. L. J. 470=8 I. C. 796.
 16. Where a party comes into a Court with a story which cannot be believed in its essential details, it is impossible to rely on a part of story for convicting the accused. 47 I. C. 73=19 Cr. L. J. 877=1918 P. 288.
 17. In weighing the evidence adduced, regard should be paid to (1) what is stated against the accused in the initial report made to the Police, (2) the state of feelings between the parties, (3) the facility with which he could be falsely implicated, (4) and the motive for implicating him. 90 P. L. R. 1939=19 P. W. R. 1909 Cr.
 18. Consistency is not the only test of the truth of evidence. Probability of story, nature of witnesses and corroboration from external circumstances must be consider-

Evidence—(contd.)

ed. 1933 P. 517=146 I. C. 993.

19. A person was examined as witness, a statement said to have been made by him to another is inadmissible when no question was put to the witness. 1934 S. 100.
20. Where the evidence is entirely oral and of interested persons and there is no circumstantial evidence against the accused, he should not be convicted. 1935 L. 922.
21. Statements of High Government officers should be considered like the statements of other persons. Courts should not surrender its discretion or judgment to such officers. 1935 S. 223.
22. When a witness makes a reckless statement which is false, his evidence should not be relied upon. 1934 O. 388.
23. Where the lower Court had the advantage of seeing and hearing the witnesses there is no material discrepancy, its finding should be accepted. 1935 P. 95=153 I. C. 466=36 Cr. L. J. 348.
24. In appreciating the evidence, the ability of the witness as well as his intellectual capacity and his powers of perception, judgment, memory and description must be considered. Bentham P. 162, Starkie P. 824 *Field's Law of Evidence in Br. India. 8th Ed. P. XXXV.*
25. When the question is as to a fact, we have to look chiefly to the honesty of a witness his accuracy and his means of gaining information. In the case of an opinion, his ability to form a judgment is to be taken into account. *Ibid P. XXXVI. See Whately's Rhetoric. Part I Chap. II, S. 4.*
26. There is no better criterion of truth, no better rule for investigating cases of conflicting evidence, where perjury and fraud must exist on one side or the other than to consider *what facts are beyond dispute*, and to examine which of the two cases best accords with those facts according to the ordinary course of human affairs and usual habits of life. 1 Moo. I. A. 19=5 W. R. P. C. 26-29.
27. *Probabilities* are an important element of consideration where the evidence appears unreliable or is directly conflicting, but a case should not be decided upon probabilities alone, apart from the evidence which the parties have submitted to the Court. 21 W. R. 436.
There is a difference between civil and criminal cases. In civil cases a preponderance of evidence justifies decision in favour of one party where the right is doubtful or there is no *prima facie* right on either side. In criminal cases the evidence ought to be conclusive in order to sustain conviction, and when there is a doubt, the accused should have the benefit of it. *Field's Law of Ev. in Br. India, 8th Ed. at pp. XLVII & XLXII.*
28. The Court has not only to satisfy itself that the facts constituting the offence have been established but also to see if proved or admitted facts bring the case within the exceptions of the Penal Code, e.g. Right of private defence, etc. 1922 L. 314=22 Cr. L. J. 507, 50 C. 1013, 1 Cr. L. J. 300, 1926 P. 433, 1927 L. 786, 1925 R. 133.
29. Regard should be had regarding the weight and *quality* of evidence rather than the *number* of witnesses. 1928 M. 1135=27 Cr. L. J. 1041, 16 Cr. L. J. 266, 1934 L. 158, 1930 L. 892, 3 A. 598, 1925 L. 295, 27 Cr. L. J. 223, 3 L.L.J. 482, 21 Cr. L. J. 33, 22 Cr. L. J. 647, 15 O. 501.
30. Court can rely on the evidence of an *interested person*. 51 M. 956, 1930 C. 645, 1929 M. W. N. 587, 1931 L. 529=32 Cr. L. J. 1032.
31. Court can discard the evidence on the ground of *unreliability* of witnesses. 1925 L. 397 1929 L. 436. 1929 P. 705, 1927 L. 874.
32. Court should not base judgment on its *own theories* unsupported by evidence. 1924 P. 813, 1 P. R. 1917, 1924 C. 611, 1930 A. 45, 1930 O. 460.
33. Judge should not base judgment on *personal knowledge*. 1925 L. 166, 1931 S. 127, 27 P. R. 1903, 1 Cr. L. J. 589, 1933 C. 36
34. Judgment should not be based on *hypothetical* state of facts which were never put forward by the prosecution. 11 Cr. L. J. 245, 27 Cr. L. J. 1346=98 I. C. 466.

Evidence—(contd.)

35. The standard of proof required in criminal cases does not vary with the magnitude or enormity of the crime. 1933 S. 166=34 Cr. L. J. 808, 19 Cr. L. J. 81, though it is usual and prudent to observe the rule "the fouler the crime is, the clearer and plainer ought the proof of it to be." 1920 P. 616=22 Cr. L. J. 154.
36. Where the action of accused is open to two constructions, the Court should not assume that it was criminal. The presumption of innocence should prevail. 1927 P. 292=28 Cr. L. J. 611, 1930 S. 99, 1931 O. 385, 54 M. 931, 1924 M. 816, 14 Cr. L. J. 251.

3. Concocted.— See Motive—10. Discrepancy—3, Wound—37.

1. Where the manipulation in the personnel of the actors in a crime is extremely easy and extremely difficult to refute, the question of motive is of extreme importance. 1926 O. 120=27 Cr. L. J. 529=93 I. C. 1025.
2. Prosecution witnesses who deliberately set about implicating innocent persons run a grave risk of their evidence being rejected *in toto*, even against persons whom the Court suspects as offenders. 1931 L. 38=130 I. C. 410=32 Cr. L. J. 522.
3. An approver can easily substitute an innocent person for a real offender. 1931 L. 408=32 Cr. L. J. 818=132 I. C. 185=1931 Cr. C. 648.
4. In a murder case when witnesses implicate the accused when they are faced with the necessity of exculpating themselves, their evidence is open to grave suspicion. 1930 P. 338=129 I. C. 666.
5. There is tendency in N. W. F. Province to include innocent with the guilty and to ascribe principal part to guilty persons and minor part to innocent relatives. 1935 Pesh. 75, 1935 Pesh. 50=1935 Cr. C. 351.
6. In weighing evidence regard should be paid (1) what is stated against the accused in first information report, (2) feeling of enmity between the parties, (3) the facility with which he could be implicated and (4) the motive for implicating him. 90 P. L. R. 1909=19 P. W. R. 1909 Cr.=11 Cr. L. J. 130.
7. Where the defence does not cross-examine prosecution witnesses concerning defence version, it is usually safe to conclude that it is an after thought and the defence evidence is concocted one. 1935 R. 393.
8. False charges are usually supported by carefully concocted details, sometimes of such an incredibly minute character as to be obviously of a "too perfect kind." Though as a rule much less ingenuity is displayed in perpetrating and concealing the crimes than would be expected from the subtle cunning and deceit practised in the smaller affairs of every day life. *Lyon's Med. Jur.* 1904, P. 17.
9. A very common form of conspiracy is to cause a person to disappear, and then to charge with murder some person against whom a spite is cherished. A plausible explanation is given of the disappearance of the body of the alleged murdered person. or a putrid corpse is obtained from the adjoining river and gashing it in several places, it is brought forward as the remains of the missing individual. In such conspiracies circumstantial details are not infrequently sworn to by several persons, testifying as eye-witnesses to alleged facts of the murder, to the burial of the corpse, etc., so that conviction for the murder may be duly passed, and the falsity of the whole proceedings not be discovered until the reappearance alive of the alleged murdered person. *Lyon's Med. Jur.* 1904 P. 17.
10. In India severe, even mortal injuries are sometimes inflicted on an individual with his consent, by another or others, for the purpose of supporting a false charge. *Lyon's Med. Jur.* 1901, P. 153, *Lyon's Med. Jur.* 1935, pp. 220—238.
11. One mark of a false case is not uncommonly the extraordinary number of persons who are said to have seen the occurrence, which in the natural course of things would have been witnessed by a limited number of persons only. But sometimes two or three persons are easily found, then a larger number, who, from motives of interest or malignity, will combine to aggrandize themselves or to ruin an opponent. *Field's Law of Evidence in Br. India, 8th Ed., P. XXX.*
12. In a case of assault five witnesses described the incident and all detailed the names of the eleven accused in the same order. It may safely be said that, without concert

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this could not possibly happen. It happened that the Mukhtar obtained a copy of the complaint made some days previously and, in order to guard effectually against discrepancy he had made each of the five witnesses commit it to memory. *Field's Law of Evidence in Br. India, 8th Ed., P. XXIII.*

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It is impossible to treat statements by a witness as corroborating his own evidence these being merely parts of that very evidence itself. 1928 P. C. 127=107 I. C. 457=47 C. L. J. 288.

Where there are two factions each trying to support its own candidate, the oral evidence given on either side should not be believed unless corroborated by documentary evidence. 1927 M. 820=103 I. C. 134.

No reliance should be placed on the uncorroborated testimony of a criminal who has undergone a sentence of imprisonment and is under Police surveillance especially when he is produced by Police under whose supervision he is. 1922 L. 397=9 I. C. 311=26 Cr. L. J. 1335=26 P. L. R. 518.

Where the alleged eye-witnesses are inimical to accused or belong to opposite faction, it is not safe to rely on their uncorroborated testimony. 1930 L. 311=30 P. L. R. 582=1930 Cr. C. 343.

The law does not say that when some body has stabbed another, the stabbed person's evidence has got to be corroborated by other witnesses. Court can convict upon it, if he is undoubtedly telling the truth. 125 I. C. 621=1930 M. 520=1929 M. W. N. 587=58 M. L. J. 658.

Where admittedly there is enmity between the parties and the prosecution have implicated wholly innocent persons, their evidence cannot be fully relied on without some strong independent corroboration. 1925 L. 42=84 I. C. 937=26 Cr. L. J. 393=6 L. J. 326.

Where there are two sets of evidence, neither of which alone can be accepted, without corroboration, they cannot each in its turn be taken to corroborate the other and joined together so as to justify any Court in basing conviction on such evidence. 27 C. 295, 1927 P. 257=101 I. C. 881=28 Cr. L. J. 497.

If a complainant owing to undue influence or corruption goes back on his story of crime, he should be declared hostile and should be cross-examined. If from cross-examination certain evidence is elicited which supports the prosecution, the evidence of corroboration on the part of third parties would then be admissible. 6 R. 481=1928 R. 295=112 I. C. 456=29 Cr. L. J. 1042

When the evidence of a witness stands discredited on a crucial point, it cannot be relied on a less important point unless there is some strong independent corroborative evidence. 1930 M. W. N. 723.

A conviction on the uncorroborated testimony of a single witness, once before discredited, cannot be sustained. 12 Cr. L. J. 485=12 I. C. 95.

The proof of motive for the crime is not corroboration of the evidence of an eye witness. 131 I. C. 439=1931 O. 119=32 Cr. L. J. 677=8 O. W. N. 107.

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If former statement is admitted under S. 157, it cannot be used as substantive evidence against the accused. It can only be used to corroborate the witness. 1935 P. 19=152 I. C. 832=35 Cr. L. J. 195, 1927 A. 705=105 I. C. 677=23 Cr. L. J. 965 Foll.

Evidence—(contd.)

35. The standard of proof required in criminal cases does not vary with the magnitude or enormity of the crime. 1933 S. 166=34 Cr. L. J. 808, 19 Cr. L. J. 81, though it is usual and prudent to observe the rule "the fouler the crime is, the clearer and plainer ought the proof of it to be." 1920 P. 616=22 Cr. L. J. 154.
36. Where the action of accused is open to two constructions, the Court should not assume that it was criminal. The presumption of innocence should prevail. 1927 P. 292=28 Cr. L. J. 611, 1930 S. 99, 1931 O. 385, 54 M. 931, 1924 M. 816, 14 Cr. L. J. 251.

3. Concocted— See Motive—10. Discrepancy—3, Wound—37.

1. Where the manipulation in the personnel of the actors in a crime is extremely easy and extremely difficult to refute, the question of motive is of extreme importance. 1926 O. 120=27 Cr. L. J. 529=93 I. C. 1025.
2. Prosecution witnesses who deliberately set about implicating innocent persons run a grave risk of their evidence being rejected *in toto*, even against persons whom the Court suspects as offenders. 1931 L. 38=130 I. C. 410=32 Cr. L. J. 522.
3. An approver can easily substitute an innocent person for a real offender. 1931 L. 408=32 Cr. L. J. 818=132 I. C. 185=1931 Cr. C. 648.
4. In a murder case when witnesses implicate the accused when they are faced with the necessity of exculpating themselves, their evidence is open to grave suspicion. 1930 P. 338=129 I. C. 666.
5. There is tendency in N. W. F. Province to include innocent with the guilty and to ascribe principal part to guilty persons and minor part to innocent relatives. 1935 Pesh. 75, 1935 Pesh. 50=1935 Cr. C. 351.
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Evidence—(contd.)

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 8. If a complainant owing to undue influence or corruption goes back on his story of crime, he should be declared hostile and should be cross-examined. If from cross-examination certain evidence is elicited which supports the prosecution, the evidence of corroboration on the part of third parties would then be admissible. 6 R. 481=1928 R. 295=112 I. C. 466=29 Cr. L. J. 1042
 9. When the evidence of a witness stands discredited on a crucial point, it cannot be relied on a less important point unless there is some strong independent corroborative evidence. 1930 M. W. N. 723.
 10. A conviction on the uncorroborated testimony of a single witness, once before discredited, cannot be sustained. 12 Cr. L. J. 488=12 I. C. 96.
 11. The proof of motive for the crime is not corroboration of the evidence of an eye witness. 131 I. C. 439=1931 O. 119=32 Cr. L. J. 697=8 O. W. N. 107.
 12. Corroborative evidence of a false witness can be accepted if it is free from the taint of suspicion. 1935 N. 81=17 N. L. J. 274.
 13. If former statement is admitted under S. 157, it cannot be used as substantive evidence against the accused. It can only be used to corroborate the witness. 1935 P. 19=152 I. C. 832=36 Cr. L. J. 195, 1927 A. 705=105 I. C. 677=28 Cr. L. J. 965 Foll.

Evidence—(contd.)

14. If a single witness attest several circumstances, each of which is capable of corroborating evidence, and if no such corroborating evidence is produced, there must be great confidence in the integrity and veracity of this single witness, before we can believe all these circumstances on his sole testimony, where if they were true, there would naturally be concurrent evidence to strengthen and confirm his statements. *Gilbert on evidence* P. 180. See also 1925 L. 295=26 Cr. L. J. 292, 1921 O. 115=22 Cr. L. J. 647, 12 Cr. L. J. 488.
 15. A statement used for contradicting or corroborating evidence, is not substantive evidence and cannot be made the basis of finding as to the existence of facts mentioned in the statement. 1935 P. 19, 1934 C. 124, 34 C. 129, 76 I. C. 416, 53 M. 550, 1932 O. 99=23 Cr. L. J. 381.
 16. Where there is nothing in witnesses' statement in Court which may be corroborated by a previous statement of his, the statement is inadmissible under S. 157. 1934 S. 100, 53 C. 372=1926 C. 139.
 17. When a prior statement is given in evidence under S. 288, Cr. P. C. or S. 33, Evidence Act, the deposition is testimony within the meaning of S. 157, Evidence Act and a former consistent statement may be given in evidence to corroborate it. 45 M. 766, 5 L. 324=1924 L. 609. See 34 B. 599.
 18. If a witness, though examined has not been questioned regarding a particular matter, his previous statement as to that matter is not admissible to corroborate him. 1934 S. 100=35 Cr. L. J. 1332. See 53 C. 372=1925 C. 139.
- 6. Credibility of witness.**
1. Where the evidence of a witness stands discredited on the crucial point, it cannot be relied on a less important point unless strongly corroborated. 1930 M. W. N. 723, 1930 M. W. N. 417, 27 C. 637 (646), 47 I. C. 73 42 C. 313.
 2. An Indian villager never says "there was general kicking and beating" but works out an analysis of fists and feet and right sides and left sides which is easily shown to be ridiculous but which does not prove him to be telling lies. It is merely his habit of thought and speech. 1930 M. W. N. 74=123 I. C. 43=31 Cr. L. J. 447.
 3. To discredit witnesses merely because they are Policemen is impossible. 3 L. 144=1922 L. 1=68 I. C. 113=4 L. L. J. 91=23 Cr. L. J. 513.
 4. No reliance can be placed upon the statement of a man, who can be very easily influenced to make a statement at one time and shortly after to disown it. 1921 P. 499=2 P. L. T. 125.
 5. A witness is not discredited merely because the cross-examining counsel asked some questions impeaching his character, when the answers to those questions are satisfactory. 1929 P. 180=118 I. C. 333=30 Cr. L. J. 896.
 6. When a witness for 15 days after the death of the deceased did not say anything as to what he saw, although in the meantime he was present at the hospital and when inquest report was made, his evidence is incredible. 95 I. C. 598=27 P. L. R. 719=27 Cr. L. J. 822=8 L. L. J. 186.
 7. The question of the credibility of a witness is eminently one for the trial Court. 1926 O. 215=91 I. C. 233=27 Cr. L. J. 57.
 8. The High Court must be guided as regards the credibility of oral evidence mainly by the Court that heard it. 1925 O. 715=89 I. C. 261=26 Cr. L. J. 1317.
 9. An accused should not be convicted on the strength of evidence which is disbelieved so far as other accused are concerned if the ground for disbelieving is common to all of them. 20 P. W. R. 1909 Cr.=11 Cr. L. J. 131.
 10. If the greater portion of the evidence is found to be false the accused should not be convicted on the residue without any corroboration. 42 C. 784, 42 C. 313.
 11. Statements made in the course of trial only while they were not made in Police investigation are not to be believed. 54 P. L. R. 1916=47 P. W. R. 1915 Cr.
 12. Evidence of a person, who knew the accused previously and who had ample opportunity of observing the accused at the dacoity and who immediately named him to the villagers and Police as one of the dacoits, is credible. 11 Cr. L. J. 623.

Evidence—(contd.)

13. Evidence of respectable persons with special means of knowledge should not be viewed with suspicion owing to the relationship to the parties. 25 I. C. 650.
14. A witness who changes sides or makes statements both in favour of accused and prosecution is unreliable. 1925 O. 725=83 I. C. 852=26 Cr. L. J. 1235
15. Where a witness keeps quiet for many days after the occurrence and comes forward after the Police had made discovery is not reliable. 1923 L. 438=84 I. C. 321=26 Cr. L. J. 257=5 L. L. J. 325.
16. In estimating the value of the evidence given by a witness, he should be absolutely considered to be innocent if he was acquitted in some previous case. 49 C. 235=1922 C. 12=26 C. W. N. 113=66 I. C. 774.
17. The fact that a witness makes mistake in identification is no reason for discrediting his evidence in other matters. 1923 A. 352=45 A. 300.
18. It is improper that the successor of a Judge who has believed the evidence should order his prosecution for perjury. 1931 L. 404=32 Cr. L. J. 652.
19. The following are the most important tests of the credibility of witnesses as laid down by Archbishop Whately :—(a) Whether they have the means of gaining correct information, (b) whether they have any interest in concealing the truth, (c) whether they agree in their testimony, (d) is the evidence consistent with the usual and known principles of human action and with the common experience of mankind? (e) Is the evidence consistent with itself? *Vide Historic Doubts relative to Napoleon Bona Parte, P. 14, 6th Edition. See Law of Evidence in British India by Field, Eighth Edition at P. XXI of Introduction.*
20. "The usual character of human testimony" says Dr. Paley, "is substantial truth under circumstantial variety. When accounts of a transaction come from the mouths of different witnesses, it is seldom that it is not possible to pick out apparent or real inconsistencies between them. On the contrary a close and minute agreement induces the suspicion of confederacy and fraud. *Ibid.*"
21. When we find a witness over-zealous on behalf of his party, exaggerating circumstances, answering without waiting to hear the question, for getting facts where he would be open to contradiction, minutely remembering others, which he knows cannot be disputed, reluctant in giving adverse testimony, replying evasively or flippantly, pretending not to hear the question, for the purpose of gaining time to consider the effect of his answer, affecting indifference or often avowing to God, and protesting his honesty—we have indications more or less conclusive, of insincerity and falsehood. On the other hand, in the testimony of witnesses of truth there is calmness and simplicity, a naturalness of manner; an unaffected readiness and copiousness of detail as well in one part of the narrative as another, and an evident disregard of either the facility or difficulty of vindication or detection. *Taylor on Evidence, Vol. I. 8th Ed. S. 44, S. 52. Field's Law of Evidence in India, 8th Ed. P. XXXIII and P. XXXIV.*
22. The three most important points to be ascertained in deciding on the credibility of a witness are : first, whether they have the means of gaining correct information; secondly, whether they have any intention in concealing the truth; and thirdly, whether they agree in their testimony. Then another important test will apply, namely, "is the evidence consistent with the usual and known principles of human action and with the common experience of mankind" *Field, Ev 8th Edition, Introduction XXI, quoting from Archbishop Whately's Historic Doubts relative to Napoleon Bona Parte 6th Ed., 14.*
23. It is impossible to rely implicitly upon the recollection of a witness as to conversation alleged to have taken place where there is no documentary evidence of any kind to corroborate such recollections and especially when documentary evidence is in direct contradiction thereof. 1935 P. C. 175=157 I. C. 4.

7. Cumulative effect of—

Although each of the facts is inconclusive, their cumulative value may establish the guilt and exclude other possibilities. 95 I. C. 311=27 Cr. L. J. 775.

8. Defence—. See Defence witnesses.

9. Destroying of—. See Record 2.

Evidence—(contd.)

10. Disappearance of—. See Disappearance of evidence.

11. Disbelieved in part.—Partly false.

1. When the prosecution cannot be believed in its essential details, conviction cannot be based on part of the story. 1924 P. 813=25 Cr. L. J. 724, 47 I. C. 73. *Cont.* 10 P. 590=1931 P. 384=135 I. C. 81=33 Cr. L. J. 111.
2. Evidence should not be rejected wholesale simply because some of it is unreliable, if the story told by witnesses is in the main true. 1926 N. 129=89 I. C. 663.
3. The fact that a witness makes mistakes in identification, is no reason for discrediting his evidence in other matters. 45 A. 300=1923 A. 352=24 Cr. L. J. 526.
4. Where prosecution witnesses are untruthful as to the greater part of their evidence it would be dangerous to convict: them on the residue without corroboration. 42 C. 784, 1930 O. 460=32 Cr. L. J. 94, 1933 O. 457, 1935 A. 747, 55 A. 379, 1931 L. 38=32 Cr. L. J. 522, 28 Cr. L. J. 185, 45 A. 300, 1927 L. 797, 1921 P. 406, 1924 N. 33, 1929 O. 248, 1933 A. 401, 1932 B. 424, 1930 M. W. N. 723. See 1931 P. 384=10 P. 59.
5. When the greater part of the story is disbelieved, a Court cannot reconstruct a story wholly inconsistent with that told by witnesses. 1924 P. 813=25 Cr. L. J. 724.
6. When the evidence of a witness stands discredited on the crucial point it cannot be relied on a less important point without strong corroboration. 1930 M. W. N. 723, 42 C. 313, 42 C. 784.
7. If the Judge has discredited the accounts of the occurrence as given by the prosecution and based the conviction on a narrative of his own, framed on surmise and conjecture, the conviction will be set aside. 17 C. W. N. 538, 81 I. C. 212=1924 P. 813=25 Cr. L. J. 724.
8. It is permissible for a Court to accept part and reject the rest of any witness's testimony. 78 I. C. 542=1924 N. 129=20 N. L. R. 63.
9. Where the major portion of the evidence is false, no case can be built on it. 1934 O. 124=35 Cr. L. J. 804.
10. Evidence of perjured witness should not be discarded altogether. Court must sift truth from falsehood. 1934 O. 507. 1933 A. 896 Diss. from.
11. Simply because of existence of some deliberate falsehood evidence cannot be totally rejected. 1933 O. 269.
12. Evidence of perjured witness is of no value by itself or by way of corroboration. 1933 A. 834=55 A. 639, 1933 A. 401 Rel. on.
13. If the prosecution case is false and perjured in material particulars and is supported by perjured evidence, the whole case must be thrown out. 1933 A. 896=146 I. C. 914, 1933 A. 314, 1933 A. 401. 14 C. 164 and 1933 C. 463 Ref.
14. If an individual were to invent a story entirely, the result would be his inevitable detection; but if he build a structure of falsehood on the foundation of a little truth, it may put honest man's life in jeopardy. The most effectual way of laying a plot, is not to swear too hard or too much or to come too directly to the point but to knit the false with the true, to interlace reality with fiction and to escape detection by taking most especial care never to have two witnesses to the same effect and also to make the facts as moderate and as little offensive as possible. *Rhetoric, Part I, Chap. III, S. 1; Field's Law of Evidence in Br. India 8th Ed. XXXVIII.*
15. The maxim *Falsus in uno falsus in omnibus* (false in particular false in all) is a dangerous one, especially in India, for if a whole body of testimony were to be rejected because the witness was evidently speaking untruth in one or more particulars, it is to be feared that witnesses might be dissuaded with. There is always embroidery to a story, however true in the main. When main part of the deposition is true it should not arbitrarily be rejected because of a want of veracity on perhaps some very minor point. *Field's Law of Evidence in Br. India, 8th Ed. pp. XL & XLI.*
16. But the case will be different if one of the essential circumstances in the story be clearly unfounded. This to use a felicitous expression of Mr. Hallam's "is to

Evidence—(contd.)

pull a stone out of an arch, the whole fabric must fall to the ground". *Ibid.* See also, *Constitutional History of England*. Vol. II. P. 687. 4 Moo. J. A. 441.

17. Ordinary legal and reasonable presumptions of facts must not be lost sight of in the trial of Indian cases, however untrustworthy much of the evidence submitted to the Courts may commonly be; that is, *due weight* must be given to evidence, and it should not be rejected due to general distrust nor to perjury widely imputed, without some grave grounds to support the imputation. 14 Moo. J. A. 354.
18. "There is no better criterion of the truth, no safer rule for investigating cases of conflicting evidence, where perjury and fraud must exist on one side or the other, than to consider *what facts are beyond dispute*, and to examine *which of the two cases best accords with those facts* according to the ordinary course of human affairs and the usual habits of life". 1 Moo. J. A. 19=5 W. R. P. C. 26-29.
19. *Probabilities* are an important element of consideration where the evidence appears unreliable or is directly conflicting; but a case should not be decided upon probabilities alone, apart from the evidence which the parties have submitted to the Court. 21 W. R. 436.
12. **Disbelieved regarding one accused.**
 1. Evidence disbelieved as to one accused need not necessarily be rejected altogether. 30 P. W. R. 1914 Cr.
 2. Evidence disbelieved against five accused must be convincing before the 6th person could be convicted. 1931 L. 38=130 I. C. 410=32 P. L. R. 259=32 Cr. L. J. 522, 1934 O. 13=35 Cr. L. J. 681.
 3. An accused should not be convicted on the strength of evidence which is disbelieved so far as other accused are concerned, if the ground for disbelieving it is common to all of them. 20 P. W. R. 1909 Cr., 30 P. W. R. 1914 Cr., 1921 P. 406.
 4. If evidence of eye-witnesses is accepted against some accused but not against others, it does not necessarily vitiate the judgment. 1932 L. 42=33 P. L. R. 475=19 I. C. 128=33 Cr. L. J. 744.
 5. Where there is conclusive proof of perjury on the part of alleged eye witness, with regard to one accused, Court would refuse to convict others on their evidence. 1934 A. 908.
 6. If a witness has deliberately committed perjury in falsely implicating one accused, it is impossible to accept his evidence against another accused. 1935 L. 922. Appeal No. 320 of 1934 approved. 1933 A. 314=55 A. 379 and 1933 A. 401=34 Cr. L. J. 765 Relou.
 7. If prosecution witnesses are considered unreliable in case of some accused, their evidence must be closely sifted as regards others. 1933 O. 59=34 Cr. L. J. 213.
 8. If the approver substituted an innocent person and his evidence has been rejected against him, the entire evidence against other accused should also be rejected. 1933 L. 871=35 Cr. L. J. 137.
 9. Evidence discarded against some accused should not be relied on against others. 1933 O. 404=35 Cr. L. J. 192.
13. **Discrepant.** See Discrepancy.
 1. It is impossible to base a conviction merely on track evidence when the main evidence is extremely discrepant. 27 Cr. L. J. 946=95 I. C. 493.
14. **Documentary.** See Document.
 1. When a witness merely referred to a certain document in which he stated his evidence was to be found and the documents were put on record as evidence, the course adopted was illegal. 5 L. 3=6=1925 L. 14=27 Cr. L. J. 170=91 I. C. 954.
 2. Documents filed by accused cannot be brushed aside, when they are filed by him along with his written statement. 1925 M. 1135=112 I. C. 465.
15. **Doubtful.** See Benefit of doubt.
 1. Where witnesses in a murder case implicate the accused only when they are faced with the necessity of exculpating themselves, their evidence is open to grave suspicion. 1930 P. 338=129 I. C. 666.

Evidence—(contd.)

2. If evidence is doubtful accused is entitled to acquittal. 9 P. 474=1910 P. 217.
3. When two sets of witnesses make divergent statements about one and the same incident, the matter becomes doubtful and the accused should be given the benefit of doubt. 106 I. C. 800=29 Cr. L. J. 208.
4. Where the inference suggested by what happened at the interview is equivocal and where the explanation put forward by the accused is reasonably possible, the theory of innocence cannot be said to have been negatived. 1923 Bom. 44=23 Cr. L. J. 466=67 I. C. 810=24 B. L. R. 534.
16. Events leading to occurrence.
The events preceding and leading up to assault on deceased should be considered. 1934 R. 44=35 Cr. L. J. 855.
17. Exaggerations in.
 1. It occasionally happens that the unreliability of a witness's testimony is shown by his *proving too much*. In his eagerness to assist the side on which he is called, he states some fact which to him in his ignorance appears calculated to promote this result, but which taken with other facts proved or admitted, has a tendency directly the opposite, or he makes a statement from which is deducible not only the conclusion sought to be established, but another which is absurd and inadmissible. *Field's Law of Evidence in British India, Eighth Edition, Page xxvii*.
 2. Much reliance should not be placed on the exaggerated evidence of a witness who tries to prove too much. 2 Moor I. A. 126.
18. False—. See False Evidence.
19. Filling up gaps.
Judge should not fill up gaps in prosecution evidence by making presumptions against the accused. His decision must rest upon legal testimony.
20. Hearsay—. See Hearsay.
21. Improper admission or rejection of—.. See Improper admission or rejection of evidence.
22. Improving upon—. See Witness—56.
- 22-A. In absence of accused—. See Record—11-A.
23. In criminating—. See Marks of injury. Incriminating question.
24. Interested—. See Witness—61.
25. Medical—.
 1. Where two of the complainant's party were seriously injured and detained in Hospital for 25 days, the absence of medical evidence was a serious defect. 51 C. 418=1924 C. 323=81 I. C. 264=25 Cr. L. J. 776.
 2. Where the part assigned to the accused is falsified by the medical evidence, the accused must be given the benefit of doubt. 1927 L. 617=28 Cr. L. J. 685.
 3. Where the opinion of the doctor was that the patient was incapable of doing a particular act next day and the eye witnesses deposed to the contrary. Held, that the hypothetical opinion of doctor should not prevail. 1924 Bom. 457=83 I. C. 616.
 4. Opinion of medical man should not outweigh the testimony of respectable and disinterested eye-witnesses. 50 C. 100-1924 B. 457=83 I. C. 616.
 5. Evidence of medical witness should not be considered as conclusive against the testimony of eye-witnesses. 1927 M. 996=28 Cr. L. J. 1007=11 W. R. Cr. 25.
 6. Medical evidence should be used as corroborative and not as evidence of charge. 1934 Pesh. 27=35 Cr. L. J. 961.
 7. Medical evidence should not be recorded carelessly. 18 Cr. L. J. 105.
26. Not on oath. See Oaths Act.
Unsworn testimony of a witness, so far as the maker in his evidence does not confirm and repeat it, cannot be used at all against the accused as proof of the truth of what it asserts. 1931 C. 401=131 I. C. 575=35 C. W. N. 731.

Evidence—(concl'd.)

27. Not subjected to cross examination. See Cross-examination.

28. Obtained by torturing.

Evidence obtained by torturing is of no value. 35 I. C. 527.

29. Of co-accused. See Plea of guilty, Joint trial.

30. Of negative character.

1. Very little weight should be attached to the evidence of a negative character. 15 C. L. J. 621=13 I. C. 678.
2. When one witness deposes to certain facts having occurred and another witness, stating that he was present at the same time, denies that any such fact took place, greater weight, other things being equal, is to be attached to witness alleging the affirmative. Because it may be explained that his attention was not drawn at the time. 3 Moor I A. 357. *Field's Law of Evidence in Br. India, 8th Ed., P. xxix.*
3. Negative evidence is regarded of little or no weight when opposed to affirmative evidence of credible persons. A fact may have taken place in the very sight of a person who may not have observed it or forgotten it. *Will's Circumstantial Evidence, 1912, P. 435.*

31. Of spies and informers. See Accomplice—6.

32. Omissions in—. See Discrepancy—3.

1. In case of omissions in evidence, it will be important to see whether the omission to mention a particular fact arises from wilful suppression, or from the witness's attention being rivetted upon some other facts, with describing which his mind has been wholly engrossed. *Will's on Circumstantial Evidence P. 292. See Ibid 1912 Ed., P. 434.*
2. If the fact be one which could not possibly have escaped his observation, and if, on being indirectly questioned, he evinces no knowledge of it, or being directly questioned, denies such knowledge, the supposition of inadvertence is scarcely possible, and a discrepancy is apparent. *Field's Law of Evidence, in Br. India, 8th Ed., P. xxvi.*
3. The negative circumstance of a witness's omitting to mention such things, as it is morally certain he would have mentioned, had he been inventing, adds great weight to what he does say. *Ibid.*
4. If several circumstances capable of corroborating evidence are attested by single witness, there must be great confidence in the integrity and veracity of this single witness. *Ibid. See also Gilbert on Evidence, P. 180.*
5. Where a case is supported by several parallel chains the want of a link in any one of them renders that particular one wholly useless, and throws the whole strain on the others, but where the entire weight depends upon a single chain only, the failure of one link, however strong the remaining links may be, must be fatal; and even where the link is not wholly wanting, but merely partly defective, it is well to remember that a chain is not stronger than its weakest part. *Ibid.*

33. Piece-meal.

1. When the evidence for prosecution is recorded piece-meal, there is every opportunity for each succeeding witness to know what the statement of the previous witness was and also what the line of cross-examination was. Such a procedure is irregular. 1928 L. 152=106 I. C. 792=29 Cr. L. J. 200.
2. Evidence should not be recorded piece-meal. 42 C. 313, 21 C. W. N. 694.

34. Quantum and quality of—. See Witness.

1. When there are many witnesses to corroborate certain facts, it is not necessary that prosecution must summon every body that has seen the occurrence. 1923 P. 46=104 I. C. 708=28 Cr. L. J. 868.
2. The question of evidence in a criminal case is not greater than or different to that required in a civil suit. 64V. R. 57.
3. The quantum of evidence does not depend on the enormity of crime but still it is safer to follow the rule that "the fouler the crime, the clearer and the plainer the

Evidence—(concl'd.)

proof ought to be." 59 I. C. 858, 1933 S. 166=34 Cr. L. J. 808.

4. It is the weight of evidence and not the number of witnesses which the Court has to consider in a case. 1921 O. 115=22 Cr. L. J. 647, 1925 O. 501, 1925 L. 275, 1934 L. 158, 1930 L. 892, 53 A. 598, 19 Cr. L. J. 946, 1920 P. 366.

5. Conviction can be based on the evidence of complainant alone. 1934 O. 244.

35. Record of—. *See* Record.

Conviction on evidence recorded by subordinate Magistrate is illegal. 17 P. R. 1867.

36. Suggestions by accused or Pleader.

Mere suggestions by a Pleader for the accused do not amount to evidence, unless partly or wholly accepted by the witnesses for the prosecution. 1932 C. 375=35 C. W. N. 106=139 I. C. 245=33 Cr. L. J. 725.

37. Suppressing of—. *See* Abetment—16.

1. If prosecution deliberately suppresses part played by deceased, the story put forward by accused should be believed. 1934 L. 696.
2. If there are number of facts which lead one to suspect that real truth has not been placed before the Court and story put forward by accused is not inconsistent, it is not just to convict him. 1935 C. 304.

38. Track—. *See* Track.

39. Tutored—. *See* Witness—105.

40. Uncontradicted—.

1. Ordinary legal and reasonable presumptions of facts must not be lost sight of in the trial of Indian cases, however untrustworthy much of the evidence submitted to these Courts may commonly be; that is, due weight must be given to evidence, and it should not be rejected due to general distrust nor to perjury widely imputed, without some grave grounds to support the imputation. 14 Moo. I. A. 354.
2. If some evidence is wholly uncontradicted, it should be believed, when no evidence to impeach it has been produced, although it was capable of contradiction. 7 Moo. I. A. 167.

41. Using against co-accused.

The evidence of defence witnesses produced by one accused cannot be treated as prosecution evidence against other accused. 1925 A. 769=26 Cr. L. J. 1018, 1926 L. 627=96 I. C. 989=27 Cr. L. J. 1037.

42. Using in another file. *See* Record—II-A.

1. Depositions taken in one case cannot be used in another. 50 C., 223=4 L. 376, 1923 M. 327, 50 A. 457, 56 M. 159, 1924 C. 813.
2. If witnesses are not examined and depositions are filed in another case, it is no evidence. 1923 M. 327=72 I. C. 525=24 Cr. L. J. 413.
3. When evidence in a case is treated as evidence in the counter case, the procedure is illegal and not curable under S. 537, Cr. P. C. 4 L. 376=1924 L. 104=25 Cr. L. J. 68, 17 Cr. L. J. 439, 1928 L. 34.
4. It is only a curable irregularity to consolidate more than one similar complaints and to record evidence by consent of accused is one of them and use it in another. 50 B. 174=1926 Bom. 231=98 I. C. 407=27 Cr. L. J. 1335.
5. Where parties consented to treat evidence in one case as evidence in the other and no injustice followed from it, the trial is not bad. 50 A. 457.
6. If depositions are filed in another case with the consent of parties and witnesses are called and examined and they swear to the truth of their previous statements, there is nothing illegal or irregular in the procedure. 53 M. 775, 9 A. 609, 1923 M. 32 Expl., 1927 L. 781, 1924 L. 164 and 1926 B. 231 Dist.
7. In two dacoity cases material witnesses were examined separately and carbon copies of statement of formal witnesses in one case were filed in another. Held, it was mere irregularity. Sessions Judge can rectify it by summoning and examining them. 1935 O. 9 (1)=36 Cr. L. J. 175, 55 A. 1040=1933 A. 690 Ref.

Evidence—(concl'd.)

43. Value and weight of—. *See*—2.

- In weighing the evidence adduced regard should be paid : (1) what is stated against the accused in the first report, (2) feeling of enmity between the parties, (3) the facility with which he could be implicated, (4) and the motive for implicating him. 90 P. L. R. 1909=19 P. W. R. 1909 Cr.=11 Cr. L. J. 130.

44. Withholding or non-production of—. *See* Witnesses—70.

EVIDENCE ACT, 1872. *See* Index.

EXAGGERATIONS IN EVIDENCE. *See* Evidence—17.

EXAMINATION-IN-CHIEF. *See* Cross-examination—14.

EXAMINATION OF ACCUSED. S. 342, Cr. P. C. *See* Defence.

1. Accused. *See*—17.

1. Two persons were shown in the charge sheet as accused persons but were not sent up for trial. No process was issued against them. They were examined as prosecution witness. Held. they were not "accused" for the purposes of S. 342. 1935 B. 186=59 B. 355, 16 B. 661 and 33 C. 1353 Rel. on.
2. Accused means the accused *then under trial* and under examination by the Court. 23 B. 213, 45 C. 720, 1920 N. 255, 17 Cr. L. J. 256.
3. Co accused tried separately is a competent witness. 1925 R. 122.
4. It cannot include accused over whom Court is exercising jurisdiction in *another* inquiry or trial. 56 C. 400, 20 A. 426, 35 C. 161, 45 C. 720, 58 C. 1214.
5. Where a person is not on trial. 1920 N. 255, 38 P. R. 1887 ; or is given pardon under S. 337. 21 P. R. 1904 or is discharged, 16 B. 66 or convicted, 58 C. 1214, he is not accused person.

2. After alteration of charge.

1. It is not necessary to examine the accused again after the charge is altered, although some of the witnesses after the alteration or addition to the charge have been recalled under S. 231, Cr. P. C. 1 P. 54=1922 P. 393=23 Cr. L. J. 146.
2. Where a Magistrate finds that a charge of house breaking with intent to commit theft is untenable, but finds that there was different object, he must give notice of that to the accused. 41 C. 743.

3. After further cross-examination.

If the prosecution witnesses were recalled for further cross-examination, and accused was not examined afterwards, the trial is vitiated 1934 L. 648 (1), 1928 L. 230, 7 L. 564=1926 L. 551, 1 R. 666 Foll. 4 L. 61 Ref.

4. Applicability.

1. S. 342 applies to a summons case. 1926 A. 358, 45 B. 672, 49 C. 1075, 46 B. 441, 96 I. C. 856, 90 I. C. 434, 59 I. C. 129, 6 P. L. J. 174, 22 Bom. L. R. 1040, 1935 A. 217, 45 A. 124, 1928 A. 222—265, Cont. 9 R. 506, 46 M. 758.
2. S. 342 applies to summary trials of warrant cases. 41 C. 743, 3 P. L. T. 347, 1935 S. 193 Cont. 46 M. 726 and of summons case. 15 L. 60, 1931 L. 153 (154), 1922 P. 206, 31 Cr. L. J. 613, 1936 O. 16, 1935 A. 217, 6 P. 504.
3. S. 342 does not apply to proceedings under S. 488, Cr. P. C. 52 B. 768=1923 Bom. 347=112 I. C. 475, 18 B. 468, 16 M. 234, 10 L. 405=1929 L. 32=112 I. C. 215=23 Cr. L. J. 1002, 1924 M. 150, 1927 L. 435 (1)=101 I. C. 606, (1927 C. 250, 1921 P. 11 and 1925 L. 667 Diss. from), 35 C. W. N. 380=1932 C. 488.
4. S. 342 does not apply to inquiry under S. 117, Cr. P. C. 50 C. 955, 1933 S. 42.
5. S. 342 does not apply to proceedings under S. 145, Cr. P. C. 1925 O. 266.
6. It is not obligatory on the Magistrate to examine the accused after the Court witnesses are examined. 1928 Bom. 384, 24 C. 167, 1925 L. 154, 3 P. 1015.
7. S. 342 applies to Presidency Magistrates. 45 B. 672.

5. Before all the prosecution witnesses.

Examination of Accused—(contd.)

1. Examination of the accused before all the prosecution witnesses is bad in law. 50 C. 223=1923 C. 196=71 I. C. 662=27 C. W. N. 99, 9 M. 224.
 2. A confessional statement of accused before examination of all the witnesses is inadmissible. 1930 L. 454=123 I. C. 540, 1928 L. 724=29 Cr. L. J. 697.
 3. Accused confessed that he had cut branches from banian tree standing on Government land and was convicted on this without any other evidence. Held, that the conviction is illegal. 5 M. H. C. R. App. 37.
- 6. Before arrest.**
- Police Officer should not, preliminary to the arrest of a person, obtain a statement from him under S. 161, Cr. P. C. 27 C. 295.
- 7. Before Committing Magistrate.** S. 209, Cr. P. C.
1. If a Magistrate commits the accused before examining him, the commitment should be quashed. 23 M 636. This case was decided in 1900 when the words "if necessary" did not occur in S. 209, Cr. P. C. 1935 C. 605=62 C. 475, 1921 S. 131.
 2. The object of examining him is to ascertain from the accused as to what explanation he offers regarding the facts stated by the witnesses. 6 C. 96, 9 P. 504=1930 P. 498, 1 M. H. C. R. 199.
 3. If the accused is unwilling to submit to examination, a note may be made to that effect. 42 I. C. 145=18 Cr. L. J. 913=11 S. L. R. 52.
 4. In a case triable by Sessions Court, the omission to examine the accused in committing Court is no disregard of the mandatory provisions of law. 1935 C. 605=62 C. 475=157 I. C. 1103=39 C. W. N. 289, 1921 S. 131=25 Cr. L. J. 191=83 I. C. 895 Rel. on. 23 M. 636 Dist. 54 C. 286=1927 C. 250 Ref.
- 8. By Police.** Ss. 160-161, Cr. P. C.
1. A Police Officer has no power to examine a person accused of the offence under investigation. 4 R. 72=1926 R. 116=27 Cr. L. J. 881.
 2. Ss. 160-161-162 do not apply to accused person and do not affect or override S. 27 of the Evidence Act. 1925 M. 574, 4 R. 72=1926 R. 116, 1926 P. 232, 1925 S. 237=86 I. C. 410=26 Cr. L. J. 778.
 3. Any incriminating statement made by accused person at an inquiry held under S. 161, Cr. P. C., would be excluded under S. 25, Evidence Act, and cannot be used at the trial. 1925 S. 237=86 I. C. 410=26 Cr. L. J. 778.
- 9. Collective or joint statement.** *Sec—11.*
1. Where the Magistrate does not examine all the accused separately, but records their statement collectively it is an illegality which vitiates the proceedings. 6 L. 554=1926 L. 155, 55 B. 356, 29 Cr. L. J. 469, 20 P. R. 1913.
 2. Accused stated that his statement was the same as that of his co-accused. Co-accused made two contradictory statements. Accused must get the benefit of the statement beneficial to him. 1932 S. 165.
 3. A Magistrate examined the accused separately before charge but jointly after the closing up of prosecution evidence. Held, that the procedure was illegal. 29 Cr. L. J. 469=10 L. L. J. 306=109 I. C. 117, 1926 L. 155.
- 10. Cross-examination of accused.**
1. The examination should not be conducted in the manners of examination of an adverse witness by counsel. 10 L. 223, 6 C. 96, 2 L. 129, 1 P. 630, 5 A. 213, 10 C. 140, 11 Cr. L. J. 193=4 I. C. 1126, 5 P. L. T. 649, 1930 R. 351=8 R. 372.
 2. S. 342 does not warrant cross-examination of the accused on his probable line of defence, before the prosecution evidence is over. 11 Cr. L. J. 171.
 3. It is highly improper to subject the accused to a very embarrassing and cruel series of questions intended rather to puzzle the accused than to enable him to furnish an explanation. 6 Bom. L. R. 94.
 4. Accused admitted their guilt before the Committing Magistrate but pleaded not guilty in the Sessions Court. The Sessions Judge began to cross-examine the accused with

Examination of accused—(contd.)

regard to the confessional statements made before the Committing Magistrate and another Magistrate under S. 164. Held, the procedure is illegal. 1922 A. 266=73 I. C. 497=24 Cr. L. J. 609.

5. Sessions Judge should not cross-examine accused to confront them with statements made to the investigating officer. 1935 A. 717=155 I. C. 560=36 Cr. L. J. 773.
6. If the questions in the nature of cross-examination are put, they should not be taken into account. 4 L. 55, 8 Cr. L. J. 62, 10 Cr. L. J. 325.

11. Joint trial—Joint Statement. See—9.

1. Statement of one accused cannot be taken into consideration against the other accused. 54 B. 531=1930 Bom. 354=31 Cr. L. J. 1137=127 I. C. 105.
2. The trial Court examined several accused separately before charge but jointly after the closing up of prosecution evidence and recorded a joint statement of theirs under S. 342. Held, that the procedure is illegal. 109 I. C. 117=10 L. L. J. 305=29 Cr. L. J. 469=29 P. L. R. 436, 1926 L. 155 Foll.
3. Two co-accused on a trial for the same crime are not debarred from giving a concerted statement. When a Magistrate was examining an accused, he found that the other two accused were exchanging remarks. Held, that the course that the accused attempted to follow was not an illegal or improper and that the Magistrate was not entitled to remove the second accused from the Court and examine the first accused in his absence. 1925 N. 403=91 I. C. 242=27 Cr. L. J. 66.
4. Under S. 42, Factories Act, a manager or occupier initially charged, can go into witness box not as accused but as a complainant against the other person whom he has brought in to prove that he committed the offence without his knowledge. 56 C. 400=1928 C. 557=117 I. C. 673=32 C. W. N. 922.

12. Gaps in prosecution—filling up by—.

1. The accused should not be examined for filling up gaps in the prosecution. 26 C. 49, 1925 N. 403, 27 Cr. L. J. 65, 9 P. 504=1930 P. 498, 27 M. 238, 36 M. 457, 42 A. 52, 4 L. 55, 28 C. 689, *Cont.* 1935 C. 687.
2. Accused should not be examined for supplementing evidence when it is deficient. 1 C. L. R. 436, 10 M. 295.
3. Where in a charge of defamation the prosecution is unable to prove that accused published the defamatory matter, it is illegal to examine the accused for supplying this defect in the prosecution. 27 M. 238, 4 L. 55=1923 L. 225.
4. It is improper to question the accused for the purpose of proving his identity, when prosecution has not let in evidence to that effect. 4 Cr. L. J. 471.
5. Where the prosecution has not let in evidence implicating the accused in the offence with which he is charged the Magistrate is not entitled to put questions to him under S. 342. 39 M. 770, 4 L. 55, 9 M. 244.

13. Improper questions.

1. The Magistrate cannot put any questions with the object of trapping him into some sort of admission after he has resiled from his confession. 2 L. 129.
2. It is objectionable to put questions to the accused in regard to the matter which he had previously mentioned in his confession and which he had repudiated as untrue. 7 C. W. N. 345.
2. Where the prosecution has adduced no evidence implicating the accused in the offence, the Magistrate has no right to put questions to him or to invite him to make a statement, the answers given by him to such questions are inadmissible in evidence against him. 39 M. 770, 4 L. 55, 9 M. 224.
4. It is improper to examine the accused for filling up gaps in prosecution or supplementing evidence. 4 L. 55, 26 C. 49, 9 P. 504, 14 M. 295.
5. It is improper to question the accused to ascertain from him the names of witnesses or what evidence they will give or what his defence is. 14 A. 242, 13 A. 345, 27 M. 238, 1925 N. 403=91 I. C. 242=27 Cr. L. J. 66.
6. It is improper for a Magistrate to put questions to the accused, before his

Examination of accused—(contd.)

conviction in the present trial, about his previous convictions, either with a view to take them into consideration for the purpose of conviction or to dispense with the formal evidence as to the alleged previous conviction and as to the identity of the accused in the event of conviction. 23 B. 129, 28 C. 687. *Cont.* 4 N. L. R. 163.

7. An examination of the accused of an inquisitorial nature or for filling up gaps in prosecution is improper and illegal. 1925 N. 403 14 A. 242.
8. Questions in the nature of cross-examination should be avoided. 1930 S. 225=126 I. C. 449, 31 Cr. L. J. 1026, 2 L. 129.
9. Embarrassing questions to draw admission from accused are improper. 1925 S. 116=81 I. C. 249=25 Cr. L. J. 761.
10. It is highly improper to subject the accused to a very embarrassing and cruel series of questions intended rather to puzzle him. 6 Bom. L. R. 94.
11. Putting one long composite question is irregular. 1927 L. 650=103 I. C. 847.
12. No judicial officer should attempt to compel accused to make admission detrimental to his interest. 19 A. 291.
13. Magistrate cannot ask accused about his previous conviction. 28 C. 689, 23 B. 129, 5 C. W. N. 239, 5 C. W. N. 864, 2 Cr. L. J. 227.

14. Incomplete chalan.

A was charged with murder. Police put in incomplete chalan before a Committing Magistrate who after examining some of the prosecution witnesses examined the accused under S. 342, who confessed. But when he was again examined, he retracted. Held, that an attempt by Police to get over the mandatory provisions of S. 164 must be deprecated and confession should be ruled out. 1928 L. 724=110 I. C. 329=20 P. L. R. 388=10 L. L. J. 311=29 Cr. L. J. 697.

15. Inducement in. S. 343, Cr. P. C.

1. Eliciting of admission by putting words in accused's mouth is unfair. 5 C. P. L. R. 11.
2. Accused is not bound to produce absconding co-accused and Court cannot exercise pressure on him. 1930 L. 953.
3. As to what is the consequence of inducement. See 17 Cr. L. J. 256.

16. Nature of questions. See—19.

1. The Magistrate asked "what have you to say regarding the statement of the witnesses". Held, this was not a sufficient compliance with the law. 1 R. 689=1924 R. 172=77 I. C. 887=25 Cr. L. J. 487.
2. The specific points which weigh against the accused must be mentioned for if this is not done he cannot be expected to explain those points. The general question "what have you to say?" is insufficient. 1 R. 689=1924 R. 172.
3. To all the accused, the question was put separately "what is your defence?" To which the accused replied "I am innocent. I will file written statement." Held, that this was sufficient compliance with S. 342. 1926 C. 424=90 I. C. 294=26 Cr. L. J. 1510, 1923 C. 470.
4. A general question to accused is sufficient, Court need not put specific questions. 1927 M. 613=100 I. C. 991, 1925 C. 361, 1927 N. 71=91 I. C. 997. *Cont.* 1926 L. 447, 1925 L. 361.
5. When accused is defended by Counsel, failure of Magistrate to put explicit questions is immaterial. 1933 M. 233=56 M. 231.

17. Oath to accused. See—1, Witnesses—77.

1. No oath can be administered to an accused and therefore cannot be examined as witness. 1 B. 610, 2
12 L. 635, 28 A. 331, 5
9 P. R. 1906 Cr., 3 R. 11,
116.
2. S. 342 (4) applies only to statements made by an accused in answer to questions put

Examination of accused—(contd.)

- to him by the Court. It has no reference to an affidavit in support of an application for transfer of the case under S. 526. 3 L. 46=1922, L. 113=23 Cr. L. J. 399.
3. Proceedings under the Legal Practitioners Act are quasi-criminal and the Pleader can be examined on oath. 49 C. 732=1922 C. 515=24 Cr. L. J. 33.
 4. A party to proceedings under S. 363, Calcutta Municipal Act, is not an accused and oath can be administered to him. 54 C. 532=1927 C. 509.
 5. It is most unfortunate that Indian Law does not permit an accused person to give evidence in support of his defence. 1929 P. 145=33 Cr. L. J. 646.
 6. Statement of accused on oath before coroner at inquest is inadmissible in evidence. 50 B. 56=1926 B. 144 *Cont.* 50 B. 111.
 7. A criminal appeal is *continuation* of the criminal case and the appellant has the privilege of accused and cannot be administered oath. 12 M. 451, 7 L. 148.

18. Object of—

1. The object is to enable the accused to explain any circumstances appearing in evidence against him and not to entrap him into some sort of admission. 9 P. 504=1930 P. 498=1930 Cr. C. 926.
2. The Court should mention the salient points to the accused, for failure to give explanation will entitle the Court to draw an inference against him. 52 C. 522=1925 C. 361=26 Cr. L. J. 631=85 I. C. 919.
3. Where an accused was charged under S. 307, I. P. C. and in convicting him relied on the fact that some abrasions were found on his person. Held, that unless an incriminating circumstance is proved by the prosecution to exist against an accused person, he should not be called upon to explain away its existence. 120 I. C. 210=31 Cr. L. J. 15=1929 N. 350.

19. Omission to examine and non-compliance—

1. The word "shall" shows that examination of the accused is mandatory and not discretionary. 10 Bom. L. R. 201=7 Cr. L. J. 194, 1 P. R. 1918 Cr., 20 Cr. L. J. 12.
2. Omission to examine the accused vitiates the whole trial. 45 B. 672, 46 M. 449, 50 C. 518, 25 C. W. N. 609, 28 C. W. N. 119, 51 C. 924, 20 Cr. L. J. 12.
3. The defect of non-examination cannot be cured by S. 537, Cr. P. C. The trial is vitiated even though the accused is not prejudiced thereby. 50 C. 518, 50 C. 223, 1 P. R. 1918 Cr., 4 L. L. J. 230, 1931 M. 241, 32 Cr. L. J. 603 (1).
4. If a Magistrate discharges the accused, the non-examination of the accused does not vitiate the proceedings. 46 M. 449 (461).
5. When once the accused is examined under S. 342 after the conclusion of the prosecution evidence, it is not necessary to examine him again after further cross-examination. 1926 L. 154=89 I. C. 842=26 Cr. L. J. 1418.
6. Omission to examine the accused after all the witnesses for prosecution have been examined and before he is called upon for his defence, is a serious illegality which vitiates the trial. 1928 L. 382=112 I. C. 850=30 Cr. L. J. 18.
7. The accused need not be examined after the Court witnesses are examined. 1926 N. 348=93 I. C. 699=27 Cr. L. J. 475, 1926 L. 154, 24 C. 167.
8. It cannot be said that medical witness is a formal one and failure to examine the accused after his evidence vitiates the trial. 1922 P. 299 (1)=60 I. C. 659.
9. If the accused is not examined after the additional evidence, which does not disclose any fresh facts or affects the decision of the Court, the omission is not fatal. 1929 S. 5=111 I. C. 852=29 Cr. L. J. 932.
10. Non compliance with the provisions of S. 342 does not vitiate the whole trial, if accused is not prejudiced. 1928 A. 222=115 I. C. 872=30 Cr. L. J. 530, 26 A. L. J. 196, 1923 A. 81, 1925 P. 414, 1926 L. 553 and 1923 M. 608 *Foll.* 1923 C. 196 *Not foll.* 7 R. 470, 1932 O. 113=33 Cr. L. J. 81.
11. Where the Magistrate examined accused at length after only some of the witnesses for the prosecution were examined but it was not proved that any prejudice was caused to the accused, Held, that the procedure though irregular was not illegal.

Examination of accused—(contd.)

conviction in the present trial, about his previous convictions, either with a view to take them into consideration for the purpose of conviction or to dispense with the formal evidence as to the alleged previous conviction and as to the identity of the accused in the event of conviction. 23 B. 129, 23 C. 687. *Cont.* 4 N. L. R. 163.

7. An examination of the accused of an inquisitorial nature or for filling up gaps in prosecution is improper and illegal. 1925 N. 403 14 A. 242.
8. Questions in the nature of cross-examination should be avoided. 1930 S. 225=126 I. C. 449, 31 Cr. L. J. 1026, 2 L. 129.
9. Embarrassing questions to draw admission from accused are improper. 1925 S. 116=81 I. C. 249=25 Cr. L. J. 761.
10. It is highly improper to subject the accused to a very embarrassing and cruel series of questions intended rather to puzzle him. 6 Bom. L. R. 94.
11. Putting one long composite question is irregular. 1927 L. 650=103 I. C. 847.
12. No judicial officer should attempt to compel accused to make admission detrimental to his interest. 19 A. 291.
13. Magistrate cannot ask accused about his previous conviction. 23 C. 689, 23 B. 129, 5 C. W. N. 239, 5 C. W. N. 864, 2 Cr. L. J. 227.

14. Incomplete chalan.

A was charged with murder. Police put in incomplete chalan before a Committing Magistrate who after examining some of the prosecution witnesses examined the accused under S. 342, who confessed. But when he was again examined, he retracted. Held, that an attempt by Police to get over the mandatory provisions of S. 164 must be deprecated and confession should be ruled out. 1928 L. 724=110 I. C. 329=20 P. L. R. 388=10 L. J. 311=29 Cr. L. J. 697.

15. Inducement in. S. 343, Cr. P. C.

1. Eliciting of admission by putting words in accused's mouth is unfair. 5 C. P. L. R. 11.
2. Accused is not bound to produce absconding co-accused and Court cannot exercise pressure on him. 1930 L. 953.
3. As to what is the consequence of inducement. See 17 Cr. L. J. 256.

16. Nature of questions. See—19.

1. The Magistrate asked "what have you to say regarding the statement of the witnesses". Held, this was not a sufficient compliance with the law. 1 R. 689=1924 R. 172=77 I. C. 887=25 Cr. L. J. 487.
2. The specific points which weigh against the accused must be mentioned for if this is not done he cannot be expected to explain those points. The general question "what have you to say?" is insufficient. 1 R. 689=1924 R. 172.
3. To all the accused, the question was put separately "what is your defence?" To which the accused replied "I am innocent. I will file written statement." Held, that this was sufficient compliance with S. 342. 1926 C. 424=90 I. C. 294=26 Cr. L. J. 1510, 1923 C. 470.
4. A general question to accused is sufficient, Court need not put specific questions. 1927 M. 613=100 I. C. 991, 1925 C. 361, 1927 N. 71=91 I. C. 997. *Cont.* 1926 L. 447, 1925 L. 361.
5. When accused is defended by Counsel, failure of Magistrate to put explicit questions is immaterial. 1933 M. 233=56 M. 231.

17. Oath to accused. See—1, Witnesses—77.

1. No oath can be administered to an accused person and therefore cannot be examined as witness. 1 B. 610, 2 A. 260, 45 C. 720, 10 B. 190, 9 P. R. 1906 Cr., 3 R. 11, 12 L. 635, 28 A. 331, 58 C. 1214, 1929 P. 145 26 M. 116.
2. S. 342 (4) applies only to statements made by an accused in answer to questions put

Examination of accused—(contd.)

to him by the Court. It has no reference to an affidavit in support of an application for transfer of the case under S. 526. 3 L. 46=1922 L. 113=23 Cr. L. J. 399.

3. Proceedings under the Legal Practitioners Act are quasi-criminal and the Pleader can be examined on oath. 49 C. 732=1922 C. 515=24 Cr. L. J. 33.
4. A party to proceedings under S. 363, Calcutta Municipal Act, is not an accused and oath can be administered to him. 54 C. 532=1927 C. 509.
5. It is most unfortunate that Indian Law does not permit an accused person to give evidence in support of his defence. 1929 P. 145=30 Cr. L. J. 646.
6. Statement of accused on oath before coroner at inquest is inadmissible in evidence. 50 B. 56=1926 B. 144 *Cont.* 50 B. 111.
7. A criminal appeal is *continuation* of the criminal case and the appellant has the privilege of accused and cannot be administered oath. 12 M. 451, 7 L. 148.

18. Object of—

1. The object is to enable the accused to explain any circumstances appearing in evidence against him and not to entrap him into some sort of admission. 9 P. 504=1930 P. 498=1930 Cr. C. 926.
2. The Court should mention the salient points to the accused, for failure to give explanation will entitle the Court to draw an inference against him. 52 C. 522=1925 C. 361=26 Cr. L. J. 631=85 I. C. 919.
3. Where an accused was charged under S. 307, I. P. C. and in convicting him relied on the fact that some abrasions were found on his person. Held, that unless an incriminating circumstance is proved by the prosecution to exist against an accused person, he should not be called upon to explain away its existence. 120 I. C. 216=31 Cr. L. J. 15=1929 N. 350.

19. Omission to examine and non-compliance—

1. The word "shall" shows that examination of the accused is mandatory and not discretionary. 10 Bom. L. R. 201=7 Cr. L. J. 194, 1 P. R. 1918 Cr., 20 Cr. L. J. 12.
2. Omission to examine the accused vitiates the whole trial. 45 B. 672, 46 M. 449, 50 C. 518, 25 C. W. N. 609, 28 C. W. N. 119, 51 C. 924, 20 Cr. L. J. 12.
3. The defect of non-examination cannot be cured by S. 537, Cr. P. C. The trial is vitiated even though the accused is not prejudiced thereby. 50 C. 518, 50 C. 223, 1 P. R. 1918 Cr., 4 L. L. J. 230, 1931 M. 241, 32 Cr. L. J. 603 (1).
4. If a Magistrate discharges the accused, the non-examination of the accused does not vitiate the proceedings. 46 M. 449 (461).
5. When once the accused is examined under S. 342 after the conclusion of the prosecution evidence, it is not necessary to examine him again after further cross examination. 1925 L. 154=89 I. C. 842=25 Cr. L. J. 1418.
6. Omission to examine the accused after all the witnesses for prosecution have been examined and before he is called upon for his defence, is a serious illegality which vitiates the trial. 1925 L. 382=112 I. C. 850=30 Cr. L. J. 15.
7. The accused need not be examined after the Court witnesses are examined. 1925 N. 348=93 I. C. 699=27 Cr. L. J. 475, 1925 L. 154, 24 C. 167.
8. It cannot be said that medical witness is a formal one and failure to examine the accused after his evidence vitiates the trial. 1922 P. 249 (1)=60 I. C. 654.
9. If the accused is not examined after the additional evidence, which does not disclose any fresh facts or affects the decision of the Court, the omission is not fatal. 1925 S. 5=111 I. C. 852=29 Cr. L. J. 932.
10. Non compliance with the provisions of S. 342 does not vitiate the whole trial, if accused is not prejudiced. 1925 A. 222=115 I. C. 872=30 Cr. L. J. 530, 25 A. L. J. 196, 1923 A. 81, 1925 P. 414, 1925 L. 553 and 1923 M. 605 *Foll.* 1923 C. 146 *Not foll.* 7 R. 470, 1932 O. 113=33 Cr. L. J. 81.
11. Where the Magistrate examined accused at length after only some of the witnesses for the prosecution were examined but it was not proved that any prejudice was caused to the accused, Held, that the procedure though irregular was not illegal.

Examination of accused—(contd.)

1928 L. 382=112 I. C. 850=30 Cr. L. J. 18.

12. In warrant case tried summarily a failure to examine accused does not vitiate the trial if accused is not prejudiced. 1926 O. 424=95 I. C. 932=27 Cr. L. J. 852.
13. Order of acquittal was set aside on the ground that the trial had been vitiated by failure to comply with the provisions of S. 342. 51 C. 924=1924 C. 975=26 Cr. L. J. 15, 4 R. 361=93 I. C. 484=1927 R. 19=27 Cr. L. J. 1364.
14. If the accused is not further examined, after the further cross-examination of witnesses, the trial is not vitiated. 1925 N. 147=81 I. C. 976, 1923 M. 609, 3 R. 139. *Cont.* 1923 C. 104, 1924 C. 975, 92 I. C. 752.
15. If after the examination of the accused, further witnesses for the prosecution are examined, the omission to further examine the accused vitiates the trial. 1928 B. 140=109 I. C. 359=29 Cr. L. J. 535, 108 I. C. 381 (L.), 1926 L. 551, 1925 P. 342, 1926 L. 683, 50 C. 34, 1926 L. 667, L. 564, 1926 L. 51=89 I. C. 458=26 P. L. R. 533, 49 C. 1075, 130 I. C. 845 (1).
16. Non-compliance with the provisions of S. 342 makes the proceedings subsequent to the illegality, illegal. It will not result in acquittal but will necessitate a remand to correct the error. 1926 N. 348=93 I. C. 699, 1928 N. 162, 1934 L. 631.
17. Failure to examine accused under S. 342 in warrant case tried summarily does not vitiate the trial, if prejudice is not caused. 1926 O. 424=27 Cr. L. J. 852.
18. After the examination of accused, investigating officer was examined, the accused should be further examined. 1932 S. 165, 1927 L. 916.
19. If crown witness is examined after defence evidence is over, failure to examine accused again does not vitiate conviction if no prejudice is caused. 1934 S. 67=35 Cr. L. J. 1175, 1929 S. 5 Expl.
20. Statement should be of accused and not his Advocate although his appearance is exempted under S. 205. 1934 A. 693 (2)=35 Cr. L. J. 789, *Cont.* 1934 B. 212, 1926 B. 218, 1927 R. 75.
21. If after close of examination, evidence against accused is given and he is not examined, the trial is illegal from that stage. 1934 L. 631, 1928 L. 230, 15 L. 60=1934 L. 96, 7 L. 564=1926 L. 551 and 1928 L. 382 Rel. on. 1933 L. 1002, 1930 L. 153 (2) 1928 N. 162 and 1926 P. 29, 1925 S. 127, 1924 P. 374, 1925 N. 433.
22. If evidence against accused is entirely circumstantial, important circumstances, which if unexplained would lead to conviction should be specifically pointed out to accused and explanation elicited, otherwise conviction cannot be sustained. 1936 M. 628-629, 1936 M. 715, 1933 P. C. 124, 1923 P. 91.
Deceased was last seen with accused selling ornaments on deceased's person same day. If accused is not examined on this point, conviction is bad. 1936 M. 629=59 M. 631 (n) 1933 P. C. 124 foll.
24. S. 342 does not apply if no evidence has been given by prosecution. 13 A. 345, 5 C. W. N. 684, 6 L. 183, 39 M. 770, 22 Cr. L. J. 146, or when no evidence implicating the accused has been given. 4 L. 55=1923 L. 225, 1929 N. 350=31 Cr. L. J. 15.
25. In a petty or technical case, case should not be remanded for complying with the provisions of S. 342. 52 C. 522, 1934 L. 618, 1934 L. 415, 1925 C. 980, 1933 L. 1002, 1933 N. 192.
26. If further evidence is taken after the examination of accused, it should be rejected. 1927 L. 916.

20. Privilege—Defamation during—or contempt of Court.

1. If the accused gave a defamatory answer to a question put by the Court and was relevant to the matter in issue, Held, that S. 342 (2) applied and he was not punishable for defamation. 1927 A. 707=50 A. 169, 36 M. 216 and 1921 C. 1 Rel., 1926 A. 2-7 Dist., 1926 P. 141 Diss. from.
2. Relevant statements made by an accused person under S. 342 or contained in a written statement are not absolutely protected for being the subject of a charge of defamation. 1936 L. 102=1926 B. 141=93 I. C. 151, 45 C. 385.

Examination of accused—(contd.)

3. A statement which amounts to contempt of Court will render the accused liable to punishment. 46 B. 973=1922 B. 261=23 Cr. C. J. 325.

21. Proceedings after irregularity.

Evidence taken after examination of the accused without further explanation from him cannot be taken into account. 1927 L. 916=106 I. C. 347=29 Cr. L. J. 11.

22. Public Prosecutor or Prosecutor conducting—

1. Where a Magistrate does not discharge the statutory function under S. 342 in a judicial manner and acts as the mouthpiece of the Public Prosecutor in conducting the examination of the accused, it is a good ground for transfer of the case. 1930 L. 166=123 I. C. 570=31 Cr. L. J. 560, 10 M. 121.
2. Court and not the prosecution must put questions, only in exceptional circumstances. Magistrate should accept suggestions from prosecution as to questions to be put. 1934 N. 213=151 I. C. 778, 1933 N. 269.

23. Record of— S. 364, Cr. P. C.

1. Omission to comply with the provisions of S. 364, Cr. P. C., vitiates the trial. 1926 C. 430=87 I. C. 920=26 Cr. L. J. 1032=29 C. W. N. 939.
2. A record of the examination of accused made under S. 364 is obligatory. 52 C. 446=1925 C. 821=88 I. C. 860=25 Cr. C. J. 1244.
3. Of an examination of the accused under S. 342 there was no record except that "the accused declined to make a statement in this Court and on being asked whether they would adduce any evidence they replied in the negative." Held, that the provisions of S. 364 were violated and the trial should be held afresh. 52 C. 403=1925 C. 575=86 I. C. 345=26 Cr. L. J. 761=41 C. L. J. 50.
4. Under S. 342, all the questions and answers shall be reduced into writing and shall be read over to accused. If he does not understand the language of the Court, it shall be interpreted to him. 1921 P. 109=61 I. C. 705=22 Cr. L. J. 417.
5. The whole statement of an accused charged with murder should be taken down. He should be allowed some latitude. 139 I. C. 228.
6. Where there has been no enquiry, the accused cannot be questioned. A Magistrate before whom an accused was produced asked him "Did you on 27th August commit murder of S. with a hatchet." Held, that the confessional statement is illegal, as there were no facts before the Magistrate nor any evidence to formulate such questions. 1930 L. 454=123 I. C. 540=31 Cr. L. J. 533.
7. It is obligatory on the Magistrate to read over or show the statement to the accused, otherwise the statement is inadmissible. 1923 P. 13=24 Cr. L. J. 497.
8. Under S. 364 the accused is entitled to explain or add to his statement when read over or shown to him. 10 L. 223=1929 L. 382=29 Cr. L. J. 769=110 I. C. 801.
9. Statements of accused or witnesses are governed by S. 164, Cr. P. C. 45 M. 230=1922 M. 40=23 Cr. L. J. 680=69 I. C. 264.
10. S. 364 only lays down that every question asked and answer given must be recorded in full, but it does not compel a Magistrate proceeding under S. 164 to put a series of questions and record answer. The confessing person should be allowed to narrate his story as a whole without interference. 137 I. C. 95=1932 L. 180=33 P. L. R. 16=33 Cr. L. J. 414.
11. The accused in reply to the Committing Magistrate said "I have nothing to state here. I have fired two shots at His Excellency...I do not think that this would be taken down in my statement." Held, that the whole statement was rightly recorded. 1932 B. 279=34 Bom. L. R. 571=133 I. C. 503=33 Cr. L. J. 613.
12. Irrelevant answers may be refused by judge. 1933 A. 690.
13. Every piece of incriminating evidence must be brought to the notice of accused. Practice of taking written statements must be condemned. 1936 O. 405.

24. Refusal to answer question. See Public Servant—42.

1. Accused is entitled to refuse to answer questions put to him. 1931 L. 178, 4 P. 231.

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12. Irrelevant answers may be refused by judge. 1933 A. 690.
13. Every piece of incriminating evidence must be brought to the notice of accused. Practice of taking written statements must be condemned. 1936 O. 405.

24. Refusal to answer question. See Public Servant—42.

1. Accused is entitled to refuse to answer questions put to him. 1931 L. 178, 4 P. 231.

Examination of accused—(contd.)

2. A counsel may legally advise the accused not to answer questions. 3 Cr. L. J. 134 (135).
3. Where accused declines to answer questions put to him, the fact should be noted on the record. (1871) 15 W. R. Cr. 16.
4. There is great risk in refusing to answer questions, as the Court and Jury may draw inference against the accused. 16 Cr. L. J. 724, 1931 L. 178=32 Cr. L. J. 684, 19 Cr. L. J. 189, 20 Cr. L. J. 465, 1924 L. 257.
5. Refusal to answer questions is not punishable. 1 Bom. L. R. 435.
6. The fact that accused declines to make a statement does not mean that he would not like to answer specific questions. 57 C. 1074=1930 C. 209.

25. Refusal to sign statement—See Public Servant—43.

Refusal to sign statement is punishable under S. 180, 1935 A. 652.

26. Retrial.

1. The appellate Court is bound to order retrial from the point the illegality was committed. 1 P. R. 1918, 1926 L. 551, 1925 C. 692, 15 L. 60.
2. Where accused's statement was taken before many of the prosecution witnesses were examined but no statement was recorded afterwards, the trial should be held afresh 1925 C. 574=75 I. C. 367=28 C. W. N. 118=24 Cr. L. J. 943.
3. If the provisions of S. 342 are not complied with, the conviction should be set aside and case should be remitted for disposal according to law. 45 C. 672, 1921 C. 605.=77 I. C. 982, 1922 P. 158.

27. Revision.

1. The Court of Revision is not bound to interfere if the accused is not prejudiced by the illegality. 1928 L. 230, 1926 L. 553, 1932 O. 113, 1921 P. 374.
2. When the provisions of S. 342 are not complied with, the High Court will interfere in revision, whether or not the accused is prejudiced. 50 C. 223 (227)=1923 C. 196=24 Cr. L. J. 198, 1925 P. 342=35 I. C. 155, 1924 N. 51=81 I. C. 201.

28. Second time on *De novo* trial.

1. If no new matter is introduced in evidence in first trial, omission to examine accused for second time at such trial does not vitiate trial. 1935 M. 22 (1)=58 M. 427=153 I. C. 297=36 Cr. L. J. 307.
2. Accused should be examined second time on *de novo* trial. 1927 L. 727.

29. Sessions Court.

1. The Sessions Judge, in cases tried by jury must carefully examine the accused in his own Court. 1926 O. 57=26 Cr. L. J. 1576, 1927 R. 19, 1920 P. 471.
2. Accused cannot file written statement in Sessions Court. 1935 C. 687=29 C. W. N. 1309.

30. Statement of co-accused. See Confession by co-accused.

1. Statement of co-accused, though can be used as link in the chain cannot form basis of conviction. 1934 Pesh. 11=35 Cr. L. J. 719.
2. Statement cannot be used against co-accused unless provisions of S. 30, Evidence Act, are satisfied. 54 B. 531, 1931 N. 169=32 Cr. L. J. 1222.
3. Where each accused was examined in the absence of the other and convicted chiefly on the statement of co-accused, conviction was set aside. 7 C. 65.

31. Summary trial. S. 263, Cr. P. C. See—4.

1. There is nothing in the Code which requires that the full statement of the examination of accused should be put on the record. 1927 O. 42=99 I. C. 103=24 Cr. L. J. 76. See 1926 S. 1=90 I. C. 434=24 Cr. L. J. 1554.
2. The examination of accused in summary trial is imperative. 41 C. 743, 3 P. L. T. 347, 15 L. 60, 1935 A. 217, 1923 A. 222, 1931 L. 153.
3. Examination need not be detailed one. 6 P. 504=1927 P. 169, 1922 P. 5.

Examination of accused—(contd.)

4. Failure to comply with the provisions of S. 342, Cr. P. C., in a summary trial is fatal. 1926 S. 1=26 Cr. L. J. 1554, 54 C. 286, 15 L. 60.
5. Examination of accused in a summary trial is essential, though it need not be taken with all formalities of S. 364. Mere statement of prisoner's plea without recording it in the form is not compliance with this obligation. 1935 S. 193=1926 S. 1=26 Cr. L. J. 1554 and 9 C. W. N. 76 (notes) Rel. on.

32. Summons case. Sec—4.

1. S. 342 applies to summons case. 54 C. 286, 1926 A. 358=93 I. C. 69, 1926 L. 667=96 I. C. 856, 1925 C. 480, 1926 S. 281=98 I. C. 186, 1926 S. 1=90 I. C. 434, 85 I. C. 943, 46 B. 441, 1921 B. 370=64 I. C. 501, 61 I. C. 715, 45 B. 672 *Cont.* 1927 L. 268=101 I. C. 608=23 Cr. L. J. 408.
2. If summons case is begun as warrant case, omission to examine accused after further evidence after charge is fatal. 1933 N. 192=34 Cr. L. J. 340.

33. Time for—

1. Accused cannot be examined before any evidence is recorded, because there is nothing which he can be asked to explain at that stage. 9 M. 224, 1883 A. W. N. 232, 6 L. 183=1925 L. 432=26 Cr. L. J. 1238.
2. Where accused was examined after two prosecution witnesses and then another prosecution witness was examined. Held, that the omission to further examine the accused is fatal. 49 C. 1075=1923 C. 164=24 Cr. L. J. 3.
3. Accused should be examined after the cross-examination of the prosecution witnesses, even where the cross-examination is adjourned at the request of the accused. 1924 P. 376=72 I. C. 891=24 Cr. L. J. 475.
4. The Magistrate began to question the accused before the close of prosecution evidence, with regard to his confession made by him under S. 164, Cr. P. C. Held, that the stage at which confession should have been considered was when the prosecution case was closed. 1922 A. 266=73 I. C. 497=24 Cr. L. J. 609.
5. The examination of the accused must take place at the close of the prosecution case and before the accused have entered upon their defence. 51 C. 933, 50 B. 42, 101 I. C. 449, 1930 B. 241, 50 C. 939, 52 C. 522, 50 C. 518, 50 C. 223, 1926 C. 537, 29 Cr. L. J. 382, 1 P. R. 1918 Cr., 1922 L. 45, 1925 L. 282, 7 L. 564, 1926 L. 684, 1931 L. 153=32 Cr. L. J. 708, 1931 M. 241, 1924 N. 301, 1934 O. 457, 1934 P. 330.
6. An omission to examine the accused at the stage indicated by S. 342 is an irregularity covered by S. 537, Cr. P. C. 1927 C. 330=100 I. C. 827=45 C. L. J. 591, 49 A. 551 *Cont.* 1928 B. 140, 1926 B. 57.
7. Where the accused was examined before charge but after charge, when the case was posted for further cross-examination, the accused only put in list of defence witnesses. Held, the provisions of S. 342, were not complied with. 1929 Bom. 447=122 I. C. 424=31 Cr. L. J. 402=31 Bom. L. R. 1134.
8. The accused need not be examined after the case is adjourned for further cross-examination. 56 C. 1157=1930 C. 219=122 I. C. 291.
9. According to practice in the Punjab, if no fresh witnesses are to be taken, the accused need not be examined again after further cross examination. 1929 L. 371=30 Cr. L. J. 625, 1924 L. 84, 1926 L. 154 and 1923 M. 609 Foll. 1926 L. 551 *Dist.*
10. A confessional statement of accused before the examination of witnesses is inadmissible in evidence. 1930 L. 454=123 I. C. 540=31 Cr. L. J. 533.

34. Undefended accused.

If the accused is undefended, the Court may point out to him the elements of the evidence adduced against him which demand explanation but should not examine him at length when defended by Pleader. 1923 M. 694=25 Cr. L. J. 7.

35. Use and value of statement.

1. Statement cannot be used to supplement prosecution evidence, if there is no evidence on the point. 51 A. 313=1929 A. 1=30 Cr. L. J. 101=113 I. C. 213.

Examination of accused—(contd.)

2. The answers given by accused during his examination may be taken into consideration at the trial and proper inferences may be drawn therefrom and even in subsequent trial for any other offence they may be used as evidence for or against him. 1921 P. 122=61 I. C. 785=22 Cr. L. J. 433=15 B. 66.
3. Statement cannot be used to fill up gaps in prosecution. 26 C. 49, 27 M. 238, 39 M. 449, 120 I. C. 95=1929 S. 255, 4 L. 55, 36 M. 457.
4. In case of circumstantial evidence, Court should always take the explanation of accused into consideration. 49 B. 878.
5. Burden of proving exceptions is on accused, which may be discharged by the circumstances and his statement. 1927 A. 119, 1929 S. 90, 1933 R. 142, 6 L. 171.
6. Where the answers given satisfactorily explain the prosecution evidence, there can be no conviction. The *entire statement* should be considered. Court cannot select passages to corroborate prosecution evidence. 51 A. 313=1929 A. 1, 1933 A. 401=34 Cr. L. J. 765, 21 C. 955, 39 C. 855, 12 Cr. L. J. 142, 33 Cr. L. J. 570=138 I. C. 217.
7. Statement can be used for or against accused. 1921 P. 122.
8. It cannot be used against any person *other* than the one who made it. 21 C. 955, 13 P. R. 1878, 27 P. R. 1869, 2 N. W. P. H. C. R. 336.
9. Accused can make admission of fact at his trial which may relieve the prosecution from bringing evidence to prove such admitted facts. 4 Cr. L. J. 471.
10. Judge cannot take into consideration circumstances appearing in the evidence, if he did not call attention of accused to explain them. 34 Cr. L. J. 411=142 I. C. 785.

36. Who can examine—

1. Only the Court conducting the trial or inquiry can examine the accused. Neither the complainant nor his counsel is authorized to put questions to the accused. 10 M. 121. See 1934 N. 213, 1933 N. 269.
2. If the Magistrate acts as the mouthpiece of the Public Prosecutor in conducting the examination of the accused, the procedure is illegal and it is a good ground for transfer. 1930 L. 166=123 I. C. 570=31 Cr. L. J. 163.

37. Written statement. S. 256 (2), Cr. P. C.

1. Though written statement can be put in and accepted by the Court, still it cannot be allowed to take the place of the examination of accused under S. 342. 42 C. 957, 22 Cr. L. J. 276, 1922 P. 5=65 I. C. 546, 69 I. C. 377, 2 P. L. T. 455.
2. Since the written statement is drawn up by the legal advisers or friends of the accused, and not by the accused themselves, the object of S. 342 is defeated. 50 C. 518, 19 C. W. N. 1043, 16 Cr. L. J. 9 and cannot have the same value as coming direct from accused's mouth. 16 Cr. L. J. 724.
3. The promise to file written statement made at the time of the plea, does not exempt the Court from its duty of examining him under S. 342. 50 C. 518=1923 C. 470, 1921 P. 415=61 I. C. 794=22 Cr. L. J. 442.
4. Where the accused persons were not examined under S. 342, after the prosecution evidence but filed written statements at that stage and also after the examination of defence witnesses. Held, that the accused not having been prejudiced, there was no miscarriage of justice and the High Court will not interfere in revision. 1 P. 31=1922 P. 388=69 I. C. 383=23 Cr. L. J. 703=4 P. L. T. 60.
5. A Magistrate asked the accused whether he had to say anything besides the written statement. Held, that the procedure though not right is not illegal. 60 I. C. 676=22 Cr. L. J. 276.
6. The accused was asked whether he had to say anything more after the cross-examination and re-examination of the prosecution witnesses and he also filed written statement. Held, that the written statement filed by the accused would have relieved the Magistrate from asking him the oral question. 4 P. 488=1925 P. 414=86 I. C. 459, 1926 A. 358=93 I. C. 69, 120 I. C. 753.
7. Where written statement is put in by the accused, the omission to examine him orally is not illegality. 50 B. 174=1926 Bom. 231=98 I. C. 407.

Examination of accused—(concl'd.)

8. The immunity conferred by S. 342 (2) does not extend to a written statement by the accused. 1926 A. 287=27 Cr. L. J. 253.
9. The filing of written statement by the accused at the close of the trial is not tantamount to oral examination of the accused required by S. 342. 1931 M. 241.
10. Accused cannot file written statement in Sessions Court. 1935 C. 687, 1926 P. 566=27 Cr. L. J. 1041. *Cont.* 1933 A. 690.
11. Gaps in prosecution can be filled up by written statement of accused. 1935 C. 687.
12. Practice of taking written statements of accused is to be condemned. 1936 O. 405.
13. S. 256 (2) provides for the filing of written statement by the accused. 2 Weir 255 (1900).
14. Court is bound to put the written statement on file. 1928 M. 1135, 55 A. 1040.
15. Great weight should be attached to the written statement of accused, but does not preclude him from raising any other defence. 1928 A. 222=30 Cr. L. J. 530, 12 Cr. L. J. 535, 1930 C. 442.
16. Accused can file any documents, and Court must consider them although they are not regularly proved. 1928 M. 1135=29 Cr. L. J. 1041.
17. A legal practitioner is not entitled to file written statement in proceedings under the Legal Practitioner's Act or Letters Patent. 5 L. 271.

EXAMINATION OF APPROVER. See Pardon—2-A.**EXAMINATION OF COMPLAINANT.** Ss. 200, 244, 252, Cr. P. C.

1. An order dismissing the complaint without examining the complainant is illegal. 48 B. 360=81 I. C. 608=25 Cr. L. J. 960, 13 B. 590, 30 C. 923, 1921 S. 84=66 I. C. 179=23 Cr. L. J. 243, 23 C. W. N. 392, 9 C. W. N. 199.
2. Merely cross examining the complainant or his witnesses in the preliminary enquiry is not sufficient. 30 C. 923.
3. When deposition in the shape of complaint is made orally or in writing and is sworn to, it is sufficient compliance. 9 A. 566.
4. The object of examination of complainant is to see whether there is a *prima facie* case against the accused. 11 P. R. 1911 Cr.=12 Cr. L. J. 217.
5. A Magistrate is bound to examine the complainant. 13 C. 334, + M. H. C. R. 162.
6. Mere calling upon the complainant to attest the complaint is not sufficient. 18 A. 221.
7. If the complainant is *Parda Nashin* lady, she may be examined by commission under S. 503, Cr. P. C. 42 C. 19. See 10 P. R. 1896 Cr. 1935 O. 6.
8. A complaint which is not signed by the complainant cannot be accepted. 42 C. 19.
9. The omission to examine the complainant on oath is a mere irregularity and does not invalidate the conviction in the absence of prejudice. 46 C. 807, 11 M. 443, 37 A. 628, 1929 P. 473=119 I. C. 413=30 Cr. L. J. 1056, 1929 C. 175=116 I. C. 722, 4 L. 359=1924 L. 258=76 I. C. 189, 1 R. 517=1924 R. 87=76 I. C. 865, 59 I. C. 41, 1922 M. 443, 9 A. 666, 1935 P. 515, 41 A. 164, 11 P. R. 1911 Cr. 1924 M. 587, 52 M. 79, 1920 P. 700, 1933 A. 816, 1914 S. 19.
10. The person prejudiced by the omission to examine the complainant is the complainant and not the accused. 1924 Mad. 587=81 I. C. 218=25 Cr. L. J. 730.
11. Disposing of a complaint for murder without examining the complainant or his witnesses is illegal. 23 C. W. N. 392=49 I. C. 475.
12. Dismissal of complaint without examining the complainant is not illegal when other material existed on which Court could pass order and the Vakil for the complainant did not object to it. 35 M. 606.
13. In summons case, the examination of the complainant is not absolutely necessary. 55 I. C. 204=24 C. W. N. 199=21 Cr. L. J. 252.
14. If the complainant declines to be examined in a summons case, the order of acquittal passed without examining his witnesses is illegal. 1927 N. 210=101 I. C. 895=28 Cr. L. J. 511.

Examination of complainant—(contd.)

15. Trial without the examination of complainant on oath in a warrant case is not irregular. 1922 M. 126=65 I. C. 859=23 Cr. L. J. 203.
16. The fact that a complainant is not examined on oath is not illegality but a mere irregularity. 52 M. 79=1924 M. 1235, 11 M. 443, 1924 M. 587 Ref.
17. Failure to examine the complainant is an error of procedure and where it has caused no injury to applicant and no failure of justice under S. 537, it is curable. 1 R. 517=1924 R. 87=76 I. C. 865=25 Cr. L. J. 273.
18. Unless a complainant is examined on oath under S. 200, an inquiry and report under S. 202 cannot be called for, and if made, are without jurisdiction and cannot form the basis of further action. 20 Cr. L. J. 552, 27 C. 921, 4 C. W. N. 305.
19. A complainant who was not examined, cannot be prosecuted in respect of his complaint, if it is false, which was dismissed on a report called for under S. 202. 2 P. R. 1912 Cr., 27 C. 921, 4 Cr. L. J. 170, 5 Cr. L. J. 13, 1930 M. 705.
20. If the complainant has already been examined under S. 200, he need not be examined again. 136 I. C. 767=1932 S. 58.
21. No process can be issued against the accused unless and until the complainant is examined. 42 C. 19.
22. S. 200 does not apply when the Magistrate takes cognizance of an offence under S. 190-1 (b) and (c). (1902) 2 Weir 241—246, 1 Cr. L. J. 193.
23. Telegram is not a complaint and therefore examination and further proceedings without a complaint are illegal. 11 Cr. L. J. 351.
24. Where there is no complaint, no examination or further proceeding is necessary. 4 Cr. L. J. 170, 5 Cr. L. J. 13, 11 Cr. L. J. 351, 1930 M. 705.
25. The object is, to ascertain facts constituting the offence, where they are not given in the written complaint and to correct and elucidate doubtful points. 1921 C. 561, 1924 M. 323, 1926 S. 194, 1922 M. 353, or to separate unfounded from substantial case. 37 M. 181, or to prevent the waste of time of Court. 1924 A. 664, 1925 S. 328, 11 P. R. 1911 Cr.; or to help the Magistrate to judge if there are sufficient grounds for proceedings with the case. 12 Cr. L. J. 385, 13 Cr. L. J. 704.
26. Examination of complainant is necessary in case of second complaint. 28 C. 652, 1930 R. 156.
27. Magistrate cannot refuse to receive a complaint and to take action under S. 200. 12 B. 161.
28. Examination of complainant is imperative. 18 A. 221, 37 A. 628, 1924 A. 664, 1926 B. 284, 13 C. 334, 28 C. 652, 30 C. 923, 27 C. 921, 42 C. 19, 46 C. 107, 18 Cr. L. J. 366—890, 1930 R. 226, 1926 S. 84, 1921 P. 235, 1920 P. 670, 12 Cr. L. J. 463, 11 Cr. L. J. 535 (M).
29. Examination should not be in a perfunctory manner. 18 A. 221, 1933 R. 297, 30 C. 923.
30. Statement of complainant should be read over to complainant if it is to be utilised for a possible prosecution for perjury. 1926 N. 141.
31. Complainant is entitled to demand that his examination should be taken before his complaint is disposed of. 29 C. 410, 4 C. L. R. 134.
32. Where a complainant refuses to answer irrelevant questions, e.g., about his motives or to force him to name the person who had written the complaint or helped him with legal advice, he cannot be punished either under S. 485, Cr. P. C. or S. 179, I. P. C. 13 B. 609.
33. Where the complaint is dismissed without examination or improper examination, complainant is prejudiced by the procedure and dismissal will be set aside. 1922 M. 443, 18 A. 221, 13 B. 520, 48 B. 360, 30 C. 923, 1919 P. 319—545.
34. If the accused is convicted, complainant has no grievance. 1922 M. 443.
35. If the Magistrate transfers the case under S. 192, he is not required to examine the complainant. 11 Cr. L. J. 535, 12 Cr. L. J. 385.
36. In the case of complaint by police servant or Court examination of complainant is

Examination of complainant—(could.)

- not necessary. 1933 P. 87, 51 A. 382, 49 M. 525 overruling 1925 M. 1672, 1929 P. 514, 1930 C. 222—665, 1930 N. 33.
37. Complainant is not a witness and therefore commission for his examination cannot be issued under S. 503, Cr. P. C., although it may be *parda nashin* lady or a ruler of Native State. 5 A. 92, 10 P. R. 1896, 12 Cr. L. J. 585.
 38. S. 200 does not authorise the Magistrate to *administer* an oath, but merely recognises his power to do so. 34 P. R. 1916.
 39. A statement not signed by complainant cannot be used against him under S. 193, I. P. C. 6 C. W. N. 840, 1926 N. 141.
 40. Failure of the Magistrate to sign the statement is only an irregularity curable under S. 537. 36 M. 275.
 41. If the complainant was examined before the complaint was transferred he need not be examined again. 42 C. 19.

EXAMINATION OF WITNESSES. Ss. 137-138, Evidence Act.**1. After close of case.**

1. Where after the close of the defence evidence the Court examined the Police Sub-Inspector as a witness. Held, that the omission to give accused an opportunity to rebut evidence was an illegality and was not cured under S. 537. 1925 L. 531=87 I. C. 923=26 P. L. R. 312=26 Cr. L. J. 1035.
2. When a party did not ask for opportunity for further arguments, when Magistrate has examined witness after arguments, he cannot take objection to the Magistrate's act in revision. 1924 C. 980=81 I. C. 831=28 C. W. N. 783=25 Cr. L. J. 1107.

2. By Commission. See Commission.**3. By Pleader in his chamber.** See Witness—44.**4. By Police.** S. 161, Cr. P. C. See Statement to Police.

1. It is doubtful whether a statement to the Police by the witness under S. 161 that he knew nothing about the occurrence is not a statement within the meaning of S. 161. 53 C. 980=1927 C. 257=100 I. C. 353=28 Cr. L. J. 273.
2. Where a driver of a motor car, driving without license when asked for his name by the Superintendent of Police gave a wrong name. Held, that he was not holding an investigation and the question put to driver was not put under S. 161, Cr. P. C., so as to give him the benefit of S. 162, Cr. P. C. 7 P. 715=1929 P. 4=113 I. C. 587=30 Cr. L. J. 177=10 P. L. T. 244.
3. The statements of witnesses should not be recorded in the special diary mentioned in S. 172. 33 C. 1023.
4. It is not necessary that the statements should be in the form of questions and answers. 15 A. 11, 7 P. R. 1896 Cr.
5. The statement need not be signed by witnesses. It is not illegal to obtain the signature of witnesses. 15 A. 11.
6. A statement made by a witness in answer to a question put to him by a Police Officer under S. 161 is privileged and cannot be made the foundation of a charge of defamation. 16 M. 235, 28 C. 794.
7. Under S. 161 a person is not bound to answer truly. Therefore a refusal to answer such questions is not punishable under S. 179, I. P. C. 23 M. 544, 27 P. R. 1903 Cr., 6 S. L. R. 277, 7 C. 121 (F. B.)
8. Answers to questions put by a Police Officer under S. 161, Cr. P. C., do not amount to preferring a false charge or instituting of criminal proceeding. 11 Cr. L. J. 164=6 M. L. T. 133=4 I. C. 1061.
9. Police Officer should not extract information by using force. Such evidence is useless. 17 Cr. L. J. 351.
10. It is not necessary to record any statement. Police Officer may make a record if he so wishes. 52 B. 832, 1924 O. 229.

Examination—(contd.)

11. Delay in recording statement of a witness makes it suspicious. 16 Cr. L. J. 155.
12. Any person supposed to be acquainted with the facts and circumstances includes accused as well. 1932 M. 391.
13. A person can be examined who is acquainted with facts of the case. 1885 A. W. N. 43.
14. A person making false statement in answer to a question under S. 161 cannot be convicted under S. 193, I. P. C. 7 Cr. L. J. 3, 18 Cr. L. J. 98. *See* 1933 R. 119.
5. **Cross-examination of—** *See* Cross-examination.
6. **During investigation by Magistrate.** S. 164, Cr. P. C. *See* Confession (Recording of).
 1. Presumption of genuineness attaches to the statements recorded by Magistrate under Ss. 164—512, Cr. P. C. Magistrate need not be examined to corroborate them. 1936 P. 11=36 Cr. L. J. 235, 10 Cr. L. J. 24, 1917 P. 247, 1931 L. 59.
 2. Third class Magistrate cannot record statement. 1930 L. 60.
 3. Magistrate acting under S. 164 need not have jurisdiction in the case. 1918 P. 179.
 4. A Magistrate is not incompetent merely because he directs Police investigation. 12 Cr. L. J. 489, or is going to hold preliminary inquiry afterwards. 37 C. 457, or has begun an inquiry into the guilt of a person. 1932 L. 103.
 5. If a third class Magistrate records the statement, it is not in the course of 'judicial proceeding' and false statement is not punishable under S. 193 though punishable under S. 193 (2). 11 B. 702, 13 Cr. L. J. 709, 45 B. 834, 1932 L. 234.
 6. Though statement is not made on oath to a Magistrate, it is not inadmissible. 1925 S. 289.
 7. Statements under S. 164 are public documents and Magistrate is bound to give copies thereof. 1932 A. 327, 1931 L. 59, 1929 L. 429, and to allow inspection of the same by the accused. 1932 A. 327, 1931 L. 59.
 8. A statement under S. 164 cannot be admitted as evidence against the accused. 1934 C. 616, 1935 B. 26, 1935 P. 19, 1927 A. 705, 1930 S. 308, 1926 L. 122.
 9. A statement recorded at the time when there is no investigation *viz.*, before or after the investigation is not one under S. 164. 1935 O. 416, 36 Cr. L. J. 1007, 1927 B. 501, 1925 B. 529=49 B. 642, 1930 L. 454, 1922 L. 189, 1928 L. 724.
 10. A statement recorded in an inquiry under S. 202 is not within S. 164. 32 C. 1085.
 11. Where a statement of a witness has been transferred under S. 238, Cr. P. C., his statement recorded under S. 164 may be used to corroborate or contradict the statement transferred under S. 288. 1934 C. 124.
7. **For the defence.** *See* Defence witnesses—5—6.
8. **Fresh—if charge is altered.** S. 231, Cr. P. C.
 1. The accused has a right to recall prosecution witnesses although alteration in the charge did not effect his evidence. 52 M. 346=1929 M. 200=113 I. C. 672=30 Cr. L. J. 223=1929 M. W. N. 838.
 2. If the Court adds or alters charge after the commencement of the trial, without allowing the accused to recall or re-examine the witnesses and the accused has been misled thereby, retrial was ordered by the High Court. 33 P. R. 1916 Cr.
 3. Where the Committing Magistrate altered the charge without giving the accused an opportunity of re-examining the witnesses for the prosecution, the commitment is bad. 1924 A. 665=81 I. C. 318=22 A. L. J. 239=25 Cr. L. J. 798.
 4. There is no duty cast on Magistrate to ask accused if he wished to recall witnesses after the alteration of charge, but the accused should ask for permission. 52 A. 455=1930 A. 215=127 I. C. 587=32 Cr. L. J. 22=1930 A. L. J. 572.
 5. The Court is bound to recall witnesses after the alteration of charge. 6 P. 832=1927 P. 398=104 I. C. 97=28 Cr. L. J. 769.
 6. If charge is amended, the accused is entitled to recall and cross-examine any of the prosecution witnesses and not only those witnesses on the basis of whose evidence the charge was amended. 1926 L. 60=26 Cr. L. J. 1497.

Examination of Witnesses—(contd.)

7. If the charge is altered by the Sessions Judge, he is bound to recall witnesses for examination or cross-examination. 33 P. R. 1916 Cr.

9. In absence of accused.

1. If witnesses are not examined in the presence of accused, the conviction will be quashed. 2 N. W. P. H. C. R. 49.
2. When examination of chief of witnesses was conductive in the absence of accused, but the prosecution case was proved in cross-examination in the presence of accused, still the trial is nullity. 1935 O. 488, 1928 P. 143 Rel. on.

10. Inducement or threat to witness by police. S. 163, Cr. P. C.

As to what is and what is not inducement or threat. See Confession (recording of).

11. In local inquiry. S. 202, Cr. P. C. See Preliminary inquiry.**12. In summons case.** S. 244, Cr. P. C.

1. Conviction without examining all the witnesses of the complainant is illegal. 1929 P. 406, 1921 O. 147, 20 M. 388, 14 Cr. L. J. 177.
2. Magistrate is not entitled to acquit the accused on the consideration of complainant's statement alone. 5 M. 160, 20 M. 388.
3. An order of acquittal under S. 245 (1), without examining the witnesses of the complainant is wrong, where he himself declines to be examined. 1927 N. 210=101 I. C. 895=28 Cr. L. J. 511, 55 I. C. 204.
4. Court can only curtail the number of witnesses on the ground that the examination of those witnesses will delay and possibly defeat the ends of justice. 1921 P. 308.
5. Court has no discretion to refuse to compel attendance of witnesses on whom processes have been issued. 1933 P. 494, 30 C. 121.
6. Magistrate is bound to examine all the witnesses of complainant. 54 A. 416.
7. Even if complainant declines to be examined, Court must take the evidence of his witnesses before dismissing complaint. 1927 N. 210.
8. Statement made by a defence witness called by co-accused cannot be treated as evidence against the accused. 12 L. 385.

13. In a warrant case by Prosecution. S. 252, Cr. P. C.

1. A Magistrate is bound to examine every one of the witnesses called by the complainant. 4 M. 329, 3 P. W. R. 1908 Cr., 14 Cr. L. J. 412.
2. A Magistrate cannot refuse to examine any witnesses simply because their evidence will be a mere repetition of what has already been given by other witnesses. 3 C. 385, 2 A. 447.
3. The witnesses must be examined orally. Where the witnesses common to three cases were first examined-in-chief in only one case and their deposition was recorded by a type-writer in triplicate, one copy being made part of the record in each case. Held that the procedure with regard to other two cases was illegal. 50 C. 223=1923 C. 196=24 Cr. L. J. 198.
4. If the Magistrate considers the charge to be groundless, he can discharge the accused without examining all the witnesses. 52 M. 987=1929 M. 754=121 I. C. 619, 1926 A. 461, 12 Cr. L. J. 105=1 M. W. N. 149=9 I. C. 606, 9 I. C. 940.
5. Prosecution should not refuse to produce a truthful witness, merely because his evidence may be favourable to the defence. 16 A. 84, 28 B. 479.
6. A Magistrate is bound to hear those witnesses whose list is sent up by the Police with the case; but from the other lists produced by Police or any other person, the Magistrate shall summon only such witnesses as are likely to be acquainted with the facts of the case. 15 Cr. L. J. 363, 49 M. 978.
7. The evidence of a witness not recalled by the prosecution when required for cross-examination, cannot be used to support the charge. 3 P. W. R. 1911.
8. The duty of seeing that all the evidence essential to the prosecution is before the Court, is thrown by Cr. P. C. upon the Magistrate himself. He cannot acquit on

*Execution of Decree***EXECUTION OF DECREE.** See S. 210, I. P. C.**EXECUTOR.** See Breach of trust—14.**EXEMPTION FROM PERSONAL ATTENDANCE.** S. 205, Cr. P. C.**1. Appearance by Pleader.**

1. On service of summons the accused need not personally attend but may appear by Pleader. Such appearance is a valid appearance and the Magistrate cannot prosecute the accused under S. 174, I. P. C. for non-appearance. 27 C. 985.
2. The Pleader appearing for the accused may perform all the acts which devolve on the accused in the course of trial. He can answer questions put under S. 342, Cr. P. C., and can plead or refuse to plead guilty. 6 S. L. R. 206, 4 R. 506=1927 R. 73, 1934 B. 212, 50 B. 250=1926 B. 218.
3. If the Court dispenses with the personal appearance of the accused, it can act upon the plea given by his Pleader. 50 B. 250=1926 B. 218=27 Cr. L. J. 440.
4. If personal appearance of accused is dispensed with Magistrate is not bound to question him personally under S. 342. 1934 B. 212, 1926 B. 218, 1927 R. 73. *Cont.* 1934 A. 693 (2)=35 Cr. L. J. 879.
5. Bond cannot be taken from the Pleader. 5 B. H. C. R. 64.

2. Applicability of S. 205, Cr. P. C.

1. S. 205 applies only where a summons has been issued to the accused. It is illegal to dispense with personal appearance when warrants are issued in the first instance. 36 P. R. 1917 Cr., 2 P. 793=1924 P. 46=24 Cr. L. J. 872.
2. Personal attendance can be excused in cases where a summons is issued in the first instance to accused, irrespective of the fact whether he appears in answer to the summons or has to be brought in by a warrant of arrest subsequently. 1930 N. 61=121 I. C. 651=30 Cr. L. J. 234.
3. If in a warrant case, the Magistrate issues a summons to a *parda nashin* lady, he can dispense with her personal appearance. 21 C. 553, 20 P. W. R. 1908.
4. If the complaint against three women under S. 494, I. P. C. is vague, the Magistrate should excuse their personal appearance. 24 I. C. 947=15 Cr. L. J. 539.
5. S. 205 should be freely utilized where the prosecution is to gratify malice. 1931 S. 37=131 I. C. 137 (1)=32 Cr. L. J. 665.

3. Conviction in absence.

1. Where an accused is absent throughout the proceedings and a co-accused was allowed to represent him, the conviction of the absent accused should be set aside, as the Magistrate can dispense with absence of the accused only where he is represented by Pleader. 1924 R. 383=85 I. C. 669=26 Cr. L. J. 845, 106 I. C. 545.
2. Where a Court dispenses with the personal attendance of accused, under S. 205, it can convict him on the plea given by his Pleader. 50 B. 250=1926 B. 218.

4. In a case under S. 110, Cr. P. C. See S. 110, Cr. P. C.**5. Inherent power of High Court for—** S. 561-A, Cr. P. C.

High Court can under its inherent powers, pass an order excusing the personal attendance of the accused and permitting him to represent himself in Court by a Pleader. 1930 N. 61=121 I. C. 651=31 Cr. L. J. 234, 14 Bom. L. R. 236, 1927 R. 73, 50 B. 250 and 17 C. W. N. 1248 *Rel. on.*

6. Parda Nashin Lady.

1. A *parda nashin* lady cannot as of right claim exemption from personal attendance in Court. 5 A. 92.
2. In summons cases the Magistrate should use his discretion under S. 205 by dispensing with *Parda Nashin* Lady's personal attendance until he has before him clear and *prima facie* proof of an offence committed by her. 6 A. 59, 5 P. W. R. 160 Cr., 20 P. W. R. 160 Cr.
3. In Sessions cases also she may be permitted to appear by a Pleader in the Court of the Magistrate's Court and the Sessions Court. 17 C. W. N. 1248, 45 M. 352.

Exemption from personal attendance—(concl'd.)

4. Where a Magistrate has refused to excuse the personal attendance of a *parda nashin* lady, High Court will interfere in a proper case. 1927 A. 149=28 Cr. L. J. 94.
5. A Magistrate issuing summons instead of a warrant by inadvertence has power to make an order under S. 205. 21 I. C. 476=14 Cr. L. J. 604.
6. The mere impression of the Magistrate that accused is not *parda nashin* is not sufficient to refuse her the benefit of S. 205, Cr. P. C., which should be freely exercised in Sind. 11 Cr. L. J. 157=1927 A. 149.
7. A Criminal Court should not compel the attendance of a *parda nashin* woman unless and until the case has reached the stage where her presence is clearly required. 5 P. W. R. 1909 Cr.

7. Recording reasons for.

The Magistrate must note on the record that permission under S. 205 has been given and should not leave the point to mere noting on the application. 50 B. 250=1926 Bom. 218=27 Cr. L. J. 440=93 I. C. 232.

8. Revocation of concession.

1. The concession should not be revoked merely on the ground that the Pleader attacks the jurisdiction of the Court or wants the case to be tried by some other Magistrate. 75 I. C. 150=24 Cr. L. J. 902=38 C. L. J. 9.
2. When the attendance of the accused has been excused, his personal appearance should not be insisted upon in order to make statement under S. 342, Cr. P. C. 4 R. 506=1927 R. 73=99 I. C. 1026=23 Cr. L. J. 235.
3. Order for attendance of exempted accused for giving explanation under S. 342 is legal. 1934 A. 693 (2)=35 Cr. L. J. 879.
4. Attendance for hearing judgment of fine only is not required. 45 M. 359.

9. Trial in absence of accused S. 340-A. See Absence of accused—4.**10. When is refusal to exempt a ground of transfer. See Transfer (Grounds of)—77.****EXEMPTION FROM WHIPPING. See Whipping—2.****EXHIBIT.**

If articles of same kind are seized on search, Exhibit numbers should be given to articles identified by witnesses. 1934 R. 80=35 Cr. L. J. 994.

EXHIBITION.

Entry into Exhibition without ticket is not an offence under S. 415 or S. 447, I. P. C. 6 Bom. H. C. R. 6.

EXHUMATION. S. 176 (2), Cr. P. C.

1. There is practically no limit of time to the utility of an exhumation, for so long as the bones remain, these may in many cases afford valuable evidence, by which the innocence of suspected persons may be proved or the exhumation may prove murder by arsenic or other mineral poison. *Lyon's Med. Jur.* 1901, pp. 90-91.
2. In exhuming a body, it is desirable that a medical officer be present from the commencement, also any relative or acquaintance of the deceased person who can identify the corpse; and if buried in coffin, the carpenter who made the coffin should be present. Some earth below and above the body should be taken and preserved in cases of suspected poisoning for analysis. *Lyon's Med. Jur.* 1904, p. 90.

EXORCISING EVIL SPIRIT. See Culpable homicide—10**EXPENSES OF WITNESSES. S. 544, Cr. P. C.****1. Called for further cross-examination under S. 256, Cr. P. C.**

1. S. 256, Cr. P. C., gives the accused absolute right to recall witnesses for prosecution at the expense of the prosecution. It is not open to the Magistrate to order the accused to pay for recalling those witnesses. 1920 L. 466, 12 P. R. 1937 Cr.
2. Expenses incurred on recalling witnesses after charge should be paid by the Government. The Magistrate cannot demand from the complainant expenses to be incurred.

Expenses of Witnesses—(contd.)

ed by his witnesses. 1928 L. 175, 1929 L. 766.

3. If the prosecution is absolutely private one (e.g., for an offence of using false trade mark), and the offence is bailable the complainant may be ordered to pay the expenses of the witnesses. 81 I. C. 418 = 1924 N. 114 = 25 Cr. L. J. 912.
4. A Magistrate has no power to ask the accused to deposit expenses of witnesses called under S. 256. 5 P. 110 = 1926 P. 214 = 27 Cr. L. J. 469, 1924 N. 114 = 25 Cr. L. J. 912, 4 C. W. N. 351, 1920 L. 466.

2. For defence. S. 257, Cr. P. C. See Defence witness—3.

1. Although under sub-cl. 2, S. 257 a Magistrate may before summoning any witness on the application of accused require that his travelling expenses be deposited in Court, but where the witnesses have already been summoned at the Government expense and are actually present in Court, the Magistrate is not justified in refusing to allow them to be cross-examined unless the accused had paid their expenses. 1929 L. 578 = 115 I. C. 76 = 30 Cr. L. J. 380.
2. After a charge had been framed against the accused under S. 500, I. P. C., he applied to the Court to issue summons to 19 witnesses. The Magistrate allowed 13 witnesses to be summoned provided, he paid the necessary expenses and process fee. Held, that the order is wrong because in warrant cases the usual rule is that the costs of accused person's witnesses are usually borne by the Crown. 108 I. C. 907 = 29 Cr. L. J. 459 (L.), 1929 L. 23 = 117 I. C. 667 = 30 Cr. L. J. 814.
3. Inability or refusal to pay the expenses of witnesses would not be an adequate ground for refusing to summon the defence witnesses. 7 P. R. 1898 Cr. 24 Cr. L. J. 831 = 74 I. C. 863. See 24 Cr. L. J. 686 = 1923 L. 420 = 73 I. C. 782.
4. If once the Magistrate allowed witnesses to be summoned under S. 257 without demanding expenses from the accused and if by chance witnesses are not examined on that date, he cannot order that on the next date of hearing witnesses shall not be summoned except on payment of their expenses by the accused. 22 Cr. L. J. 711 = 63 I. C. 871.
5. A person proceeded against under S. 110, Cr. P. C., is entitled to have his witnesses summoned at Government expense unless the Magistrate for any reason declines to do so. 1932 L. 577 = 138 I. C. 765 = 33 Cr. L. J. 679 = 33 P. L. R. 742.
6. The Magistrate should summon so many witnesses at one hearing as he thinks will be able to examine on that hearing, in order to save the expenses of parties. 24 Cr. L. J. 686 = 1923 L. 420 = 73 I. C. 782.
7. Accused should not be burdened with the costs of expert if his demand is not unreasonable. An expert is bound to attend when summoned by Court. 1936 L. 919, 1929 L. 23 = 30 Cr. L. J. 814, 29 Cr. L. J. 459 and 1932 L. 481 Rel. on.
8. Expenses of witnesses are usually borne by crown. 1929 L. 23 = 30 Cr. L. J. 814, 1932 L. 481 = 577, 7 P. R. 1898, 1924 P. 142, 29 Cr. L. J. 459. See 1923 L. 420.

3. In De novo Trials.

When due to the hasty action of a Magistrate in not giving short adjournment under S. 526 (8), the case has to be transferred, the costs of complainant should be borne by crown. 1936 N. 233.

4. In private prosecution—.

1. All criminal prosecutions are at the instance of the Crown and the Crown is really the prosecutor in a criminal case and all costs ought to be paid by the Crown for summoning witnesses for prosecution. 1924 P. 695 = 77 I. C. 810 = 25 Cr. L. J. 458 = 5 P. L. T. 487.
2. In private prosecution the complainant must pay the travelling expenses and diet money of his witnesses in advance. 1928 O. 226 = 110 I. C. 216 = 29 Cr. L. J. 664 = 5 O. W. N. 26.
3. A Court ordering a party to deposit the travelling allowance of a witness should state the amount of travelling allowance to be deposited. 1925 P. 553 = 87 I. C. 421 = 25 Cr. L. J. 965 = 6 P. L. T. 215.
4. When a private prosecution was ordered to be taken up by crown, the cost of

Expenses of Witnesses—(concl.)

expert witnesses should be paid by Crown. 1935 P. 455.

5. S. 544, Cr. P. C., and rules framed by Local Government under this section, give a discretion to the Magistrate in the matter of expenses of complainant and witnesses, but such discretion should be exercised not arbitrarily but on sound Judicial principles. 9 Bom. L. R. 353.

5. Recovery of—from a party. S. 546-A., Cr. P. C.

1. There is no provision in the Code under which the Court can order payment of diet money to a witness. The power is vested in the Court under the general rules of the High Court and therefore a suit for recovery of such money is maintainable in a Civil Court. S. 547, Cr. P. C., does not apply to such a case. 1926 C. 289=90 I. C. 485=29 C. W. N. 1033.
2. The witness's fee should not be included in the costs under S. 546-A, Cr. P. C. 1935 R. 163=156 I. C. 598=36 Cr. L. J. 970.

EXPERT. S. 45, I. Ev. Act.

1. Court acting as—

1. The practice of Court acting as handwriting expert has been disapproved. 1925 C. 485, 1925 C. 145=85 I. C. 525, 49 C. 235. See 1925 C. 768 and 9 Cr. L. J. 498.
2. Opinion of Court on medicines is valueless. 1924 C. 611=26 Cr. L. J. 71.
3. In case of thumb impression Court can apply magnifying glass to verify the result submitted to it by witnesses. 46 M. 715=1923 M. 178, 32 C. 759, 50 M. 462=1927 M. 696.

2. Excise officer as—

Excise Sub-Inspector is expert for distinguishing liquors. The Court must ascertain grounds of expert's opinion. The evidence recorded in the connected case cannot be imported into the other. 1935 N. 13=154 I. C. 341=36 Cr. L. J. 511.

3. Expert—who is.

1. Judge should not himself compare signatures without the help of other evidence, as Court is not an expert. 1925 C. 485=78 I. C. 668, 1924 P. 284=72 I. C. 748.
2. In law the term 'expert' has a special significance and no witness is permitted to express his opinion unless he is an expert. 1930 A. 587=128 I. C. 441.
3. An Assistant Mint Master is an expert. 88 I. C. 848=1925 O. 616=25 Cr. L. J. 1232.
4. A Court's opinion based upon its own knowledge that a certain amount of arsenic would produce poisoning, collapse and unconsciousness is valueless when untrained in medicine. Similarly it cannot say by reference to medical books what medicine should be prescribed for biliary colic. 1924 C. 611=83 I. C. 631=26 Cr. L. J. 71 28 C. W. N. 579.

4 Evidence and value of—

1. Expert evidence on commission loses much of its value. 1928 L. 533=108 I. C. 369=29 Cr. L. J. 377=10 L. L. J. 235.
2. An expert opinion not based on any well defined inexorable laws of nature cannot be taken as decisive, where there is direct evidence opposed to it. 1926 L. 313=96 I. C. 641=27 Cr. L. J. 977.
3. Opinion of a medical witness must not depend on which party calls him as witness. 1925 C. 768=87 I. C. 534=41 C. L. J. 300.
4. Evidence of a person who is not 'expert' in art of handwriting can be ruled out as inadmissible. 1930 L. 336=31 P. L. R. 109=127 I. C. 368.
5. Expert opinion on foreign law or local law need not be called for, when it is elaborately laid down in the Code. Court should itself interpret such law. 1930 M. 146=123 I. C. 600, 1925 A. 720=47 A. 823=89 I. C. 590=23 A. L. J. 768.
6. Opinion of expert as to identity of palm impression is admissible. 52 B. 223=1928 Bom. 158=108 I. C. 508=29 Cr. L. J. 410=30 Bom. L. R. 321.

Expert—(contd.)

7. The opinion of an expert given for the purposes of a suit in a previous suit is not substantive evidence and when the accused has not the opportunity of cross-examining the expert its value is very little. 1928 L. 921=29 Cr. L. J. 778.
8. Reports of experts are not legal evidence, unless they appear and are examined in Court. 1928 L. 427=106 I. C. 493=29 P. L. R. 125.
9. Chemical Examiner's negative report regarding absence of trace of blood in the earth and leaves taken from the alleged place of occurrence will not displace strong direct evidence of the place of murder. 1924 C. 625=83 I. C. 485=26 Cr. L. J. 5.
10. Report of finger print bureau is not admissible if not subjected to cross-examination, though parties agree to abide by it. 1924 N. 183=73 I. C. 641, 22 C. W. N. 745.
11. The report of the Government Expert who never came into the witness box and whose report is not even supported by affidavit is inadmissible. 1923 A. 601=75 I. C. 148=24 Cr. L. J. 900, 1 R. 290=1924 R. 17=76 I. C. 425=25 Cr. L. J. 185.
12. Evidence of thumb-impression expert is valuable. 1929 L. 210=30 Cr. L. J. 52.
13. Though it is unsafe to convict the accused upon the sole testimony of an expert, yet the Court cannot refuse to convict on the evidence of finger expert. 6 P. 305=1928 P. 129=104 I. C. 626=28 Cr. L. J. 850. See 9 Mys. L. J. 444.
14. When the evidence of Finger Print Expert as to age of thumb-impression is opposed to date on the document, Court should be careful to accept expert opinion. 1926 P. 575=97 I. C. 335.
15. Conclusion from thumb-impression can be basis of conviction. 46 M. 715=1923 M. 178=69 I. C. 374=23 Cr. L. J. 694=1922 M. W. N. 642, 32 C. 759.
16. Although finger prints sometimes afford valuable evidence of identity, great caution must be exercised when there were eye witnesses to transaction. Their evidence should not be lightly brushed aside. 1923 C. 240=70 I. C. 194=36 C. L. J. 9.
17. Where the Court did not believe the evidence on either side, and relied on the report of the thumb-impression bureau to whom it sent the document. Held, the procedure is illegal. 28 I. C. 132.
18. Expert evidence by itself is not sufficient to base a conclusion. 1928 P. 368.
19. Under Land Acquisition Act, an expert's evidence is useless if unsupported by data. 5 L. 227=1924 L. 548=79 I. C. 74, 33 B. 325, 11 C. W. N. 875, 10 Bom. L. R. 907 Foll.
20. Opinion of an expert is not infallible and he is likely to be partial to the party calling him. 1921 L. 126=59 I. C. 220=1933 L. 561=144 I. C. 331.
21. Medical evidence cannot give precise age of a person. 1928 L. 250=113 I. C. 53=10 L. L. J. 183, 1924 O. 353=83 I. C. 840.
22. An expert must be examined orally like other witnesses. Prosecution cannot put in evidence, statement made by a medical expert in another trial in the absence of the accused. 94 I. C. 139=27 Cr. L. J. 571=26 P. L. R. 80, 8 I. C. 713.
23. In murder cases, medical evidence must be given *viva voce* before the Jury. 56 C. 566=1929 P. C. 244=119 I. C. 378=30 Cr. L. J. 1031=38 C. W. N. 632.
24. Where the medical evidence tends to two explanations, it is not very important. 1929 O. 248=120 I. C. 820=31 Cr. L. J. 181.
25. The effect of medical testimony is to render other evidence as to the age of the person probable or improbable. 56 I. C. 313=7 O. L. J. 219.
26. If a Finger Print Expert has not been cross-examined as to the grounds of his opinion and as to the test to which he had put a particular finger print, the weight attached to such evidence cannot be diminished by applying to it considerations to which the witness's attention was never directed. 55 I. C. 273=21 Cr. L. J. 257.
27. Where the general condition and state of health of a testator is in issue, isolated extracts from medical works ought not to be preferred to evidence of a medical man. 51 I. C. 419.
28. Technical works cannot be used to refute an expert witness's opinion unless the

Expert—(contd.)

passage to be used are put in cross-examination to the witness to explain them if he can. 46 I. C. 593=19 Cr. L. J. 753=22 C. W. N. 745, 23 C. 1.

29. As to the probative value of the opinion of an expert on finger prints, it must have the same value as the opinion of any other expert. 6 P. 305=1928 P. 129=104 I. C. 626=28 Cr. L. J. 850.
30. Expert evidence is generally prejudiced. 1933 L. 561=34 Cr. L. J. 735.
31. Conviction cannot be based on expert evidence unless corroborated. 1936 A. 165=37 Cr. L. J. 263.
32. Court is not to surrender its own opinion to that of an expert, but with his help must form its own opinion on the subject in hand. 1935 R. 178=156 I. C. 582.
33. An expert can be asked whether his evidence has been disbelieved on a former occasion. S. 155, Ev. Act.

5. Expenses of—

1. An expert cannot refuse to attend Court. He is entitled to expenses set fourth in High Court Rules. Accused cannot be burdened with costs of expert if his demand is not unreasonably. 1936 L. 919, 1929 L. 23=30 Cr. L. J. 814, 29 Cr. L. J. 459 and 1932 L. 481=33 Cr. L. J. 761 Rel on.

6 Finger or Thumb impression. See—4 (12 to 17)—See Finger impression.

1. Finger impressions include thumb impressions. 3 C. W. N. 90.
2. Similarity of finger impressions is, as a rule, evidence of personal identity and their dissimilarity will be evidence of the reverse. 1 C. W. N. 33.
3. Opinion of expert as to identity of palm impression is admissible. 52 B. 223=1923 Bom. 158=29 Cr. L. J. 410=108 I. C. 503=30 B. L. R. 321.
4. Conviction can be based on the uncorroborated testimony of a finger print expert. 1931 C. 441=133 I. C. 111=35 C. W. N. 863=32 Cr. L. J. 1001. See 9 Mys. L. J. 444.
5. Opinion of thumb-mark expert is conclusive. 9 P. R. 1914 Cr.
6. Evidence of Finger Print Expert can be accepted by Court without corroboration. 1936 B. 151=60 B. 187, 4 L. 246=1923 L. 622 and 1922 P. 73 Not foll. 1923 M. 178=46 M. 715 Ref.
7. Under S. 73 Court has power to ask accused to give his thumb impression for comparison. 1932 B. 406. 1924 R. 115 Foll. 1923 P. 129=23 Cr. L. J. 550=6 P. 305, 1926 C. 531, 46 M. 715=1923 M. 178, 1928 P. 103=6 P. 623, 1922 P. 73=1 P. 242, 1927 M. 696=50 M. 462.

7. Grounds of opinion of— S. 51, Ev. Act. See Opinion.

1. If the reasons given by expert are frivolous, the opinion is valueless. 1935 N. 13=154 I. C. 341, 56 A. 428=1934 A. 273.
2. Expert may give an account of experiment performed by him. S. 51 (ill.) Ev. Act.

8. Not knowing language of signature.

The opinion of an expert is not of much value where the language of signature he cannot read or write. 1933 P. 555.

9. Of handwriting.

1. It is unsafe to base conviction on the opinion of handwriting expert. 9 Cr. L. J. 498, 45 C. 60, 36 M. 159, 9 P. R. 1914 Cr., 18 P. W. R. 1912 Cr., 147 P. L. R. 1912, 8 P. W. R. 1908 Cr., 1932 L. 490, 1921 L. 126.
2. A comparison of handwriting is to be used with great care and caution. Where there is no comparison by the expert in open Court, the evidence of an expert is inadmissible. 39 C. 606, 30 I. C. 751=16 Cr. L. J. 703.
3. If the handwriting expert is not subjected to cross-examination, his evidence is inadmissible. 15 C. W. N. 728=10 I. C. 955, 79 I. C. 641=1924 N. 183.

Expert—(contd.)

7. The opinion of an expert given for the purposes of a suit in a previous suit is not substantive evidence and when the accused has not the opportunity of cross-examining the expert its value is very little. 1928 L. 921=29 Cr. L. J. 778.
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The opinion of an expert is not of much value where the language of signature he cannot read or write. 1933 P. 559.

9. Of handwriting.

1. It is unsafe to base conviction on the opinion of handwriting expert. 9 Cr. L. J. 498, 45 C. 60, 36 M. 159, 9 P. R. 1914 Cr., 18 P. W. R. 1912 Cr., 147 P. L. R. 1912, 8 P. W. R. 1908 Cr., 1932 L. 490, 1921 L. 126.
2. A comparison of handwriting is to be used with great care and caution. Where there is no comparison by the expert in open Court, the evidence of an expert is inadmissible. 39 C. 606, 30 I. C. 751=16 Cr. L. J. 703.
3. If the handwriting expert is not subjected to cross-examination, his evidence is inadmissible. 15 C. W. N. 728=10 I. C. 965, 79 I. C. 641=1924 N. 183.

Expert—(contd.)

4. If there are few similarities discovered in the handwriting compared and no peculiar style is found, it is unsafe to convict the accused of forgery. 11 Cr. L. J. 114.
5. When the admitted facts lead to one conclusion only, it would be unsafe to rely on the testimony of handwriting expert. 56 I. C. 879=1920 P. 155.
6. Evidence of a person who is not an expert in the art of handwriting is to be ruled out as inadmissible. 1930 L. 336=31 P. L. R. 109=127 I. C. 368.
7. The evidence of a handwriting expert must be received with great caution and should not be relied upon unless corroborated. 36 M. 159, 1931 O. 298, 8 I. C. 98.
8. Evidence of persons acquainted with the handwriting of a person is admissible, though they are not experts. 18 P. R. 1915 Cr.=12 P. W. R. 1915 Cr.=16 Cr. L. J. 338, 147 P. L. R. 1912=18 P. W. R. 1912 Cr.
9. A mere statement by an expert that it is the handwriting of an accused, is insufficient, unless he can say how long ago it was written. 36 M. 159.
10. Similarity of handwriting though of some assistance in determining whether the evidence adduced to establish forgery can be believed is not a safe or certain test. 25 I. C. 843=15 Cr. L. J. 643, 6 A. L. J. 184, 49 C. 235, 11 Cr. L. J. 114.
11. A Judge should not compare signatures without the help of other evidence. 1925 C. 485=78 I. C. 668.
12. A comparison of handwriting is at all times, as a mode of proof hazardous and inconclusive. 1925 C. 145=85 I. C. 525=29 C. W. N. 75.
13. Only similarities of handwriting must be pointed out to the Court, which has to decide whether particular writing is to be assigned to a person. 1921 P. C. 168 (P. C.)
14. In order to prove the handwriting of another, one must show that he is acquainted with the handwriting of that person. 4 P. 394=1925 P. 787=92 I. C. 1034.
15. It is not quite safe to come to the conclusion that a document is forgery, in a criminal case, on a mere comparison of signatures. 9 Mys. L. J. 444.
16. If the accused, charged with forgery, refuses to give his handwriting or finger impression for comparison, adverse inference can be drawn. 1932 B. 405.
17. Expert evidence is not unsatisfactory. 1931 L. 408=32 Cr. L. J. 818.
18. Court should not base a finding merely on expert opinion. 36 M. 159, 8 I. C. 93, 11 Cr. L. J. 114.
19. Dissimilarity of handwriting show that writers are different. 1925 C. 768, 36 M. 159, 49 C. 235.
20. Evidence of expert is of little value when it is contradicted by another expert. 1933 L. 885=144 I. C. 497.
10. **Opinion of—when not called as witness.** See Opinion.
11. **Opinion of non-expert.** See Opinion—19.
Evidence of a person who is not expert in handwriting can be ruled out as inadmissible. 1930 L. 336=31 P. L. R. 109.
12. **Report of—** S. 60, Ev. Act.
 1. Report of an expert in handwriting is inadmissible in evidence, unless he appears as witness. 1923 A. 601=24 Cr. L. J. 900.
 2. Report of finger print expert is inadmissible unless proved by him in Court. 1924 N. 183=79 I. C. 641.
13. **Summoning of—to contradict—**
Accused has right to summon expert witness to contradict the expert witness of the crown. 1934 A. 372=35 Cr. L. J. 591=147 I. C. 1197.
14. **Type-written document.**
 1. Evidence of expert that one document has been typed on same machine as another is not admissible under S. 45, Evidence Act. The Court may ask the witness

Expert -- (concl'd)

points in favour of the view that both documents were typed from the same machine. But Court must come to its own conclusion on such point. 1935 A. 162=1935 Cr. C. 214. 1933 A. 690=145 I. C. 481=34 Cr. L. J. 967 Foll.

2. Expert evidence as to peculiarities in typing resulting from defects of machine by which documents were typed, can be considered by Court. 1933 A. 498 (501)=1933 Cr. C. 433.
3. The opinion of an expert that a certain document is type-written on same machine as another document is not admissible under S. 45, Ev. Act. The Court can come to its conclusions but can treat it as expert evidence. 1933 A. 690.

EXPLANATION BY ACCUSED. *See Defence.*

1. Burden of proof on accused. *See Burden of proof*—1.
2. In murder cases. *See Murder* 61—3.
3. Of incriminating circumstance. *See Incriminating circumstance*—2.
4. Of marks of injuries. *See Marks of injuries*—2.
5. Time for giving—.

There are three occasions upon which accused has opportunity of giving explanation of his conduct or of mentioning any defence he may have. *First*, when he is originally charged, whether by an employer, any other person or Police Officer making enquiries or affecting his arrest. *Secondly*, when formally charged at the Police station; and *thirdly*, after the evidence is given against him before a Magistrate. It is a common trick of advocacy to say in answer to question by Court, "I reserve my defence, I call no witnesses here and I offer no evidence." Such a beginning is, to say the very least, a bad introduction to a true story. *Wills on "Circumstantial Evidence" Sixth Edition at P. 102.* 1935 S. 145 (154).

6. When prima facie case made out. *See Defence*—11

EXPLOSIVE. *See Public Nuisance* 15. *Mischief*—7.**EXPLOSIVE ACT, IV OF 1884.**

1. License for sale of *patakhas* is not required under the Explosive Act. 53 A. 226, 1933 S. 171, 8 P. R. 1910 Cr.
2. Rule 35 is not applicable to fireworks. 1930 M. W. N. 1261.
3. Under Rules 3 and 10 under the Explosive Act, even "throw downs" and Chinese crackers are explosives. 1932 M. 320, 136 I. C. 781 (1).

EXPLOSIVE SUBSTANCES ACT, (VI OF 1908).**S. 3.**

Malice in the legal sense is not confined to personal spite against individuals. It amounts to an intentional wrongful act. 1930 L. 266=31 Cr. L. J. 290=31 P. L. R. 73.

S. 4.

1. A person who does not know the existence of explosives cannot be said to be in possession of it maliciously. 9 L. 531, 1934 L. 718.
2. In a joint family house the possession of incriminating substance would be presumed to be that of the head of the family but prosecution may prove that the possession was with some other member of the family. 9 L. 531=1928 L. 272.
3. The failure to obtain necessary consent of the Government as required by S. 7 does not invalidate a commitment proceedings for an offence under S. 4. 99 I. C. 37=28 Cr. L. J. 5=50 B. 695=1927 B. 21=28 B. L. R. 1290.
4. The presence of mansal stains on wearing apparel is no proof that accused was in possession of explosive substance. 1931 L. 403=32 Cr. L. J. 81E.
5. The term "explosive substance" includes any part of any apparatus, machinery, etc., used or adopted for causing any explosive substance. 42 C. 957.
6. Accused can be convicted under S. 5, though sanction was for offence under S. 4. A. L. R. 1934 C. 142, 1934 A. 982.

*Explosive Substances Act, (VI of 1908)---(concl'd.)***S. 5.**

1. Temporary residence in the house containing explosive articles even with the knowledge of their existence there, is not possession within the meaning of S. 5. 1923 C. 27=106 I. C. 545=23 Cr. L. J. 49=46 C. L. J. 368.
2. Manager of the family is presumed to be in possession of the bomb found in a house. 40 C. 198.
3. Accused pointed out explosive substance from a place over which he had no exclusive control, held, that it was for prosecution to show that possession could be inferred. 130 I. C. 652=1931 L. 50=32 P. L. R. 150=32 Cr. L. J. 585.

S. 7.

Conviction under a section other than that set out in the order of consent is justified. 31 P. R. 1919. Consent can be obtained at the Sessions trial. 1934 A. 932.

S. 8.

Under S. 8 primary requisite to give notice is accidental explosion and no serious injury of property. S. 177, I. P. C., will not apply, unless the omission to give notice is intentional. 30 I. C. 446=16 Cr. L. J. 622.

EXPOSURE OF CHILD. See Abandonment of child.

EXPOSURE OF PERSON. See Cantonment Act, S. 118 and S. 509, I. P. C.

EXPRESSION OF OPINION. See Opinion—7, 8, 9. Transfer (grounds)—36.

EXPUNGING REMARKS. S. 561-A., Cr. P. C.

1. In the absence of appeal from judgment the High Court will not expunge objectionable remarks of trial Court from the judgment. 1930 M. W. N. 791, 44 A. 401 Cont. 5 L. 476 (481)=1925 L. 187=85 I. C. 143=26 Cr. L. J. 463.
2. Remarks condemning without foundation or evidence a person not party or witness and without giving him opportunity of being heard ought to be expunged. 1929 L. 201=112 I. C. 686=29 Cr. L. J. 1102, 9 L. 269=1923 L. 740, 1925 L. 392=89 I. C. 270=26 P. L. R. 315, 45 B. 1127.
3. No suggestion of any kind can be made against accused when he is found not guilty. 1922 P. 97=67 I. C. 195=23 Cr. L. J. 371.
4. High Court cannot direct subordinate Court to delete any passage in a judgment after it has been duly signed and delivered. 43 I. C. 321=19 Cr. L. J. 97.
5. High Court can expunge damaging remarks reviewing its own judgment. 2 P. W. R. 1910 Cr.
6. In revisional jurisdiction High Court has power to expunge objectionable words from judgment of Lower Court. 164 P. L. R. 1901, 80 P. L. R. 1904, 193 P. L. R. 1911, 49 A. 254.
7. The High Court will not permit the continuance on record of the expression of a Lower Appellate Court tending to show its opinion that an accused though acquitted by the Lower Court, and in spite of the absence of appeal from acquittal, was really guilty. 1925 L. 129=82 I. C. 173=25 Cr. L. J. 1245.
8. A Judge or Magistrate is bound to record reasons for his decision and the High Court cannot delete those reasons and leave the decision without its reasoned basis. 1929 S. 243=118 I. C. 747=30 Cr., 1925 L. 187 Discussed.
9. High Court can expunge remarks in a judgment, when the application is made by an aggrieved person, be he accused or not. 1928 A. 182=29 Cr. L. J. 336.
10. Right of Magistrate to make disparaging remarks against persons who appear or are named in the course of a trial, is one that should be exercised with great reserve and moderation, specially where the person disparaged has had little or no opportunity of explaining or defending himself. 9 L. 269=1928 L. 740=109 I. C. 812=29 P. L. R. 461=29 Cr. L. J. 620, 1923 L. 382 Foll., 1925 L. 187, 1925 L. 392, 27 P. R. 1903 and 49 A. 254 Rel. on.

Expunging Remarks—(concl'd.)

11. The High Court can expunge *suo motu* objectionable remarks in the Lower Court's judgment in the exercise of its inherent jurisdiction without notice to trying Magistrate or the District Magistrate. 1928 N. 242=107 I. C. 912=29 Cr. L. J. 313.
12. The inherent power of expunging remarks should be exercised sparingly. 1926 L. 382=93 I. C. 974=27 Cr. L. J. 510, 1930 L. 1048=32 Cr. L. J. 268.
13. Under S. 561-A the High Court has inherent power to order the expungement of passages in the order of a Sessions Judge granting bail if such passages are likely to prejudice the Magistrate in the impartial trial of the case. 1925 N. 228=82 I. C. 755=25 Cr. L. J. 1363.
14. Where the High Court is moved by District Magistrate under S. 561-A for expunging certain remarks imputing perjury or incompetency to an official in the judgment of the trial Court, the power should be exercised sparingly and in rare cases. 1930 L. 1048=129 I. C. 273=32 Cr. L. J. 268=31 P. L. R. 992.
15. High Court under its inherent powers can expunge objectionable remarks irrespective of the fact whether there has or has not been appeal or revision. 5 L. 476.

EXTENUATING CIRCUMSTANCES. See Sentence—21.**Extermment order :—**

A Magistrate cannot give an order, when public tranquility is threatened, to a person to remove himself from the District and to do so by the next available train. 58 C. 1037.

EXTORTING CONFESSION. S. 330, I. P. C.**1. Abetment.**

Accused stood by and acquiesced in an assault on a prisoner committed by another Policeman for the purpose of extorting a confession, it was held that he had committed abetment of the offence under S. 330. 20 B. 394.

2. Police Torture.

1. A Constable during an enquiry voluntarily beat the accused, who died nine days after from the effect of the beating, he was guilty under S. 330. 86 P. R. 1866. See 11 C. 530.
2. If the hurts were in the nature of grievous hurt, the accused would be guilty under S. 331. 12 P. W. R. 1917 Cr.
3. The Indian Police also whose duty it is to make the preliminary report on criminal cases are still credited with suppressing incriminating evidence for a monetary consideration, as well as with extorting false confession by torture or threat through mistaken zeal. . . . Five persons were arrested and maltreated by constables at night and they confessed that they had committed the murder. When the trial began missing man came in the Court. *Lyon's Med Jur. Ed. 1904 P. 18.*

3. Sentence.

1. When at the outbreak of cholera some villagers tortured some women whom they suspected to be witches, so that they may confess to their being witches and poured heated oil over the women from the effect of which one of them died, held, that they were guilty under S. 324, I. P. C. only. 13 W. R. 23 Cr.
2. Offence under S. 330 can be seldom proved and Courts should pass deterrent sentence. 1936 L. 471=163 I. C. 145.

EXTORTING PROPERTY. See Wrongful confinement—11.**EXTORTION. Ss. 384 to 389, I. P. C.****1. Abetment.**

Accused arrested A and extorted Rs. 200 from him under a threat that he would not be released unless money was paid. B lent money to A and it was paid. Held, B was not guilty as accomplice. 27 C. 925, 27 C. 144, 33 C. 649.

2. Mere presence of village watchman at the time of extortion is not abetment, where his approval is not elicited. 8 C. 728.
3. It is not necessary that a receiver should be charged with abetment. 2 B.H.C.R. 394.

Extortion—(contd.)**2. Attempt.**

1. S. 385 does not expressly provide for the punishment of an attempt at extortion. A charge under S. 384 read with S. 511, I. P. C. is not bad. 1927 P. 89=93 I. C. 60 =27 Cr. L. J. 1244.
2. A who was drunk went to the house of B with a weapon in his hand and cried that if B would not give him money, he would cut him and his wife. Held, it is doubtful whether it is attempt at robbery or of the offence under S. 387. 13 Cr. L. J. 864 =17 I. C. 800.

3. Charge.

In the case of extortion approximate amount extorted from each man and nature of extortion should be stated. Even if the accused comes to know at the close of the case the charge against him, it is fatal to the trial. 35 I. C. 971=17 Cr. L. J. 411.

4. Distinction of Cheating, and theft.

1. Although there is a common feature between the offence of extortion and that of cheating, yet they cannot be regarded as two aspects of one offence. 1928 Bom. 346 =112 I. C. 586=29 Cr. L. J. 1082=30 B. L. R. 967.
2. It is not necessary that extortion should follow immediately upon the restraint in order to constitute robbery. 1927 M. 307=99 I. C. 596=28 Cr. L. J. 164.
3. Extortion is carried out by over-powering the will of the owner, while it is not so in theft. (1865) 4 W. R. 5. Cr.

5. Essential and Evidence.

1. The threat of criminal charge for the purpose of extracting money not legally due falls within S. 383, 20 I. C. 237.
2. Complainant must be put in fear of injury with the object of inducing payment of money from him. 38 I. C. 429=18 Cr. L. J. 317.
3. Where several persons threatened the occupants of the house to deliver keys of the safe a conviction for extortion was not sustainable, when the evidence showed that it was a petty affair and outcome of quarrel. 1931 M. W. N. 129.
4. A Nikah Khawn is not bound to read a Nikah, unless he chooses to do so. Demand of any fee by him beforehand is no offence. 4 L. 179=1924 L. 162.
5. Realising of fines by means of or under threat of picketing is extortion. 1922 A. 529 =45 A. 137=71 I. C. 110, 1924 N. 19=75 I. C. 764.
6. Crops of a judgment-debtor were attached in execution of a decree. Accused took money from him to get the crops released. No offence is committed. 46 A. 81=81 I. C. 609=1924 A. 197=21 A. L. J. 850=25 Cr. L. J. 961.
7. If the accused had no intention in removing the property, offence under S. 384 is not committed. 86 I. C. 426=26 P. L. R. 97.
8. In order to constitute an offence under S. 385, it is not necessary that the threat should be of some conduct, which might constitute an offence or which might be made the basis of a civil action. 9 P. 725=1930 P. 593=32 Cr. L. J. 87.
9. Anything forbidden by law is unlawful and threat of any such act with the object of exacting money is extortion. 9 P. 725=1930 P. 593.
10. Threatening to ask complainant in a criminal trial, scandalous and indecent questions unless he paid money amounts to extortion. 9 P. 725=32 Cr. L. J. 87.
11. Threat of divine punishment is no injury under S. 384. 48 M. 774=1925 M. 480.
12. Accused forcibly removed certain property from the possession of the complainant, claiming it as his own, he was not guilty. 26 Cr. L. J. 794.
13. If threat is used by some and property is carried away by others, all are guilty. 2 B. H. C. R. 394.
14. A payment taken from the owners of cattle under a threat that cattle will be impounded if payment was refused is no extortion. (1880) 1 Weir 438.
15. It is not necessary that threat should be used and the property received by one and the same individual, nor that the receiver should be charged with abetment. 2 Bom.

Extortion—(concl'd.)

H. C. R. 394.

16. Obtaining money against the will of person on threat of loss of appointment may be extortion. 1936 S. 29=37 Cr. L. J. 457.
17. Word "injury" in S. 44 I. P. C. is wide and includes every tortious act. 1936 S. 29, 18 W. R. Cr. 17 Ref.

6. Picketing. See Picketing.**7. Threat to ask scandalous questions.**

- Threat to ask complainant scandalous or indecent questions unless he paid money is extortion. 9 P. 725=1930 P. 593=128 I. C. 141=32 Cr. L. J. 87.

EXTRADITION ACT (XV OF 1903.)**1. General.**

1. The Magistrate acting under the Extradition Act is not subject to any appellate or revisional jurisdiction. He makes an enquiry and reports the result to the Government. 38 C. 547.
2. The Indian Extradition Act or the British Foreign Jurisdiction Act does not apply to a person resident within the original jurisdiction of High Court who commits an offence outside British India. 1932 C. 229=33 Cr. L. J. 322.
3. Extradition Act should be strictly construed in favour of accused persons. 53 B. 149=1929 Bom. 81=117 I. C. 321=30 Cr. L. J. 772.
4. Chander Nagar is a foreign state as defined by the Act. 48 C. 328.
5. The act of District Magistrate in endorsing a warrant to arrest is executive and not open to revision by the High Court. 56 A. 409.

S. 3.

1. Detention of a fugitive pending the consideration of the report of the investigating Magistrate by the Government is not illegal. 46 C. 52.
2. The Act provides for the bail to be furnished by the accused person who is governed by Cr. P. C. High Court has fullest discretion in the matter. 12 Cr. L. J. 358.

S. 7.

1. A British Indian Magistrate to whom a warrant has been addressed under S. 7 has no power to grant bail apart from the provisions of Ss. 8 and 8-A. 43 B. 310.
2. The Political Agent has no power to cancel a certificate already granted and subsequent order for the trial of the accused in the Native State must be set aside. 13 Cr. L. J. 537=15 I. C. 809.
3. An order of the District or Chief Presidency Magistrate executing warrant under S. 7 is subject to revisional powers of the High Court. 53 B. 149=1929 B. 81.
4. The Magistrate to whom the warrant is addressed need not enquire as to its legality. 7 L. 159=1926 L. 411=59 I. C. 275=27 P. L. R. 319=27 Cr. L. J. 755.
5. An extradition warrant signed by the Assistant British Envoy of Nepal Court is not valid as he is not empowered as Political Agent within S. 7. 1925 P. 112.
6. If the applicant was well defined and the place at which and authority to which delivery was to be made was mentioned also. Held, that the warrant was legal. 134 I. C. 594=1931 O. 394=32 Cr. L. J. 1243.
7. Absconding from Jail is not one of the offences mentioned in the first schedule. Therefore S. 7 has no application to a warrant issued by the British Envoy at the Court of Nepal for the arrest of a person who has absconded from the Jail in Nepal. 1 P. 57. Both powers can refuse to surrender accused. 12 P. 347.
8. For a legal warrant (1) the offence must be an extradition offence, (2) accused must not be British subject, (3) the offence must have been or supposed to have been committed in the State, otherwise it is illegal. 56 A. 409.

S. 8.

1. On a warrant from a State the Magistrate has no power to admit to bail except under Ss. 8 and 8-A. 1924 N. 313=77 I. C. 234. See 43 B. 310.

Extradition Act (XV of 1903)—(concl'd.)

2. Magistrate is not bound to report the matter to Local Government. 1934 P. 553.
3. Person whose extradition is sought should apply to Magistrate who would then refer the matter to Local Government. 12 P. 347.

S. 9.

The East possessions of France are not a foreign state. 47 C. 37. See 48 C. 328.

S. 10.

Magistrate has power to grant bail to an accused arrested under S. 54 (7), Cr. P. C. whom he has been asked to retain in custody by the District Magistrate of the Native State. 1925 B. 104=87 I. B. 100=26 Cr. L. J. 948.

S. 15.

Where a warrant was issued without any evidence and without reporting the issue to the Political Agent, order was had under S. 10 (1) and (2) of the Extradition Act. 41 C. 400, 1 P. 57=1922 P. 442=23 Cr. L. J. 293=66 I. C. 517.

S. 18.

S. 18 does not prevent the co-operation of two Governments in a friendly action according to the comity of the nations. All that S. 18 provides is that the Act will not work against the will of either party so as unduly to impose any liability on such party. 91 I. C. 69=27 Cr. L. J. 37, 1933 P. 295.

S. 19.

S. 19 (c) empowers only a first class Magistrate or any Magistrate empowered by Local Government to enforce the provisions of the Fugitive Offender's Act. 11 Cr. L. 622.

S. 22 (3).

Rules made under the Act and published in the Gazette of India must be treated as if they are sections enacted by the Act. 1931 O. 394=32 Cr. L. J. 1243.

S. 23.

S. 23 Extradition Act empowers the Magistrate to grant bail to a person arrested without warrant under S. 54 (7). 1925 Bom. 104=87 I. C. 100=26 Cr. L. J. 948.

EXTRA JUDICIAL CONFESSION. See Confession—17.**EXTRA JUDICIAL INFORMATION.**

It is extremely improper for a Magistrate to rely on a statement made to him out of Court. 14 B 572, 10 P. R. 1870 Cr.

EYE WITNESS. See Alleged Eye witness.

1. When an alleged eye witness did not rescue the injured party, the presumption is that he did not see the fight. 132 P. L. R. 1915.
2. If alleged eye witnesses are inimical to the accused or belong to opposite faction, it is not safe to rely on their uncorroborated testimony. 1930 L. 311=50 P. L. R. 582.
3. The mere fact that an eye witness does not come forward immediately an investigation begins is not in itself sufficient ground for rejecting his testimony. 32 P. L. R. 461=1931 L. 529=133 I. C. 446=32 Cr. L. J. 1032.
4. Eye witnesses who had witnessed the crime and assisted in concealing evidence or connived at and gave no information to Police or any other person are no better than accomplices. 1929 L. 540=120 I. C. 190=31 Cr. L. J. 50.
5. In case of mutual infliction of injuries on each other, conviction should be under S. 326 and not under S. 307 when there are no eye witnesses. 2 R. 558=1925 R. 133=94 I. C. 1049=26 Cr. L. J. 409.
6. If some eye witnesses were not called by the prosecution no inference favourable to accused can be drawn. 1923 O. 217=74 I. C. 434.
7. The opinion of a medical man should not outweigh the testimony of witnesses. 50 C. 100=1923 C. 116=69 I. C. 48=1 C. 616=26 Bom. L. R. 622.
8. The mere fact that eye-witnesses did not come forward immediately the investiga-

Eye Witness—(concl'd.)

tion begins, is no reason to reject their evidence. 1931 L. 529=133 I. C. 446=32 Cr. L. J. 1032=32 P. L. R. 461.

9. When a prosecution witness who was not interested in accused Nos. 1 and 2 came up after the occurrence and was told by eye-witnesses that accused No. 3 killed the deceased and they did not name Nos. 1 and 2. Held, that the accused Nos. 1 and 2 cannot be convicted. 1923 L. 236 (2).
10. The evidence of a witness who says that he has seen murder being committed but not giving information, is not free from suspicion. 1935 O. 1=152 I. C. 473=36 Cr. L. J. 166, 1934 O. 315=148 I. C. 1045=35 Cr. L. J. 836 foll.
11. The fact that the alleged eye witnesses were disposed at the out set not to disclose what they knew is no ground to discredit their evidence. 1935 C. 591=36 Cr. L. J. 1254=158 I. C. 67.
12. Evidence of eye witness should not be rejected simply because she is wife of complainant. 1933 O. 340=34 Cr. L. J. 538.

F.**FABRICATING FALSE EVIDENCE. Ss. 192-193, I. P. C.****1. Abetment.**

1. M instigated Z to personate C and to purchase in C's name certain stamped paper, in consequence of which the vendor of the stamped paper endorsed C's name as purchaser. Held, that M was guilty of abetment of fabricating false evidence. 2 A. 105, 25 A. 75. See 65 I. C. 994 (996).
2. A person signing a false report without reading it is not guilty of abetment. 50 I. C. 23=17 A. L. J. 574=20 Cr. L. J. 268.
3. For conspiracy to fabricate evidence to obtain capital conviction, all conspirators should know that the charge is false. 1933 P. C. 124.

2. Alteration of date of a document.

Where the date of a document which would otherwise not have been presented for registration within time, was altered for the purpose of getting it registered, the offence constituted was not forgery but fabricating false evidence. 6 C. 482.

3. Attempt—

1. If intending to sue one on a forged bond, one purchases a stamp paper in the name of his intended debtor, it is not an attempt but preparation. 4 N. W. P. H. C. R. 46, 2 A. 105.
2. But if something had been written on the stamp, the attempt would be complete. 2 A. 105, 25 A. 75.
3. Accused dug a hole intending to place salt therein, so that the discovery of salt might be evidence against his enemy. Held, the digging of hole is an attempt to fabricate. 4 N. W. P. H. C. R. 133.
4. Where the intention of the accused is to discredit the evidence of witnesses that might be produced by the complainant, the offence is one of attempt to fabricate false evidence. 1925 L. 327=86 I. C. 671=26 Cr. L. J. 847.

4. Burden of Proof.

If the charge is that proceedings have been fabricated in connection with proceedings which are contemplated by the accused, the *onus* is on the prosecution to prove that they were so contemplated. 56 B. 213=1932 B. 185, 1923 B. 105 Expl.

5. Complaint. See False Evidence.

If the offence is contemplated in relation to a proceeding in Court, a complaint from Court under S. 195, Cr. P. C., is not necessary. 56 B. 213=1932 B. 185=34 B. L. R. 234.

6. Essentials and Evidence.

1. Preparation of false balance sheet is not an offence under this section but under S. 477-A. 16 A. 88.

Fabricating false evidence—(contd.)

2. Purchase of stamp in the name of another person with the intention of committing forgery constitutes fabrication. 25 A. 75, 8 A. 304, 15 A. 173.
3. A person may fabricate a document to screen himself from punishment and not injuring others. A municipal clerk mislaid a paper and forged another and used it in Court. Held, he was guilty under S. 193. 5 A. 533, 1922 A. 435.
4. A person altering the date of a document to bring it within time for Registration is guilty under S. 193. 6 C. 482.
5. There can be no fabrication of false evidence within S. 192 if the evidence is not in itself admissible. 1 P. R. 1914 Cr.=139 P. L. R. 1914=15 Cr. L. J. 344.
6. There is no fabrication of false evidence if document produced does not lead to the forming of erroneous opinion touching a point but rather forms a correct opinion. 40 A. 35=42 I. C. 914=19 Cr. L. J. 2=15 A. L. J. 822.
7. It is not necessary that judicial proceeding may be pending at the date of fabrication. It is sufficient if there is a reasonable prospect. 45 B. 663=22 Cr. L. J. 49=1921 B. 366=59 I. C. 193, 2 A. 105, 59 I. C. 135=22 Cr. L. J. 23.
8. False dying declaration by man, who does nothing to communicate with authorities does not come under S. 192 or S. 194. 1930 P. 550=129 I. C. 187.
9. The tutoring of a man to give false evidence, amounts to the "causing of circumstance to exist" within S. 192. 1927 A. 721=105 I. C. 662=28 Cr. L. J. 950=25 A. L. J. 1077, 29 A. 351 Foll., 16 Cr. L. J. 667 Diss. from.
10. The accused, intending to implicate their enemy, secreted some stolen property in his field and godown. Held, they were guilty under S. 192 and S. 414, I. P. C. 1 A. 379.
11. The accused who were informers to the Police of illicit salt by a person, who was their enemy, accompanied the Police Inspector with salt concealed on their persons and were arrested before depositing it in the house of the enemy. Held, it is fabrication. 3 W. R. 59.
12. Where a Police Officer suppressed a document entrusted to him to forward it to his superior and made a false entry in the diary that he has so forwarded it. Held, as the entry is not admissible on his behalf, rather it might be used against him, he is not guilty of fabrication. 6 A. 42, 19 A. 305, 21 A. 159, 20 A. L. J. 662.
13. A false statement in the recital of a title deed, when not admissible against the person against whose interest such statement was made, is not fabrication. 46 C. 986, 2 C. L. J. 46, 21 A. 159. *Contra* 30 I. C. 444, 56 P. L. R. 1918.
14. Where accused purchased a plot No. 10 and altered it in the deed as No. 272. Held, it is not fabrication on a material point as the property was otherwise sufficiently described. 5 A. 217, 5 A. 221.
15. Accused made a hole in the wall of his own house, and broke open a box of his uncle of whom he was the next heir and removed the contents which were disputed. His object was that it may appear that it was the act of thieves. Held, he has committed no offence. 10 C. L. R. 187.
16. A Patwari knowing that certain documents were forged, made entries in his papers corresponding to and based on those facts. Held, he is not guilty as he made true entries of false facts and not *vice versa*. 26 P. R. 1890 Cr.
17. Lessee executed a *Kabuliat* in favour of landlord without the consent and falsely recited therein that his agent had agreed to give him the lease. Held, the document is not false document, though it contained a false recital. 16 P. R. 1894 Cr.
18. A Pleader filed his power of attorney only signed by his client but falsely attested by a witness. Held, as the document was no part of evidence, S. 192 does not apply. 5 M. H. C. R. 373=1 Weir 175.
19. Accused sent waste paper by insured packet, purporting to contain currency notes in satisfaction of his debt due to addressee and used the acknowledgment in evidence. Held, he is guilty under S. 193 for fabricating false evidence. 1927 M. 199=99 I. C. 102=28 Cr. L. J. 70=51 M. L. J. 800.
20. The accused forged a *Kabuliat*. Held, that the inference is that he intended to use

Fabricating false evidence—(contd.)

it in a subsequent judicial proceedings. 1926 C. 224=90 I. C. 534=26 Cr. L. J. 1574=42 C. L. J. 215, 46 C. 936.

21. A person fabricating a false rent note showing that a house has been let to him for a certain period is guilty under S. 193. 59 I. C. 135=22 Cr. L. J. 23.
22. Mere fabrication of account is not in itself an offence. 56 B. 213.
23. A false endorsement on a mortgage-deed of payment is an offence under S. 193, I. P. C. 15 Cr. L. J. 221=22 I. C. 1005.
24. With a view to get refund of stamp duty on a conveyance which fell through, the accused altered its date so as to apply in time to the Collector for refund. Held, he is guilty under Ss. 192-193. 47 I. C. 871=19 Cr. L. J. 971=28 Cr. L. J. 213.
25. Witnessing the service of summons on a wrong person is no offence under S. 193 unless it is proved that accused was aware that service was expected on a different person. 52 I. C. 417=20 Cr. L. J. 641.
26. Affidavits are no evidence and cannot be the subject of charge under S. 193 and no sanction can be granted. 12 Cr. L. J. 563.
27. Where identifier swore a false affidavit intended to be used in a judicial proceeding. Held, the offence of fabricating false evidence is complete. 1928 P. 161=6 P. 760=106 I. C. 703=29 Cr. L. J. 111.
28. Mere indiscretion in signing a fabricated document without knowing its contents, will not constitute the offence. 17 A. L. J. 574=20 Cr. L. J. 268=50 I. C. 28.
29. One C whose brother D was an accused person, applied to the Court on his behalf that the prosecution witnesses should first identify D. The Court assenting to his request, C produced 10 persons, none of whom could be identified as D by the witnesses. When Court asked C to point out P, he pointed out a wrong man. Held, he was guilty of fabricating false evidence. 29 A. 351, 50 A. 365, 16 Cr. L. J. 667.
30. The accused who was in possession of the complainant's house as yearly tenant, at the end of tenancy prepared a rent note for 4 years and got it registered without complainant's knowledge. Held, he was guilty. 22 Bom. L. R. 1229=59 I. C. 135.
31. Accused unsuccessfully sought to obtain a woman in marriage, made and registered an agreement in her favour falsely reciting that he had married her and purporting to convey to her a plot of land in lieu of dower, held he was guilty. 48 C. 911.

7. Intention.

1. There may be no proceedings actually pending in the Court, nor they may have been instituted but the offence is complete as soon as there is fabrication with that intention. 2 P. 105, 59 I. C. 135=22 Bom. L. R. 1229=22 Cr. L. J. 23.
2. Under S. 192, it is the intention that creates the offence and not fact, as to whether the document is admissible in evidence or not is immaterial. 56 P. L. R. 1918=43 I. C. 429, 30 I. C. 444=16 Cr. L. J. 620 Cont. 1 P. R. 1914 Cr.

8. Judicial Proceedings. See Judicial proceedings.

A statement under S. 164, Cr. P. C. is not evidence in a stage of judicial proceedings within the meaning of S. 193, Explan. II. 1932 L. 254 (1)=33 Cr. L. J. 413.

9. Non-liability of accused for—

If A stabs Z and in order to escape detection, disposes of Z's body in such a way that the death may appear to be accidental, he is not guilty. 28 A. 705.

10. Procedure.

1. Where a party is challenging certain fabricated evidence, the opposite party might produce against him, and it is not produced, the party is entitled to file a complaint against the other party under Ss. 192 and 193 and complaint by Court under S. 193 (b), Cr. P. C. is not necessary. 1930 Bom. 337=32 Bom. L. R. 589=54 B. 273, 39 M. 677 and 1923 Bom. 105 Dist.
2. Before action is taken against a person for fabricating false evidence, he should be given an opportunity to substantiate his allegations. 1925 M. 1157=90 I. C. 661=26 Cr. L. J. 1589.

*Fabricating false evidence—(contd.)***11. Sentence.**

The term of imprisonment for attempt to fabricate false evidence for the purpose of being used in a stage of judicial proceedings cannot extend beyond one-half of seven years. (1865) 3 W. R. 59 Cr.

12. Touching material point.

1. Fabricated evidence must be material to the case. 23 A. W. N. 68.
2. If the evidence fabricated is not admissible there is no offence under S. 193. 6 A. 42, 21 A. 159, 19 A. 390, 46 C. 986 *Cont.* 13 P. W. R. 1918 Cr.=56 P. L. R. 1918 = 19 Gr. L. J. 141, 30 I. C. 444.
3. If the document does not lead to the formation of an erroneous opinion touching any particular point, but rather leads to form a correct opinion, an offence under S. 193 is not committed. 40 A. 35.
4. A person produced a registered deed of sale in which property sold was wrongly numbered and which was corrected by him subsequent to registration, was not guilty. 5 A. 217.
5. A Vakil presenting a Vakalatnama, purporting to have been executed before an officer and to bear his signature is not guilty. 5 M. H. C. R. 373.
6. Where there was a dispute as to ownership of a box in accused's house and he made a hole in the wall of the house and removed the articles he claimed, his object being to make it appear that there had been theft, but he did not charge any body with committing theft, he was not guilty. 10 C. L. R. 187.
7. A Patwari knowing that certain documents were forged, made entries in his papers corresponding to those documents, he was not guilty. 26 P. R. 1890 Cr.
8. A *Kabuliat* was made and signed by the lessees alone, with the intention of causing it to be believed, that an agreement to let, therein recited, had been made by the agent of the landowner and with her assent. Held, no offence under S. 193 was committed. 16 P. R. 1894 Cr.
9. A clerk, whose duty it was to register sale of cattle, gave a receipt to the purchaser and dated it 27th March instead of 21st and subsequently altered it to 27th. Held, there was no fabrication of false evidence. 40 A. 35.

13. To conceal one's offence or to divert suspicion.

1. The mere intention to divert suspicion and conceal one's guilt need not necessarily amount to fabricating false evidence. But the accused cannot escape penalty under S. 193 and take shelter behind the circumstance that he is an accused. 1934 A. 1017 = 46 B. 317 = 1922 B. 29 *Rel. on.* 28 A 705 *Dist.*
2. If A stabs Z and in order to escape detection disposes of Z's body in such a way that the death may appear to be accidental, he is not guilty. 28 A. 705.
3. Accused must have intention of fabricating evidence in order that it should appear in evidence in judicial proceedings. Fabricating evidence merely to screen himself is not sufficient. 1935 C. 304, 28 A. 705 *Not foll.*
14. To procure conviction of capital offence. S. 194, I. P. C. See False evidence—11.
15. To procure conviction of offence punishable with transportation, S. 159. See False evidence.
16. Using fabricated evidence knowingly. S. 196. See False evidence—38.

1. In support of an *alibi* on a charge of assault, the accused produced a cattle pound receipt and called the *Patil* of another village to prove that he was there at the time of offence. The defence was not believed. He was guilty under S. 196. 23 Bom. L. R. 987.
2. The production of a document in obedience to the order of Court, does not amount to using the document as genuine within the meaning of S. 196. 3 R. 36 = 1925 R. 191 = 85 I. C. 253 = 25 Cr. L. J. 509.
3. The word "Evidence" does not include document. When the accused used in a civil suit a false document as genuine, he should be charged under S. 471 and not under S. 196. 5 C. 717, 30 C. W. N. 84. See 7 M. 289, 7 A. W. N. 285.

*Factories Act (XII of 1911)***FACTORIES ACT (XII OF 1911.)****General.**

Factories Act should be properly enforced for the protection of workmen but the Court must also bear in mind the employer's position. 1925 B. 143=26 Cr. L. J. 482.

S. 2.

1. A boy doing the work of drawing comes under S. 2. 9 Cr. L. J. 160.
2. Persons employed for merely selling the manufactured articles do not come within the definition of "employed" even though they occupy a room at the factory. 8 L. 666=1923 L. 78=29 Cr. L. J. 583. *Cont.* 1933 N. 233.
3. S. 2 comprises actual work and not merely residence in the factory for a certain number of hours. 1930 A. 214=1930 A. L. J. 459=127 I. C. 522.
4. Gurhal Ghar is a factory within the meaning of S. 2 (3a). 1930 B. 162.
5. Railway workshops are factories within the meaning of the Act. 1929 L. 573.
6. Where mechanical power is used in aid of manufacturing process and persons simultaneously employed in a premises exceed 20, it is a factory. 1930 B. 162, 50 M. 834.
7. By a factory is meant "premises where anything is done towards the making or finishing of an article up to the stage when it is ready to be sold." 8 L. 666.
8. The word "occupier" means a person who is in actual possession and control of a factory. 50 B. 34=1926 B. 57=91 I. C. 949=27 Cr. L. J. 165.

S. 9.

The personal responsibility is imposed by S. 9 upon an occupier of factory to keep a register of the children employed and their respective employments. 9 Cr. L. J. 160.

S. 18.

The services of notice should be according to the Procedure Code. The mere note of a visit is not such an order as is contemplated therein. 1925 B. 143=85 I. C. 226.

S. 20.

The provisions of S. 20 are not fulfilled if there is a door made in a partition between the two portions of the room and it is not locked to prevent its being opened by women and children wishing to get into the press room. 50 B. 34=1927 B. 57.

S. 23.

1. Even in a case of a child of 14, there is need for a certificate under S. 23 (a). 30 Cr. L. J. 793=117 I. C. 447=1929 B. 272=31 B. L. R. 544.
2. Where children were employed for the purpose of sorting ground-nuts in a yard close to a room where machinery for the decoration of ground nuts was used, held that the children were employed in a factory. 50 M. 834=1927 M. 345.

S. 24.

The Inspector has no right to issue a general prohibition against the employment of women at night. 1921 A. 229=22 Cr. L. J. 369=61 I. C. 225=19 A. L. J. 503.

S. 26.

1. When the extra work consisted in taking ice to ships when required is not extra work. 134 I. C. 881.
2. A continuously changing system of hours specified is different from what is contemplated by a fixation of special hours. 134 I. C. 881. Where men work during a time which is admittedly outside the time for employment, the owner is guilty under S. 26. 1930 A. 214, 58 B. 137=1934 B. 43.
3. Manager can change hours before work begins. 58 B. 137.

S. 27.

Employment of women at night when Inspector's opinion is not obtained technically amounts to an offence. 1921 A. 229=61 I. C. 225.

*Factories Act (XII of 1911)—(concl'd.)***S. 28.**

Where an Inspector of Factories approves a system of working a particular factory, he has power under S. 21 of the General Clauses Act to cancel the approval. 59 I. C. 857=22 Cr. L. J. 153.

S. 34.

The duty to inform the authority under Factories Act under S. 34 is laid on the Manager. 1930 L. 658=31 Cr. L. J. 869=125 I. C. 380.

S. 41.

1. Liability of the occupier and Manager of the factory to be sentenced for an offence under S. 41 is joint and several. 1921 B. 322=45 B. 220.
2. The employer of a mill who employs a number of workmen to work in his mill after 7 P. M. is liable to be convicted and sentenced separately in respect of each such workman under S. 41-A read with S. 29 (1). 53 I. C. 933=20 Cr. L. J. 837, 45 B. 220.
3. Separate sentences of fine on the occupier and Manager in one trial under S. 41 are illegal. 13 P. R. 1918 Cr.=45 I. C. 159=19 Cr. L. J. 495.
4. The occupier and Manager both or either of them cannot be required to pay a fine which may exceed Rs. 200. 45 B. 220=1921 B. 322.
5. The Manager or occupier who is charged with an offence against the Act can go in the witness box and give evidence himself, because he gives evidence not as an accused in the case originally started against him but in his own right as a complainant on his complaint against other persons whom he has brought in. 56 C. 400.
6. "Occupier" means a person who occupies the factory either by himself or his agent. He may be an owner, lessee or licensee. 55 B. 366, 1933 N. 100.
7. An owner is liable even if he has given over the management to the Manager and himself knows nothing about it. 55 B. 366=1931 B. 308.
8. Managing agent is liable under S. 41 jointly and severally along with the manager and they can be jointly tried. 1932 P. 188=136 I. C. 289=33 Cr. L. J. 274.

FACTS. S. 3, Evidence Act.**1. Definition of—**

1. 'Facts' means and includes —
 - (1) Any thing, state of things or relation of things capable of being perceived by senses;
 - (2) any mental condition of which any person is conscious. S. 3, Ev. Act.
2. According to Bentham there are physical facts and psychological facts. If A fires at B, the act of firing is physical fact and can be proved by eye witnesses, but the intention cannot be proved by direct evidence but only by circumstantial evidence. *Field, 8th Ed., P. 14.*

2. Forming part of the same transaction. See Facts forming part of the same transaction. S. 6, Evidence Act.**3. Inconsistent with fact in issue. S. 11, Ev. Act. See Facts inconsistent with fact in issue.****4. In issue. S. 3, Ev. Act.**

It is the duty of prosecution to prove all such facts as constitute the offence, their non-existence being presumed. Hence all the ingredients of the offence which is charged against the accused are 'facts in issue' in a Criminal trial. *Monir's Law of Ev. 1935, P. 12.*

5. Proof of— See Proof of fact.**6. Relevancy of— See Relevancy of fact.****7. Which are occasion, cause or effect. S. 7, Ev. Act.**

1. Marks on the ground of struggle near the place where murder took place is relevant. S. 7 ill. (b), Ev. Act.

Facts—(concl'd.)

2. The fact that complainant with money went to a fair and showed it to some persons is relevant in the case of robbery. S. 7, ill. (a).
3. In a case of poisoning the state of deceased's health and habits known to accused are relevant facts. S. 7, ill. (c).

8. Which are introductory or explanatory. S. 7, Ev. Act.

1. A telegram received by a person, even though not proved to have been sent by a particular person, may be admissible under S. 9, Ev. Act, to explain the conduct of the person who received it. 1933 P. 96=142 I. C. 809.
2. Accused was arrested on the strength of Telegram to Bombay Police from Nyasa land Police. It was admissible in evidence as explanatory of the conduct of the Bombay Police. 49 B. 878=1926 B. 1=27 Cr. L. J. 114.
3. An alleged conspirator tore up a stolen draft on hearing of the arrest of another conspirator, evidence of this fact was admissible under S. 9. 49 B. 878.
4. Statements made by an accused person which have a bearing upon the question of his guilt, i. e., which support or rebut the theory of his guilt, are admissible under S. 9, provided they do not fall under Ss. 25-26 of the Ev. Act. 24 Cr. L. J. 723=73 I. C. 963.
5. If a person absconds his conduct shows that he is concerned in the crime. Therefore anything which rebuts the inference of his flight becomes relevant under S. 9. 22 Cr. L. J. 529=62 I. C. 545.
6. In a charge of conspiring to commit a dacoity, the evidence that some of the accused were intimately associated with the approver, was admissible under S. 9, to prove that conspiracy existed. 54 B. 524=1930 B. 157.
7. Accused sent a letter to an editor of a newspaper. A copy of it was found on him. It was held that letter was relevant to prove the intention of the accused. Since it was found in his possession it was original. 1928 B. 77=29 Cr. L. J. 322.

FACTS FORMING PART OF THE SAME TRANSACTION. S. 6, Ev. Act.**1. Absence at the occurrence.**

Evidence of a witness who was not present at the occurrence but only deposed to circumstances after the occurrence is not admissible to prove facts relating to the occurrence. 1925 L. 578=91 I. C. 812=7 L. L. J. 436=26 P. L. R. 674.

2. Bystanders. See Bystanders.**3. Events leading up to occurrence.**

Events leading up to and pleading assault on deceased must be considered. 1934 R. 44=35 Cr. L. J. 855.

4. Res gestae— Part of the transaction.

1. Where the offence under trial is filing a false complaint, what happened at the subsequent Police investigation of the complaint forms no part of the *res gestae*. 48 M. 640=1925 M. 579=26 Cr. L. J. 721=85 I. C. 209.
2. What a person states during an occurrence in respect of the occurrence itself is admissible as *Res gestae* under S. 6. 53 C. 372=1926 C. 139.
3. Members of an unlawful assembly uttered words expressing their determination to force their way through a Police cordon, the words were admissible as part of transaction of unlawful assembly. 1925 R. 354=25 Cr. L. J. 1622=3 R. 352.
4. What a person states at the time of an occurrence relating to some previous occurrence which took place long ago is no part of the latter and therefore inadmissible under S. 6. 53 C. 372=1926 C. 139=92 I. C. 442.
5. Evidence of witnesses to whom complaint was made long after a theft is not admissible, as it is not *res gestae*. 1934 C. 17.
6. A statement cannot be said to form part of the same transaction, which amounts to narrative of past events. 1931 M. 233=131 I. C. 456.
7. Statements during the investigation of crime are inadmissible. 48 M. 640.

Facts Forming Part of the same Transaction—(contd.)

5. An injured person, after he had been injured, made a statement in the presence of accused, that he had injured him, is admissible under S. 6 and S. 8. 10 C. 302.
 9. A first information report is admissible as part of *Res gestae*. 1931 L. 35.
 10. A statement which is admissible under S. 6 may also be used, under S. 157 or 155 to corroborate or contradict the testimony of its maker in Court. 43 I. C. 443.
- 5. Statements after transaction.**
1. The statement of the raped girl to her mother, after the occurrence, when the accused had left and the girl came away to her house is not relevant under S. 6. 1930 C. 132=50 C. L. J. 524=121 I. C. 175=31 Cr. L. J. 656.
 2. Even if the statement of the raped girl to her father after the occurrence be admissible, much value cannot be attached to it. 1930 L. 337=32 Cr. L. J. 63.
 3. Where the woman raped made a statement to her relative shortly after and committed suicide about three days after the occurrence, the statement was not admissible under S. 6. 1931 M. 233=131 I. C. 456=32 Cr. L. J. 751.
 4. A statement with regard to an event which took place a year ago would not be part of *Res gestae*. 53 C 372=1925 C. 139=92 I. C. 442=27 Cr. L. J. 266.
 5. A statement made by deceased immediately after the robbery, regarding robbery and assault, is admissible showing conduct, though the person who made it cannot be called to depose to it on oath. 6 P. 747=1923 P. 162=105 I. C. 695=29 Cr. L. J. 106.
 6. A booking clerk committed breach of trust in respect of certain sums, his confession before the Traffic Manager is admissible under S. 6. 9 B. II. C. R. 358.
 7. A statement made after the completion of transaction is inadmissible. 11 C. W. N. 266.
 8. Statement by injured person to a third person in the presence of the accused who did not deny it, is admissible. 10 C. 302.
 9. Statement of the raped girl made immediately after the occurrence to another woman is admissible, not as evidence of truth of the charge alleged but as corroborating the credibility of the complaint and of the evidence of the consistency of her conduct. 43 I. C. 423=19 Cr. L. J. 155.
 10. A statement by a person alleged to be the eye witness of a murder made to a person who came to the scene of occurrence after the murderer had left the place, cannot be proved against the accused for the purpose of showing that their names were mentioned as murderers. 34 P. R. 1914 Cr.
 11. A statement by accused just after occurrence is relevant showing state of mind. But repetition by him of what A said to accused is inadmissible. 1924 L. 733=25 Cr. L. J. 1005=81 I. C. 717=6 L. L. J. 575.
 12. A witness went to the spot after transaction and heard bystanders saying four men have committed the murder. Held, it is inadmissible. 1925 L. 578=27 Cr. L. J. 140=91 I. C. 812=26 P. L. R. 674.
 13. If the statement is made after the act is over and its maker has had time for reflection and deliberation, the statement will cease to be part of *Res gestae* and will not be admissible under S. 6. 1921 L. 258=4 L. L. J. 491, 34 P. R. 1914 Cr., 11 C. W. N. 266.
 14. Evidence of witness that complainant informed them about the theft long after incident is not admissible, as such evidence does not come under *Res gestae*. 1934 C. 17=150 I. C. 209.
 15. Statement of accused after the occurrence is relevant to show his state of mind, but where the statement is a repetition of what some body else said to the accused, the latter statement must be proved by direct oral evidence of a person who heard it. 1924 L. 733=25 Cr. L. J. 1005.
- 6. Statement before occurrence.**
1. When statements were made by deceased ten days before murder, as to the probable cause of her death, they are inadmissible. 4 L. 451=1924 L. 253=25 Cr. L. J. 1140=81 I. C. 964.

Facts forming part of the same Transaction—(contd.)

2. A witness stated that he had seen three women, who were sleeping in the same *hari* as the complainant and his wife that night, searching something at dusk. Held, that the alleged search in the evening was not part of the same transaction as the abduction at night. 1924 C. 105=90 I. C. 433=26 Cr. L. J. 1553.

7. Statements during transaction. See—3.

Evidence of statements, made by members of an assembly the promoters of which were charged under Sec. 325 142, I. P. C., of their determination to force their way through the police forms evidence of a part of the *Res gestae* and is admissible. 3 R. 352=1925 R. 354=90 I. C. 918=25 Cr. L. J. 1622.

8 Transaction—same

1. To see whether two or more acts constitute the same transaction, the proximity of time, unity or proximity of place, continuity of action and community of purpose or design should be determined. 42 C. 957=16 Cr. L. J. 497, 11 C. W. N. 266.
2. The word 'transaction' is used in a limited sense in ill. (a) to S. 6, though it is used in a more general sense in the remaining illustrations of the section. 15 B. 402(496).
3. When several felonies are connected together and form part of one entire transaction, then, one is evidence to show the character of the other. 16 B. 414, 11 Bom. H. C. 90.
4. Where robbery and murder form one transaction, possession of stolen property which is presumptive evidence of robbery would be presumptive evidence of murder as well. 13 M. 426, 1923 P. 162=6 P. 747=106 I. C. 698.
5. A transaction consists both of the physical acts and the words accompanying such physical acts whether spoken by persons doing the acts or those present there. 53 C. 372.
6. Stephen defines a transaction as a "group of facts so connected together as to be referred to by a single legal name, as a crime, or contract, a wrong or any other subject of inquiry, which may be in issue". Stephen's Digest Art. 3, 42 C. 957, 1931 P. 52.

FACTS INCONSISTENT OR IMPROBABLE WITH FACT IN ISSUE. S. 11, Ev. Act.

1. Degree of Probability.

1. The words of S. 11 are very wide and evidence which would be admissible under English Law will be admitted under this section. 16 B. 414 (430).
2. Collateral facts, which, by way of contradiction, are inconsistent with a fact in issue or relevant fact are admissible. 6 Bom. L. R. 983.
3. The admissibility of fact in issue depends on how near is the connection between it and the fact in issue. 1928 R. 118=29 Cr. L. J. 555. 18 I. C. 97.
4. The words "highly probable" indicate that the connection between the facts must be so mediate as to render the co existence of the two highly probable. 6 C. 55 (662), 1933 A. 690=34 Cr. L. J. 967, 47 C. 671.
5. S. 11 is controlled by other specific provisions of the Act. 1928 C. 983, 34 A. 341.
6. An inference as to the existence of one transaction from the similarity or simultaneousness of another can be drawn under S. 11. Accused were charged with obtaining money on false pretences. Held, that, on or about that time accused having made similar misrepresentation to a third person was admissible to corroborate the story of prosecution and to prove intention of accused. 39 A. 273, 37 C. 91.
7. In a prosecution to bring false evidence against a person, the fact that accused had previously instituted an unfounded prosecution against the same person is admissible under S. 11, Ev. Act. 1928 R. 118=109 I. C. 491.

2. Inconsistency—

1. It is under S. 11 that evidence of *alibi* is admitted. S. 11, ill. (a).
2. A statement by a defence witness that a prosecution witness was at another place

Facts inconsistent or improbable with Fact in Issue—(concl'd.)

at the time of occurrence is relevant under S. 11, even through the prosecution witness was not cross-examined on the point. S. 153 ill. (e) Ev. Act. 11 Bom. H. C. R. 166.

3. Dissimilarity of thumb impression is relevant to disprove identity. 1 C. W. N. 33.

FAILURE OF JUSTICE. See Irregularities—14.

FAILURE TO ACCOUNT. See Breach of trust—41.

FAILURE TO PROVE A CASE. See False charge—12.

FAIR COMMENT. See Defamation—17.

FALL. See Wound—7.

FALSE AFFIDAVIT. See False evidence—Affidavit.

FALSE CHARGE. S. 211, I. P. C.

1. Abetment of—

1. In order to support a charge of abetment, there must be evidence of previous co-operation. There is no abetment after an act is committed. 18 W. R. 28.
2. A person who gave evidence in support of a false charge is not guilty of abetment of that charge. 10 C. L. R. 4, 18 W. R. 28.
3. If a person makes an other lodge a false information before Police, he is guilty of abetment of offence under S. 211. 7 C. W. N. 556. See 10 C. L. R. 4.

2. Applicability—

1. Where the person at whose instance proceedings under S. 211 are instituted against a false complainant, is never charged in any Court, nor put upon his trial in any Court nor proceedings taken in a Court, it cannot be said that an offence under S. 211 was one which was committed in or in relation to any proceedings in Court. 9 L. 408=1928 L. 259=109 I. C. 685=29 P. L. R. 515=29 Cr. L. J. 605, 1924 A. 779, 44 C. 650, 19 P. R. 1917 Cr. and 34 A. 522 Dissented.
2. False information to Police was followed by a complaint to the Magistrate on the same facts, which was dismissed by the Magistrate. Held, that an offence under S. 211 and not under S. 182 is committed. 1928 R. 243=29 Cr. L. J. 1044.

3. Burden of proof.

1. It is not for a person charged under S. 211 to make out that his report was true, until it has been clearly traversed by prosecution evidence showing that it was false. 1929 M. 496=113 I. C. 455=30 Cr. L. J. 167=30 M. L. W. 795.
2. The burden of proving absence of just and lawful ground is upon the prosecution. It must prove a negative fact by leading cogent evidence and not merely a former record. 26 P. R. 1900 Cr.

4. Charge.

The charge should specify the exact nature of false charge for which the accused is to be tried. 1 B. H. C. R. 87.

5. "Charges" or "institutes proceedings."

1. Where a charge is made against several persons and one is not proceeded against, the fact that others are charged in Court does not make the charge against the former, a charge in Court. 1924 A. 779=46 A. 906, 34 A. 522 Dissented.
2. Mere stating facts and suspicion is not 'charge' but alleging belief in the guilt of a person and desiring he should be proceeded against is charge. 40 A. 906=1924 A. 779=82 I. C. 167=25 Cr. L. J. 1230
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False Charge—(contd.)

5. During the investigation, the Police were told that they should search the house of certain persons, as there was reason to suspect their conduct. Held, it did not amount to "charge" within the meaning of S. 211. 28 I. C. 999=16 Cr. L. J. 423.
6. A telegram that a dacoity had taken place without mentioning names is not institution of false charge within S. 211. 25 I. C. 630=15 Cr. L. J. 622.
7. Statement to Police under S. 162. Cr. P. C., is not a complaint or charge. 11 Cr. L. J. 286=20 M. L. J. 132, 11 Cr. L. J. 164.
8. A complaint of cognizable offence to the Police is institution of criminal proceedings within the meaning of S. 211. 17 C. 574, 40 C. 360, 19 Bom. 51, 22 Bom. 517 28 M. 565, 31 M. 506, + P. 472=1925 P. 678=92 I. C. 885.
9. There are two modes of instituting criminal proceedings either to Police or to Magistrate. 14 C. 574, *See* 16 A. 124, + A. 215—598.
10. According to Allahabad High Court, the mere making of a complaint to Police or Magistrate is merely making a charge. Following upon that charge there must be institution of criminal proceedings, *viz.*, taking some action against the person charged. 16 A. 124, 5 A. 215—598, 26 A. 244, 6 A. L. J. 989, 22 Bom. 596.
11. Where accused asked a Magistrate to compel the prosecutor to execute a sale-deed or return the purchase money, failing which he was to be punished criminally, does not amount to a charge. 17 C. 574, 32 M. 258.
12. Accused complained to Magistrate, that Police were tutoring certain witnesses and to take action. Held, it is not a charge within the meaning of S. 211. 26 M. 640, 75 I. C. 158=1923 N. 313=24 Cr. L. J. 910=6 N. L. J. 202.
13. A statement to the Police of a suspicion, that a particular person has committed a crime is not a "charge" even though his suspicion was unfounded. 39 A. 715, 28 I. C. 999, 38 I. C. 334.
14. Accused cannot be prosecuted under S. 211 for making answers to questions put to him by a Magistrate. 19 Bom. 51.
15. The 'charge' should be made in order to the institution of criminal proceedings, 14 P. R. 1879 Cr.
16. Petition against the Manager, Court of Wards, about his mismanagement to the Deputy Commissioner in his executive capacity is not a charge within S. 211. 109—397 P. L. R. 1904, 7 A. L. J. 618, 30 C. 415.
17. Accused complained to the Collector, as Officer of Court of Wards, against a subordinate having wrongfully confined him for extorting bribe. The Collector was District Magistrate as well and after examining him judicially ordered his prosecution under S. 211. Held, the Magistrate acted arbitrarily in turning a departmental complaint into a criminal complaint and ordering his prosecution without giving him an opportunity to produce his evidence. 30 C. 415, 28 I. C. 108.
18. Accused addressed a letter to the Police on the authority of information supplied to him, that a certain person has murdered a woman and that he could prove it, it was held that he could not be said to have made a false charge with knowledge of its falsehood. 12 P. R. 1905 Cr.
19. Accused wired to the Collector, that a certain officer had forcibly entered his house and inoculated his family. Held, it is not a complaint to a Magistrate and the complainant could not be prosecuted under S. 211. 7 A. L. J. 618.
20. A charge may be vexatious but it is not on that account to be considered false. 1 Bom. L. R. 11.
21. If a person makes a charge through his agent, manager or the like, he would be liable in the same way and to the same extent as if he had himself made it. 10 C. L. R. 4, 18 W. R. 28.
22. 'Falsely charging' means a false accusation made to any authority bound by law to investigate it or take steps in regard to it. 1930 P. 550, 32 M. 258.
23. The term 'institution' in S. 211 means institution either by Police or others in some criminal Court in consequence of accused's action. 1922 L. 133=65 I. C. 434.
24. Lodging false information with Superintendent of Police about wrongful confine-

Facts inconsistent or improbable with Fact in Issue—(concl'd.)

at the time of occurrence is relevant under S. 11, even through the prosecution witness was not cross-examined on the point. S. 153 ill. (e) Ev. Act. 11 Bom. H. C. R. 166.

3. Dissimilarity of thumb impression is relevant to disprove identity. 1 C. W. N. 33.

FAILURE OF JUSTICE. See Irregularities—14.

FAILURE TO ACCOUNT. See Breach of trust—41.

FAILURE TO PROVE A CASE. See False charge—12.

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3. Causing Police search to be made and identifying property as being unlawfully in complainant's possession, amounts to charge within the meaning of S. 211. 46 A. 906=1924 A. 779=25 Cr. L. J. 1239.
4. Petition for inspection of Municipal election papers to the District Magistrate, intending to take criminal proceedings against an employee of Municipal Board, who gave voting papers to an unauthorized person does not amount to criminal charge under S. 211. 12 Cr. L. J. 433=8 A. L. J. 1106=11 I. C. 617. See 39 A. 715.

False Charge—(contd.)

5. During the investigation, the Police were told that they should search the house of certain persons, as there was reason to suspect their conduct. Held, it did not amount to "charge" within the meaning of S. 211. 23 I. C. 999=16 Cr. L. J. 423.
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24. Lodging false information with Superintendent of Police about wrongful confine-

False Charge—(contd.)

- ment of his mother by the Police is institution of criminal proceedings within S. 211. 1930 C. 711=128 I. C. 208=32 Cr. L. J. 110=34 C. W. N. 556.
25. There is an essential difference between a mere information to Police and a definite statement to it that a certain person has committed an offence. S. 211 applies to the latter case. 1925 A. 472=85 I. C. 818=26 Cr. L. J. 594, 1924 A. 779=22 A. L. J. 829=82 I. C. 167=25 Cr. L. J. 1239.
 26. Accusation contained in dying declaration made to a Magistrate stands on no better footing than an accusation made to a private individual, such as a compounder in a hospital. It is not a complaint. 1930 P. 550=129 I. C. 87, 17 C. 574, 30 C. 415, 19 Bom. 51, 26 M. 640.
 27. Investigation by Police on information of cognizable offence is not instituting proceedings against any person within the meaning of S. 211. 1931 N. 134=32 Cr. L. J. 1009=133 I. C. 398, 5 A. 215, 16 A. 124, 3 P. R. 1888 Cr., 1925 P. 678, *Contra*, 17 C. 574, 20 M. 79, 1931 A. 269=33 Cr. L. J. 256=136 I. C. 277.
 28. Statements made in the course of an investigation under Chapter XIV, Cr. P. C., are not charges as contemplated by S. 211, I. P. C. 61 M. L. J. 658=1931 M. W. N. 1138, 31 M. 506 Ref.
 29. A woman asked Police to investigate and punish a Sub-Inspector for the alleged rape. The Sub-Inspector was exonerated and he brought a complaint of false charge. Held, the offence committed by woman was under S. 211 and not under S. 182. 1935 N. 69=17 N. L. J. 189.
 30. In a charge of rape accused was not named in F. I. R. but was subsequently named in the complaint. It proved to be false. Held, that the offence of the woman was under S. 211 and not under S. 500 I. P. C. 1935 R. 163=36 Cr. L. J. 970.
 31. Where a person does not confine himself to reporting his suspicions to Police but insists on Court proceedings, it amounts to charge. 1934 R. 21=35 Cr. L. J. 1259.
 32. Report of cognizable offence to Police amounts to institution of criminal proceedings. 1934 Pesh. 112, *case law discussed*.
 33. If a complaint is made by a stranger accused makes a false statement in Police statement did not give rise S. 211, as his M. L. J. 134 Foll, 1928 M. 791 Expl. Cr. L. J. 357, 20
 34. The test of "charge" is whether the person making the charge intended to set the criminal law in motion against the person charged. 1932 L. 246=13 L. 568.
 35. Information given to Police Officer in respect of non-cognizable cannot amount to institution of criminal proceedings under S. 211, as the Police Officer has no power to take any proceedings by himself. 1932 C. 511, 1933 O. 374, 1932 P. 170.
- 6. Civil remedy.**
A person may sue merely for damages for a false and malicious prosecution without prosecuting one under S. 211, I. P. C. 3 M. 6, 6 W. R. 9, 30 A. 525 (P. C.)
- 7. Complaint not dismissed—Prosecution of complainant.**
Petitioner reported to Police about theft and then made a complaint to a Magistrate who sent it for inquiry to a Sub-Magistrate. On receiving his report, the Magistrate issued summons under Ss. 182—211 against the petitioner. Held, that the order was illegal, as the complaint had not been dismissed by the Magistrate. 1932 C. 383 (1)=36 C. W. N. 15=33 Cr. L. J. 514=137 I. C. 849.
- 8. Complaint under S. 195 (1) (b), Cr. P. C.**
1. When a false charge is made only to Police and not the Magistrate, no complaint is necessary for a prosecution under S. 211. 1928 N. 17=105 I. C. 454=28 Cr. L. J. 934, 43 C. 1152, 1924 A. 779, 34 A. 522 doubted.
 2. When information to the Police is followed by a complaint to the Court, the complaint under S. 195 is necessary before taking cognizance of a case under S. 211, I. P. C., although the complaint was not investigated by the Court. 4 P. 323=1925 P. 483=26 I. C. 825=26 Cr. L. J. 889, 43 C. 1152, 44 C. 650.

False Charge—(contd.)

3. Petitioner himself planted a mould in respondent's house and gave information to the Police. The respondent was prosecuted and discharged by a Magistrate who ordered prosecution under S. 211. Held, the offence was committed in relation to proceedings in Court. 1924 R. 211=84 I. C. 863=26 Cr. L. J. 383.
4. Court may make a complaint under S. 476 for an offence under S. 211, if it is of opinion that the proceedings were caused to be started by that person, though he is not party to the proceedings before it. 1930 C. 671=127 I. C. 65, 1925 R. 321=27 Cr. L. J. 4, 37 C. 250.
5. Complaint under S. 211 should not be made until the original complaint is properly dealt with and dismissed. 1924 N. 115=75 I. C. 543=24 Cr. L. J. 959, 1926 B. 284=95 I. C. 68=27 Cr. L. J. 740.
6. Even if the accused do not desire to take action under S. 211, the Court can do so *suo motu*. 1928 A. 333=112 I. C. 770=30 Cr. L. J. 2.
7. Magistrate ought not to order prosecution under S. 211 merely upon a Police report. The complainant should be given full opportunity to prove the truth of his information. 1927 C. 175=99 I. C. 408, 1927 P. 402=103 I. C. 63=28 Cr. L. J. 639, 6 C. 496, 7 C. 208, 27 C. 921, 29 A. 557, 30 A. 52, 10 M. 232, 14 C. 707.
8. Mere failure to prove a case is not sufficient to order prosecution under S. 211, as failure to prove a case is not the same thing as the institution of a maliciously false case. 1925 P. 329=83 I. C. 701=26 Cr. L. J. 141=6 P. L. T. 365, 1924 P. 379=72 I. C. 76, 18 C. W. N. 391, 17 C. W. N. 379.
9. Mere dismissal of a complaint does not justify a Court in prosecuting the complainant under S. 211. There must be a *prima facie* case against him. 1927 A. 107=98 I. C. 465=27 Cr. L. J. 1345.
10. If the complainant is not examined on oath in support of his complaint, he cannot be prosecuted under S. 211. 1926 B. 284=95 I. C. 68=27 Cr. L. J. 740.
11. Where a complaint is found true by one Court and false by appellate Court, complainant should not be prosecuted under S. 211. 1922 P. 160=23 Cr. L. J. 272.
12. In ordering prosecution under S. 211, no Court should lend itself to the gratification of private malice of a person who may or may not be party to the proceedings. 3 C. W. N. 3, 4 N. L. R. 140 (143).
13. In ordering prosecution, the Court should consider the chances of conviction, for it would be disastrous if there were number of prosecutions ending in acquittal. 37 C. 250, 1 C. W. N. 400.
14. Court should not order prosecution in a pending case. 28 P. R. 1886 Cr., 1 A. 497, 1 A. 527, 74 I. C. 1054=1923 A. 360=24 Cr. L. J. 862=45 A. 58.
15. Ordering of prosecution without giving notice or opportunity to the accused is illegal. 7 M. 292, 18 A. L. J. 620.
16. If there is a clear case of false charge, the accused should be prosecuted under S. 211, and not to be let off with fine under S. 250, Cr. P. C. 29 C. 281, 27 M. 59.
17. In ordering prosecution it is necessary to hold that the charge was both false and malicious. 29 C. 481.
18. Award of compensation under S. 250, Cr. P. C., does not bar a prosecution under S. 211. 30 C. 123, overruling 28 C. 251, *Contra*. 49 I. C. 850.
19. If A, B and C complain to the Police and C complains to Magistrate as well, Magistrate's complaint is necessary for the prosecution of any or all of them. 19 P. R. 1917 Cr., 101 A. L. J. 61.
20. The offence under S. 211 must be divided into two parts, one where on the report investigation is held and which leads to proceedings in Criminal Court, and the other is, where report only led to Police inquiry and no proceedings in Court. Complaint under S. 195 is necessary in the former case but not in the latter case. 9 Mys. L. J. 112, 46 A. 906, 9 L. 408, 53 C. 824, 1929 S. 115.
21. Submission of a petition containing a false charge of bribery to the Inspector-General of Police against a Sub-Inspector is punishable under S. 211. 26 P. R. 1908 Cr.

False Charge—(contd.)

22. Great delay in filing complaint under S. 211 is alone sufficient to dismiss it. 1935 R. 485.
23. For a false charge against two persons, only one offence is committed. 1934 R. 21 = 35 Cr. L. J. 1259.
24. No sanction for filing complaint is necessary unless some proceedings before Magistrate have preceded complaint under S. 211, 1934 R. 40 = 35 Cr. L. J. 802 = 148 I. C. 845, 44 C. 970 Dist.
25. If a complaint under S. 211 is dismissed under S. 203 Cr. P. C., a fresh complaint under S. 500, I. P. C., is competent. 1934 R. 40 = 35 Cr. L. J. 802.
26. S. 195 (1) (b) applies to cases of false report made in investigation of Police with intention that there should be trial in consequence of it. 1936 L. 238 = 37 Cr. L. J. 426, 1929 S. 132.
27. Accused falsely reported to Police that A removed his watch from the car and deposited it with another. He was prosecuted under S. 211—193. Held that S. 195 (1) (b) did not apply and proceedings were quashed. 1936 L. 238 = 37 Cr. L. J. 426.
28. No person should be proceeded against under S. 211 unless he is given opportunity to substantiate his allegations. 1932 L. 246 = 13 L. 568.

9. Complaint by Police.

Accused made a complaint to Police, which reported to the Magistrate that it was false. Magistrate accepted the report and notice to accused was issued to show cause. Police preferred a complaint under S. 211. Held, that Police was entitled to prefer complaint. 1934 M. 175 = 35 Cr. L. J. 698 = 148 I. C. 593.

10. Compounding of original offence.

The fact that an offence alleged to have been committed had been compounded is no conclusive answer to a charge made against the prosecutor under S. 211. 11 C. 79.

11. Criminal Proceedings.

1. Criminal proceedings include the investigation by a Police Officer. 1931 A. 269 = 33 Cr. L. J. 256 = 136 I. C. 277.
2. False information to Police of non-cognizable offence does not constitute institution of criminal proceedings. 1932 C. 511 = 59 C. 334 = 33 Cr. L. J. 631.
3. Making of false charge before a Magistrate followed by Police enquiry but no further proceedings is not institution of criminal proceeding. 3 P. R. 1888 Cr.

12. Defamation—complaint of—for—

If a complaint under S. 211 is dismissed under S. 203, Cr. P. C., a subsequent fresh complaint under S. 500, I. P. C. is competent. 1934 R. 40 = 35 Cr. L. J. 802.

13. Distinction between S. 182 and S. 211.

1. "False charge" in S. 211 implies a definite accusation of an offence of a defined person, and "false information" might merely comprise the giving of information without charging a person of any offence. 15 Bom. L. R. 574 = 20 I. C. 747, 42 I. C. 998, 105 I. C. 454 = 28 Cr. L. J. 934 = 1929 N. 17.
2. In a prosecution under S. 182 malice need not be proved but under S. 211, proof of the absence of just and lawful ground for making the charge is an important element. 19 B. 717 (725, 726).
3. S. 211 presents the same offence under S. 182 in its aggravated form. 5 C. 184, 32 C. 180, 7 M. H. C. R. 5, 5 P. 33 = 1925 P. 717 = 26 Cr. L. J. 1269.
4. A conviction under either section on the same facts would not be illegal. 1 Weir 120.
5. The offence under S. 182 is complete, when false information is given to a public servant, although he does not institute criminal proceedings but a case under S. 211, a Court should determine criminal proceeding instituted in it. 15 A. 336, 64 I. C. 839.
6. If a false charge is made to Police against a definite person it will fall under S. 211. For an offence under S. 182 it is only necessary that information given should be

False Charge—(contd.)

false to his knowledge. 8 Mys. L. J. 112, 9 L. 403, 21 A. L. J. 805, 46 A. 906, 1917 M. W. N. 875.

14. Essentials and Evidence.

1. It is enough to constitute an offence under S. 211 if the accused makes his complaint *without any just grounds and acts without due care and caution* 1925 S. 184=82 I. C. 718=25 Cr. L. J. 1358=19 S. L. R. 91.
2. It must be proved that accused made the statement which he knew to be false and which he believed to be false or which he did not believe to be true. 61 I. C. 521=22 Cr. L. J. 393.
3. Mere failure to prove a case is not sufficient to order prosecution under S. 211, 1925 P. 329=83 I. C. 701=26 Cr. L. J. 141, 1924 P. 379=72 I. C. 75=24 Cr. L. J. 316.
4. A false charge against a public servant must be made to an officer who has power to investigate and send it for trial. 1929 C. 724=33 C. W. N. 1058, 1930 P. 550.
5. Information to Superintendent of Police that a certain Police Officer wrongfully confined the accused and his mother, falls under S. 211, and not under S. 182. 1930 C. 711=34 C. W. N. 556=32 Cr. L. J. 110=128 I. C. 208.
6. If the complaint is filed in Court and there is no report to the Police. Police cannot proceed under S. 211. 1925 A. 613=96 I. C. 870=27 Cr. L. J. 1014.
7. The application that the Police should not torture the accused, is not a complaint and the accused could not be prosecuted under S. 211. 1923 N. 313=75 I. C. 158=24 Cr. L. J. 910=6 N. L. J. 202.
8. An order for prosecution of an offence under S. 211, merely on the report of the Police that the information given by the accused is false, without giving him an opportunity to prove the truth of information, is bad. 1927 C. 175=99 I. C. 408=28 Cr. L. J. 152, 1927 P. 402=103 I. C. 63=28 Cr. L. J. 639. See 7 P. 408=1929 P. 70=117 I. C. 647=30 Cr. L. J. 842.
9. The Crown must prove that the primary intention of the accused was to cause injury to the Police Officer and he set the criminal law in motion. 1932 L. 246=137 I. C. 157=33 P. L. R. 174.
10. A complainant who was not examined under S. 200, Cr. P. C., cannot be prosecuted under S. 211 if his complaint is dismissed on a report called for under S. 202, Cr. P. C. 2 P. R. 1912 Cr., 27 C. 921.
11. Whether a report made to the Police is substantially correct is a question of fact. 5 C. W. N. 727.
12. Where accused never knew before actually served under S. 182, what the Police report was and the application filed by him impugning the report had been rejected. Held, that the proceedings should be quashed. 33 Cr. L. J. 406=1932 C. 287.
13. A person may, in good faith, institute a charge which is subsequently found to be false, or he may, with intent to cause injury to an enemy, institute criminal proceedings against him believing there are good grounds for them and he is not liable. But to constitute this offence he must have known that there was no just or lawful ground for such proceedings. 3 N. W. P. H. C. R. 327.
14. Accused made a complaint to the Police and the complainant started prosecution under S. 211. Accused then made the same complaint to Magistrate and claimed investigation. The claim was rejected and he was convicted under S. 211. Held, that the conviction was not illegal. 1934 R. 21=35 Cr. L. J. 1259, 1928 A. 765, and 1932 P. 152 Rel. on. 44 C. 650 Dist.

15. Failure to prove a case.

Mere failure to prove a case is not sufficient for ordering prosecution under S. 211, I. P. C., as it is not the same thing as institution of maliciously false case. 1925 P. 329=83 I. C. 701, 1924 P. 379=72 I. C. 76, 18 C. W. N. 391, 17 C. W. N. 379.

16. False report by Police.

1. A Head Constable falsely reported to his officers that certain persons were in the

False Charge—(contd.)

habit of dealing with stolen goods and they were prosecuted and acquitted, he was guilty under S. 211. (1865) 2 W. R. 44 Cr.

2. Where a Police Officer made a false report regarding an offence, which the Magistrate, after hearing evidence, found to be false he could not be prosecuted under S. 211. 4 C. W. N. 347.

17. Jurisdiction.

1. A person made a complaint to the Police and the Police did not take any action, he filed a complaint in Court. The Magistrate ordered a preliminary enquiry. The Police filed complaint against him under Ss. 211, 182 in the Court of another Magistrate. Held, that the latter Court had no jurisdiction, as the preliminary enquiry of the first Court had not been completed and no complaint was made by it. 1929 S. 115=115 I. C. 313=30 Cr. L. J. 399.
2. If a Magistrate erroneously and in good faith takes cognizance of a complaint, although he is not empowered by law, no prosecution for false complaint can be ordered. 1930 P. 550, 1926 P. 400. 17 C. 574 and 32 M. 258 Dist.
3. The criminal proceeding taken and false charge made outside British India are not within the scope of S. 211. 1924 B. 51=47 B. 907=77 I. C. 189=25 Cr. L. J. 333.
4. The Magistrate dismissing a complaint is not competent to proceed against the complainant under S. 211, but should make a complaint, 5 P. 450=1925 P. 368.
5. Even where the accused persons do not desire to take action under S. 211, a Court can act *suo motu*. 1928 A. 333=112 I. C. 770=30 Cr. L. J. 2.

18. Of accusation which is not complaint.

Accused submitted a petition to the Deputy Commissioner making certain complaints against Manager of the Court of Wards, he could not be convicted under S. 211, as it was not a complaint. 109 P. L. R. 1904, 30 C. 415.

19. Of arson.

Where a man burnt his own house and falsely charged another, he was guilty under S. 211. (1867) 8 W. R. 65 Cr.

20. Of bribery.

Submission of a petition containing false charge of bribery against a Sub-Inspector of Police to the Inspector-General of Police falls under S. 211, 26 P. R. 1908 Cr.

21. Of dacoity, hurt or theft.

1. Where a false charge of dacoity was made to a Police Officer, who referred it to a Magistrate as false and the Magistrate ordered the charge to be dismissed without taking any action against the party implicated, the person preferring the charge was guilty under S. 211. 20 M. 79, 1 M. H. C. R. 30.
2. A charge of voluntarily causing hurt contained in a petition of complaint was wilfully false and made with intent to injure another, the complainant was guilty under S. 211. 4 N. W. P. H. C. R. 6.
3. A falsely to injure B informed the Police that B has stolen property in his house and Police searched B's house and the information proved to be false, A was guilty under S. 211 and S. 182. 16 P. R. 1870 Cr., 14 P. R. 1872 Cr.

22. Opportunity to show cause.

Ordinarily a person ought to be given an opportunity to show cause before he is ordered to be prosecuted under S. 211. 33 Cr. L. J. 406=1932 C. 287.

23. Petition for protection from Police extortion.

Petitioner sent a petition to Superintendent of Police making allegations of bribery and extortion against a Police Sub-Inspector, who was put on trial and acquitted. Held, that petitioner should not be prosecuted under S. 211, I. P. C., as he only prayed for his own protection. False charge would depend whether his object was to set the criminal law in motion or ask for a departmental inquiry. 59 C. 334=1932 C. 511, 1932 L. 246=137 I. C. 157=33 P. L. R. 174=33 Cr. L. J. 409.

False Charge—(concl'd,**24. Procedure—.**

1. A person who lays information containing a false charge against a number of persons commits a distinct offence against each of the persons and may be separately prosecuted under S. 211 for each of such offences. 48 I. C. 342=19 Cr. L. J. 1002.
2. Where a false charge is made to Police only and not to a Magistrate, no complaint under S. 195 is necessary for prosecution under S. 211. 43 C. 1152, 105 I. C. 454=1928 N. 17, 51 A. 332=111 I. C. 858=29 Cr. L. J. 938.
3. If the offence falls both under S. 182 and S. 211, prosecution for minor offence under S. 182 is improper. 114 I. C. 685=1928 R. 254=30 Cr. L. J. 342, 32 C. 180, 44 C. 650, 15 A. 336, 7 B. 184.
4. Where Magistrate has no jurisdiction to take cognizance of an offence under S. 211 for want of proper complaint, he can investigate it as regards S. 182. 5 P. 33=1925 P. 717=88 I. C. 1045=26 Cr. L. J. 1269=6 P. L. T. 515.
5. The offence under S. 211 is non-cognizable one and the Police Officer cannot investigate it. He can only make a complaint under S. 195 to the Magistrate. 1925 M. 672=90 I. C. 393=25 Cr. L. J. 1550=1925 M. W. N. 317.
6. Before lodging a complaint for making a false charge against a complainant, the original complaint must have been investigated. 1926 B. 284=27 Cr. L. J. 740.
7. Where a false report is made to Police and also a complaint to Magistrate, proceedings under S. 211 are appropriate, though under S. 182 are not illegal. 64 I. C. 839, 32 C. 180, 34 A. 522.
8. If a complaint under S. 211 is dismissed under S. 203, a fresh complaint under S. 500 is competent. 1934 R. 40=35 Cr. L. J. 802.

25. Report to Police.

1. Where a person does not confine himself to reporting the matter to Police and stating his suspicions, but insists on Court proceedings, it amounts to charge. 1934 R. 21=35 Cr. L. J. 1259.
2. False report was made by accused to Police of an offence. It was admissible as admission under S. 21, Evidence Act. He was guilty under S. 211. 1936 P. 358.
3. S. 195 applies to cases of false report made in investigation of Police with intention that there should be trial in consequence of it. 1936 L. 238=37 Cr. L. J. 426, 1929 S. 132=30 Cr. L. J. 732.

26. Sanction. See—8.

No sanction for filing complaint is necessary unless some proceeding before Magistrate has preceded complaint under S. 211. 1934 R. 40=35 Cr. L. J. 802=148 I. C. 845, 44 C. 970 Dist.

27. Sentence.

A sentence of imprisonment is obligatory only if false charge is made to the Police under the latter part of S. 211. But under the former part, only a fine is permissible. 9 Mys. L. J. 112, 1 B. H. C. R. 34.

28. Use of F. I. R. against the maker under S. 211. See First information report.**29. Vexatious charge.**

To bring a vexatious charge is no offence under S. 211. 1 Bom. L. R. 11.

FALSE CLAIM IN COURT. S. 209 I. P. C**1. Complaint.**

Before prosecuting a person under S. 209, he should be allowed an opportunity of proving his claim. 3 L. L. J. 537.

2. Essentials and Evidence.

1. The fact that claim is dismissed does not necessarily make it false. 54 I. C. 636, 22 Cr. L. J. 467.
2. It is not necessary under S. 209 that whole of the claim should be false. 7 A. W. N. 1.

False Claim in Court—(concl'd.)

3. Making of any claim, has no reference to a document produced in support of the claim. 28 M. L. J. 486=29 I. C. 71.
 4. If a person obtains a decree fraudulently for a sum not due, the case would fall under S. 210, I. P. C., whether the Court had power to pass the decree or not. 52 I. C. 666=23 Cr. L. J. 698.
 5. Where a person knowingly makes a 'false claim and falsely verified the plaint, he can be convicted of one or the other, but not of both. And since verification was necessary to prefer false claim, prosecution should be under S. 209. 1901 A. W. N. 187.
 6. A charge under S. 209 cannot be sustained if the claim depends on a question of law or on some custom having the force of law and not upon facts. 33 P. R. 1888 Cr.
 7. S. 209 applies to false claim in Court by *forged entries*. 25 P. R. 1884 Cr.
 8. S. 209 applies when there is knowledge that claim is false and not where there is not a mere belief that it is false or is believed to be true. 38 P. R. 1898 Cr.
 9. Fraudulent application to execute decree for sum not due falls under S. 209, when an order of attachment is passed thereon and then set aside on objection. 53 A. 416.
 10. Mere incorrect application for execution does not fall under S. 209. 1936 A. 164=37 Cr. L. J. 420.
3. **Fraudulently obtaining decree.** S. 210, I. P. C. See *Fraudulently obtaining decree*.
4. **Similar acts of—**
1. In a prosecution under S. 209, I. P. C., evidence relating to other suits by the accused against other persons may be admissible under Ss. 14-15, Evidence Act, to show *animus* of accused and a systematic course of fraud and to rebut the plea of good faith or mistake. 46 I. C. 696=19 Cr. L. J. 776.
 2. Evidence relating to similar suits by other persons is not admissible unless those suits form part of the same transaction or are the result of conspiracy between them. 22 C. W. N. 494=46 I. C. 696.

FALSE DEFENCE. See *Defence*—3.

FALSE DOCUMENT. See *Forged document using as genuine*.

FALSE EVIDENCE. Ss. 191—193, I. P. C.

1. **Abetment of—**

1. A person instigating another to make a false statement is guilty of abetment. (1873) 20 W. R. 41 Cr.
2. A person asking a witness to suppress certain facts in giving his evidence is guilty of abetment. 2 M. H. C. R. 438.
3. A person falsely personated another witness—the scribe of a document and swore having as such written it. The persons who set him as the true scribe and thus caused him to give evidence as such are guilty of abetment. 8 W. R. 5.
4. A person who instigated a witness to say that a certain person when arrested was found standing in a certain place which was not true, was held to be guilty of abetment. 1893 B. U. C. 632.

2. **Administrative Enquiry.**

Where perjury is committed in an administrative enquiry, no appeal lies against order for prosecution. 1929 A. 936=120 I. C. 122=30 Cr. L. J. 1154.

3. **Affidavit by accused.** See *False information*—2.

An application was put in for transfer of a case on some facts which were denied by the other party by counter affidavit and the statement of the Magistrate. Held, that on this material a prosecution under S. 193 should not be started, though the enquiry under S. 476 can be ordered. 32 Cr. L. J. 674=58 C. 1211=1931 C. 344.

4. **Attempt.**

If a witness makes a statement and later on in the course of same deposition contradicts

False Evidence—(contd.)

it and says it is untrue, he is guilty of attempt to commit perjury if the first statement can be proved to be false. 1927 N. 189=103 I. C. 101=28 Cr. L. J. 645.

5. Basis of prosecution.

1. As a written complaint is not verified, it cannot be basis for prosecution for perjury. But the examination of the complainant under S. 200 being taken on oath and read over to him can be basis for prosecution. 1926 N. 141=26 Cr. L. J. 1401.
2. Depositions not read over to witness cannot be basis for prosecution 1924 C. 705=51 C. 236=81 I. C. 803=25 Cr. L. J. 1027, 42 I. C. 783=18 Cr. L. J. 1039.
3. Opinion of handwriting expert, without being examined on oath and the opinion of the Court about the handwriting cannot be basis for the prosecution. 1 R. 290=1924 R. 17=76 I. C. 425=25 Cr. L. J. 185.
4. Where an approver makes a statement under a pardon not given during enquiry under Cr. P. Code, the statement cannot form basis of an alternative charge of offence under S. 193. 46 B. 61=1922 B. 138=64 I. C. 40=23 Bom. L. R. 884.
5. A statement recorded under S. 164, Cr. P. C., can be basis for prosecution. 45 B 834=1921 B 3=60 I. C. 593=22 Cr. L. J. 241, 16 S. L. R. 285.
6. Depositions to which the procedure laid down in S. 360, Cr. P. C., has not been applied cannot be used for prosecution under S. 193. S. 360 applies equally to accused as well as witnesses. 1921 P. 149=62 I. C. 584=12 Cr. L. J. 568.
7. A prosecution for perjury should not be ordered if the statements are discrepant owing to inaccuracies of mind and are not deliberately false. 19 Cr. L. J. 230.
8. A hearsay evidence should not be made the subject of prosecution. 7 A. L. J. 618.

6. Burden of Proof—

1. The burden is on the prosecution to prove beyond all reasonable doubts that the alleged statement is false 51 I. C. 679=19 Cr. L. J. 519.
2. Prosecution must prove that it is not probably but necessarily false. 56 I. C. 660.
3. In perjury cases administration of oath to the accused has to be proved by the prosecution like other facts. It can be proved from the record. 50 I. C. 187=20 Cr. L. J. 379, 43 I. C. 585.
4. Prosecution must prove that the statement is false. Burden cannot be thrown on accused to establish good faith as to defence, 1534 P. 133=144 I. C. 1011=34 Cr. L. J. 917. 1933 P. 513=34 Cr. L. J. 912 and 36 A. 362 Rel. on.

7. Charge—

1. In a charge for perjury, the incriminating passages stated to be false must be specified in the charge. It is not a proper charge to set out the whole deposition and say that it contains false statements. 28 C. 348, 1924 C. 104=76 I. C. 417=25 Cr. L. J. 177, 43 I. C. 585=19 Cr. L. J. 169=1918 P. 13.
2. In an alternative charge it is not proper to set out two long depositions which are in some respects contradictory, leaving the accused to find out for himself in respect of which particular contradiction, it is, that he is said to have committed an offence. 9 W. R. 25, 42 I. C. 783=18 Cr. L. J. 1039=1917 P. 299.
3. Precise words used by the accused and not merely their substance should be set out in the charge. 51 I. C. 579, 17 W. R. 32, 22 W. R. 28.
4. A charge is a precise formulation of the specific accusation made against a person, who is entitled to know its exact nature at the earliest stage. 28 C. 434.
5. If the charge does not give the precise date on which the false statement was made, it is vague. 8 W. R. 95.
6. The charge should be framed on the English record and not on the vernacular record. 23 W. R. 28.
7. An alternative charge in respect of two contradictory statements can be framed only when the prosecution is unable to prove which of the two statements is false. 27 R. 1890 Cr., 2 Weir 300.
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8. Otherwise two separate charges ought to be framed, relating to each statement.

False Evidence—(contd.)

39. In a case of attempt to fabricate false evidence in one Court and case heard by another Court, the complaint for prosecution for attempt should be made by the Court which heard the case. 1931 B. 185=35 Cr. L. J. 848.
40. False statement was made before Police and Committing Magistrate, which was retracted before Sessions Judge. Held, that prosecution under S. 193 should not be sanctioned. 1933 N. 179=34 Cr. L. J. 649, 37 C. 618, 29 Cr. L. J. 1044, 39 I. C. 320, 1923 C. 862=55 C. 1312, and 1923 A. 548 Ref.
41. A Magistrate recording statement under S. 164, Cr. P. C., is a Court within the meaning of S. 195, Cr. P. C. Hence cognizance of complaint under S. 193, I. P. C., cannot be taken without a complaint in writing of such Court or some other Court to which it was subordinate. 1935 A. 341. 48 A 60 and 47 A. 934 Ref. on.

9. Contradictory statement.

1. In every case of contradictory statements, it is not desirable to prosecute a witness. Prosecution should always be in the interest of justice. 1929 C. 390=33 C. W. N. 644=1929 Cr. C. 26, 55 C. 1312.
2. There is no law that a witness should be given an opportunity to explain discrepancies in his statement. But it is open to him to explain when it is read over to him. 1929 C. 390=33 C. W. N. 644. See 3 L. L. J. 442.
3. If a witness makes a statement and later on in the same deposition contradicts it and says it was untrue, he cannot be convicted of perjury in the alternative, as the whole statement amounts to no more than second statement. 1927 N. 189=103 I. C. 101=23 N. L. R. 35=23 Cr. L. J. 645, 1929 N. 279=117 I. C. 210, 2 Weir 168, 34 I. C. 556 *Contra* 10 C. 937 and 26 M. 55.
4. Where one of the two contradictory statements was made by a witness after the accused was discharged, the statement cannot be availed of by accused for prosecution of witness for perjury 42 C. 240, 1926 N. 141=89 I. C. 713=26 Cr. L. J. 1401.
5. Where a witness made a false statement before Committing Magistrate but deposed truly at the trial, High Court refused to prosecute him. 37 C. 618, 1936 O. 373. Notice should not be issued if the case is pending. 1926 S. 140.
6. A Court should not prosecute merely where there is discrepancy between a statement made on oath and a statement contained in a petition in which he is not bound to state the truth. 2 Weir 169.
7. A charge of perjury based on two contradictory statements can be successful only if the statements are irreconcilable. 1 P. R. 1914 Cr., 7 A. 44, 158 P. L. R. 1911, 26 I. C. 318=16 Cr. L. J. 14, 42 I. C. 783=18 Cr. L. J. 1039.
8. Accused cannot be convicted of perjury if at the time of making the second statement, he was not asked to explain his first deposition in the light of the second. 11 Cr. L. J. 353, 6 I. C. 409, 18 Cr. L. J. 772=41 I. C. 148, 3 L. L. J. 442.
9. No person should be convicted for perjury, unless it be proved that it is impossible that the statements of the accused made on oath can be true. 54 I. C. 673.
10. If the contradictory statements are reconcilable, there should be no prosecution for perjury and every possible presumption should be made in favour of reconciliation. 7 A. 38, 1 P. R. 1914 Cr., 24 I. C. 576=15 Cr. L. J. 488, 28 B. 533, 13 Cr. L. J. 23, 10 B. 124.
11. Where a person is prosecuted for a statement, reliable evidence must be forthcoming about its falsehood. It is not furnished by his mere previous contradictory statement. 13 I. C. 220=5 S. L. R. 136.
12. In order to base conviction on contradictory statements both the statements must be on oath. 32 I. C. 330.
13. Contradictory statements must have been made intentionally. 13 C. W. N. 422 and not recklessly or negligently. 36 A. 362, 72 P. L. R. 1911.
14. Before ordering prosecution for contradictory statements, the accused should have a *locus penitentiae* or an opportunity for retraction, reconciliation, explanation or correction. 230 P. L. R. 1911, 19 I. C. 712, 27 I. C. 218, 34 I. C. 656.
15. If the contradiction is on an immaterial point there should be no prosecution for

False Evidence—(contd.)

perjury. 26 A. 509.

16. Conviction can be based on contradictory statements. 18 B. 377, 55 C. 1312.
17. If one of the statements is made before a Magistrate not having authority to carry on preliminary inquiry and the other before a Magistrate having jurisdiction, there will be no sufficient basis for an alternative charge of perjury. 11 B. 702.
18. A person making one statement under S. 164, Cr. P. C., and another contradictory statement at the trial, is guilty. 22 A. 115, 1908 P. W. N. 73, 45 B. 834, 18 B. 377.
19. It is not necessary that contradictory statements should have been made at different trials or inquiries for a prosecution for perjury. 26 M. 55, 96 I. C. 505, 10 C. 937.
20. Accused can be convicted of perjury for two contradictory statements on a single charge, if there is evidence to show which statement is false. 5 Bom. H. C. R. 49.
21. Proof of contradictory statement on oath, without evidence as to which of them is false, is sufficient to justify a conviction. 4 M. H. C. R. 51.
22. If a witness makes contradictory statements in Committing Magistrate's Court and in Session's Court, it cannot always be supposed that subsequent statement is true one. 1935 N. 145=36 Cr. L. J. 935=156 I. C. 257, 1933 N. 179=34 Cr. L. J. 649=143 I. C. 747 Diss. from.
23. Mere contradiction in deposition will not justify prosecution for perjury. 1934 S. 155, 1928 C. 862=55 C. 1312.

10. Essentials and Evidence.

1. For perjury the deponent must leave Court under the impression which he begins deceiving it. If the witness goes back to his previous deposition in his cross-examination, no offence is committed. 1929 N. 279=117 I. C. 210=30 Cr. L. J. 724.
2. There can be no offence if a statement though false was made without an intention to make it. 28 B. 533, 7 A. 44, 10 C. 405, 1926 N. 141=89 I. C. 713=26 Cr. L. J. 1401.
3. If the statement is capable of reasonable construction there is no perjury. 1924 P. 381=72 I. C. 887=24 Cr. L. J. 471.
4. For a conviction under S. 193, there must be absolute certainty about the falsity of the statement. 1924 P. 276=72 I. C. 161=26 Cr. L. J. 321=4 P. L. T. 683.
5. The offence of perjury is committed whether the false statement had material bearing on the matter under enquiry or not. Materiality has bearing upon the punishment. 1929 A. 936=120 I. C. 122=30 Cr. L. J. 1154=1930 A. L. J. 251.
6. Where a Patwari prepared false written statement which he was required by Revenue Court to prepare according to his papers and gave evidence on oath, he is guilty under S. 193 and not S. 218. 1929 A. 374=30 Cr. L. J. 874, 5 A. 553.
7. False verification of a written statement in a suit is giving false evidence under Ss. 191 and 193. 1930 A. 490=31 Cr. L. J. 954=126 I. C. 5=1930 A. L. J. 955, 1927 A. 383, 6 A. 626, 27 P. R. 1894, 43 C. 1001, 26 A. 509.
8. A person making false statement in an affidavit in support of an application under S. 439 as required by S. 539-A is guilty under S. 193. 1927 S. 128=99 I. C. 600=28 Cr. L. J. 168.
9. Accused can be prosecuted for perjury for making false affidavit in support of an application for transfer. 1926 L. 12=89 I. C. 457=26 Cr. L. J. 1369, 1922 L. 113=23 Cr. L. J. 399=3 L. 46, 28 A. 331 and 33 A. 163 Dissented.
10. Special oath is conclusive as against person who offers to be bound by it, but does not prevent the Court from prosecuting him for perjury if the statement was false in fact and to his knowledge. 1924 Bom. 511=26 Cr. L. J. 1237.
11. Making false claim against Railway for detention of goods by over stating value is punishable under S. 193. 1924 N. 35=25 Cr. L. J. 15.
12. When accused's statement is proved to be false, it can be presumed that he intentionally gave false evidence unless he offers explanation. 1929 N. 193=116 I. C. 643=30 Cr. L. J. 655, 36 A. 509, 36 A. 302, 1927 N. 170.

False evidence—(contd.)

13. Where a witness stated that he had no knowledge of the arrest of his son and was prosecuted under S. 193. Held, the mere fact that the accused heard of the arrest afterwards does not make him liable, when he was not present in the village on the day of the arrest. 1927 L. 874=28 Cr. L. J. 1010.
14. For a conviction for perjury it must be proved that it is impossible that the statement of the party accused made on oath can be true. 1 R. 290=1924 R. 17=76 I. C. 425=25 Cr. L. J. 185.
15. It must be proved that the statement is false to the knowledge of the accused. 61 I. C. 521=22 Cr. L. J. 393.
16. In a prosecution for perjury on a denial of the receipt of consideration, the presumption of law as to the passing of consideration for a promissory note is not applicable to criminal trial. 59 I. C. 198=22 Cr. L. J. 54=18 A. L. J. 1151.
17. Hearsay evidence given by witness cannot be made the subject of prosecution under S. 193. 11 Cr. L. J. 351.
18. A person making three different statements at three different stages of proceedings should not necessarily be prosecuted for perjury. 11 Cr. L. J. 734=8 I. C. 947.
19. In a suit for ejectment, defendant pleaded that he was the owner. Plaintiff produced rent-deed signed by defendant, who said that his signatures were obtained on a blank paper. There was endorsement on the back of the document *Tahrir Taslim hai*. Held, the evidence is insufficient for conviction for perjury. 11 Cr. L. J. 485=7 I. C. 420.
20. If the deposition is not read over to the witness, it is inadmissible and conviction under S. 193 cannot lie. 42 M. 561=50 I. C. 987=20 Cr. L. J. 379.
21. A witness who deliberately gives false evidence and when confronted with incontestible proof of his falsehood admits it to be false, he is guilty of perjury. 17 I. C. 64=13 Cr. L. J. 752.
22. Recital in judgment about the statement of a witness is inadmissible in evidence under S. 80 and cannot form the basis of conviction under S. 193. 56 I. C. 660=21 Cr. L. J. 500, 1924 C. 104=76 I. C. 417.
23. A person signing a report without reading it cannot be said to know that the report was false and is not guilty under S. 193. 50 I. C. 28=20 Cr. L. J. 468=17 A. L. J. 574.
24. If a witness after being informed of various circumstances by Court, acknowledges the falsity of his previous statement and corrects it, he is not guilty of perjury. 12 P. R. 1917 Cr.=15 P. W. R. 1917 Cr.=39 I. C. 847=18 Cr. L. J. 607.
25. It is not necessary to prove that the alleged statement is impossible. It is sufficient to prove it incredible. 54 I. C. 60=21 Cr. L. J. 12=22 O. C. 236.
26. Mere suppression of circumstances when the fact stated is true is no perjury. 32 I. C. 688=17 Cr. L. J. 96=9 S. L. R. 170.
27. Previous contradictory statement of accused is not sufficient to prove falsity of the alleged statement. 13 I. C. 220.
28. An inaccurate statement is not necessarily false. 43 I. C. 822, 71 I. C. 661.
29. An ambiguous statement is not a false one. 1924 P. 381=24 Cr. L. J. 471.
30. A dubious or uncertain statement is not necessarily false. 32 I. C. 683=17 Cr. L. J. 96.
31. The fact that no oath was administered to a person is no bar to his prosecution for perjury. 1925 A. 410=85 I. C. 710=26 Cr. L. J. 566.
32. Evidence of even one witness is sufficient for a charge of perjury. 1931 A. 362=131 I. C. 594=32 Cr. L. J. 780=53 A. 598.
33. Accused admitted having perjured themselves to incriminate a person of murder, because they had been tutored by Police. Held, they are guilty as they were under no compulsion to make the statement which would have the effect of sending an innocent man to gallows. 10 W. R. 48.

False Evidence—(contd.)

34. A conviction for perjury is not sound if the statement is not read over in the presence of accused, or his Pleader. 42 C. 240, 52 C. 159=1924 C. 889=83 I. C. 905=26 Cr. L. J. 201, 1 L. 361, 46 C. 175. See 12 C. W. N. 845.
35. If a witness makes a false statement deliberately without any inducement or compulsion, the fact that he subsequently withdraws it should not give him complete immunity. 1935 N. 145=36 Cr. L. J. 935=156 I. C. 257, 6 W. R. 65 Cr. (1866).
36. A witness technically can be prosecuted for making contradictory statements in the course of same deposition. 26 M. 53, but it is expedient that he should not be prosecuted as he is trying to correct himself and some *locus penitentie* be given to him. 1935 N. 145 (146)=155 I. C. 257=36 Cr. L. J. 935, 1923 C. 862=55 C. 1312 and 1927 N. 189=23 Cr. L. J. 645 Ref.
37. Merely because a person is coward, he cannot be inferred to be perjurer. 1934 S. 6=35 Cr. L. J. 736.
38. If witness reverts to truth during trial, prosecution need not be ordered. 1934 S. 155, 37 C. 619, 112 I. C. 458 Ref.
39. A man may make a statement in the belief that it is true, though good reasons exist for knowing it to be false, for man's beliefs are not always influenced by good reasons. 1933 P. C. 124.
40. The statement of approver who is examined on oath under S. 164 can be subject of perjury under S. 193, I. P. C. 1933 L. 321=14 L. 507, 2 P. R. 1893 and 1922 B. 138 Dist.

11. Fabricating. See Fabricating False Evidence.

12. False balance sheet.

The making of false balance sheet is not an offence within S. 193 but S. 418. 16 A. 88.

13. False claim.

Making of false claim against Railway for detention of goods by overstating its value is punishable under S. 193. 1924 N. 35=75 I. C. 703=25 Cr. L. J. 15.

14. False statement in an application by accused.

1. A convicted person cannot get rid of his conviction by tendering by affidavit in revision. If he tenders an affidavit, he cannot be prosecuted for false statement contained therein 19 A. 200.
- 2 Statement made by an accused in an affidavit in support of application for transfer of a case can be the subject matter of perjury. 3 L. 46, 6 L. 34, 1926 L. 12=26 Cr. L. J. 1369, 1933 A. 47=55 A. 114. 33 A. 163 *no longer good law.*

15. False pleadings.

1. A person filing a written statement in a suit is bound by law to state the truth and if he makes a statement which is false to his knowledge or belief or which he believes not to be true, he is guilty under S. 193. 6 A. 626.
2. A mere assertion is a pleading contrary to fact but it is not sufficient for the purpose of prosecution in a

16. False statement in declaration. S. 199, I. P. C.

1. This section deals with voluntary declaration. 4 M. H. C. R. 185.
2. S 199 does not apply to applications for executions of decree containing false averments. 1934 O. 65=147 I. C. 395, 10 B. 288 Rel. on.
3. Prosecution must prove that declaration is false, the burden does not lie on the accused to prove good faith. 1934 P. 133=34 Cr. L. J. 917.
4. Even though a declaration does not comply with the requirements of O. 19, R. 3, C. P. C., it is still a declaration within the meaning of Ss. 199 and 200. 1933 P. 513=34 Cr. L. J. 912, 1924 P. 312=73 I. C. 721 and 37 C. 259 Ref.
5. The burden of proof is on the prosecution to prove that accused knew or believed the affidavit to be false. 1933 P. 513.

False Evidence—(contd.)**17. False verification.**

1. The verification of an application, in which the applicant makes a false statement, does not subject him to punishment under S. 193, if such application does not require verification. 6 C. 440, (1868) 9 W. R. 58 Cr., 25 A. W. N. 52.
2. If a decree-holder, knowing that some thing has been paid on the decree verifies an execution application for full amount, he is guilty under S. 193. 7 S. L. R. 25.
3. Signing and verifying an application containing false statement is an offence under S. 193, and it makes no difference that at the time when the signature and verification were appended, the *Darkhast* was blank. 6 Bom. L. R. 886.
4. A false verification of written statement in a suit is an offence under Ss. 191-193. 1930 A. 490, 1927 A. 383, 5 A. 626, 27 P. L. R. 1894 Cr., 43 C. 1001, 26 A. 509.

18. Giving evidence in another's name. See False Personation in Court.

A person falsely deposing in another's name is not guilty of cheating by personation, but under S. 193. 1 B. H. C. R. 89.

19. Illegal pardon.

Evidence of accused person illegally pardoned cannot be used against him or subject him to prosecution for perjury. 10 Bom. 190.

20. Illegal or irregular trial—want of jurisdiction—

1. The fact that the trial in which false evidence is given is to be commenced *de novo* owing to irregularity does not exonerate the person giving false evidence and he is guilty under S. 193. 19 M. 375.
2. Proceedings in a trial were annulled in consequence of sanction being insufficient it was held that the person in giving false evidence was not guilty, as the false statement was not made in a stage of judicial proceedings. 8 B. H. C. R. 37 Cr.
3. If the Court had no jurisdiction or acted beyond jurisdiction a conviction for perjury will not be sustained. 6 A. 103.

21. Incriminating question.

If an incriminating question is put to the witness and he makes a false answer he is guilty under S. 193. 2 C. L. R. 181, 3 M. H. C. R. App. 29.

22. Intention.

If the accused proves that he did not intentionally make false statement, he is entitled to acquittal. 1934 O. 65=147 I. C. 395, 26 A. 509 Rel. on.

23. Joint trial.

1. In a prosecution for perjury the case of each accused should be separately inquired into. To include them in one joint charge is illegal. 5 A. 17, 6 M. 252, 10 C. 405, 72 I. C. 527, 89 I. C. 713, 1923 L. 89.
2. If there was a common purpose to make a false statement, a joint trial of two accused is legal. 51 Bom. 310=1927 B. 177, 48 A. 325.
3. Persons verifying false statement and witness perjury in pursuance of same design can be jointly tried under S. 193. 1936 N. 263, 1926 A. 334, 1927 B. 177, 4 A. 293, 10 C. 405, 6 M. 252, 18 Cr. L. J. 339 Ref.

24. Judicial proceedings. See Judicial proceedings.

1. During an inquiry by Magistrate regarding a head man a witness was examined on oath. Held, he could not be convicted under S. 193 as Magistrate had no power to administer oath. 1934 A. 988 (2), 29 A. 563.
2. Statement of witness recorded under S. 164, Cr. P. C., is not evidence in a stage of judicial proceedings within the meaning of S. 193, I. P. C. 45 B. 834=1921 B. 3=22 Cr. L. J. 241.

25. Liability of accused.

Accused cannot be charged either for giving or fabricating false evidence with the sole object of diverting suspicion from himself and concealing his guilt in regard to a crime with which he is charged. 29 A. 705.

False Evidence—(contd.)

26. Materiality to the case.

1. It is not necessary that the false evidence should be material to the case. (1866) 6 W. R. 84 Cr., 5 Bom. H. C. R. 68, 1 M. H. C. R. 38.
2. If the subject matter of the charge of perjury was wholly immaterial to the case, the jury might well attribute the statement to indifference or carelessness on the part of the prisoner. 1 B. H. C. 38 (41 42).
2. Cases may arise in which *materiality* may not be essential to the offence, but it must be taken into consideration in arriving at the intention with which the false statement was made. 2 P. L. T. 380.
4. The offence of perjury is committed whether the false statement had material bearing on the case or not. Materiality has bearing upon punishment. 1929 A. 936=120 I. C. 122=30 Cr. L. J. 1154.

27. Oath. See 34. See Oath against oath.

1. The fact that no oath was administered to a person is no bar to his prosecution for perjury. 1925 A. 410=85 I. C. 710=26 Cr. L. J. 566.
2. Perjury may be committed even if the witness was neither sworn nor affirmed. 19 C. 359, 16 Bom. 359, 11 A. 183, 16 M. 140—105 *Cont.* 10. A. 207.
3. It is no offence to give false evidence before a Court in a Native State where the oath is not administered under the provision of law in force in British India, but under the law of the State in relation to proceedings before that Court. 47 Bom. 907=1924 B. 51=77 I. C. 189=25 Cr. L. J. 333.
4. If the Court has no authority to administer an oath to a witness, a prosecution for perjury will not stand. 20 C. 724, 14 C. 653, 20 C. 719, 24 C. 755, 15 P. L. R. 1894 Cr.
5. If the Court administering the oath is acting beyond its jurisdiction, a conviction for perjury will not stand. 6 A. 193, 11 B. 702.
6. Prosecution for perjury is bad in case of oath against oath. 28 Cr. L. J. 1006.
7. While the witness was affirmed at the beginning of the day to speak the truth in all the cases before the Court that day, he is guilty under S. 193 for giving false evidence in a suit, although he was not sworn for that case. 2 M. H. C. R. 43, 4 M. H. C. R. 185. But this is no longer law. See S. 13 Oath's Act, X of 1873.

28. Procedure.

1. Statements under S. 25, Income Tax Act, must be verified like plaints. It is the Collector and the District Magistrate who can direct proceedings to be taken for offences under the Act. 38 I. C. 993=18 Cr. L. J. 433=15 A. L. J. 163.
2. A deposition which is not read over to witness in the presence of accused or his Pleader is not nullity. It can be proved by the evidence of Magistrate that he admitted it to be correct. 51 I. C. 666=20 Cr. L. J. 206.
3. Depositions not read over are inadmissible under S. 80 Evidence Act, for perjury, as they are not taken in accordance with law. 42 I. C. 326=18 Cr. L. J. 966, 28 M. 308, 36. I. C. 955, 12 P. R. 1917 Cr., 1928 L. 125=107 I. C. 100.
4. Secondary evidence of depositions not read over to a witness is barred by S. 91, Evidence Act. 58 I. C. 830=1 L. 361=21 Cr. L. J. 830.
5. In the absence of evidence that the deposition was not read over, the Magistrate ought to assume that the Judge of the Civil Court complied with the provisions of O. 18, R. 5, although there is no note of R. O. A. C. 28 P. R. 1918 Cr.=47 I. C. 872=19 Cr. L. J. 972. See 12 P. R. 1917 Cr.
6. Reading over of a deposition when the Magistrate is taking other evidence is illegal. 1926 C. 423=87 I. C. 340=26 Cr. L. J. 1016, 52 C. 499=1925 C. 831.
7. Reading the deposition by a witness himself and an admission by him that it was correct is not sufficient compliance of S. 360, Cr. P. C. 1925 C. 1120=87 I. C. 103=26 Cr. L. J. 951, 42 C. 240.
8. Reading over depositions of witnesses after the examination of all is over. 49 M. 71=90 I. C. 659=1925 M. 1206=26 Cr. L. J. 1587.

False Evidence—(concl'd.)

6. An intention to procure false conviction is corrupt one. 1 P. R. 1914 Cr.
 7. In support of *alibi*, accused produced a cattle pound receipt and called the Patil of another village to prove that he was there at the time of offence. The defence was not believed. Held, he was guilty under S. 195. 46 B. 317=23 Cr. L. J. 23=1922 B. 99=64 I.C. 503.
 8. In the absence of evidence that the accused knew that the interpolation in an account complained about was a false statement, the mere fact that it was he who produced the accounts in Court will not make him guilty under S. 196, 48 M. 395=1925 M. 609=86 I. C. 449=26 Cr. L. J. 801.
 9. A person commits no perjury when the assertions made therein are, according to affidavit not from his personal knowledge but from what he had been told and when there is nothing to show that the assertions are not correct. 1923 A. 75=74 I. C. 75=24 Cr. L. J. 747=21 A. L. J. 88.
 10. A person producing accounts in pursuance of a notice under S. 23 (2), Income Tax cannot be prosecuted under S. 196, where the books were found to be false. 1927 C. 724=104 I. C. 903=28 Cr. L. J. 887=31 C. W. N. 996.
 11. The offence under S. 196 calls for deterrent punishment. 50 B. 783.
- 39. Want of jurisdiction in the original case.**
1. If the Court administering the oath is acting beyond its jurisdiction, conviction for perjury will not lie. 6 A. 103, 11 B. 702, 14 Bom. L. R. 753.
 2. The test of jurisdiction is whether or not the Court had power to enter upon the inquiry. 20 Cr. L. J. 245.
 4. A Pleader giving false explanation on solemn affirmation when asked to explain his conduct under the Legal Practitioners' Act, is not guilty. 6 M. 252.
 4. A person making a false statement in an application for a new trial is not guilty. 2 B. L. R. 1.
 5. Making a false statement before a person purporting to act under the Registration Act but not legally authorized to do so, is no offence. 20 C. 719.
 6. An heir of an employee in the Telegraph Department supporting his claim before District Judge by false witnesses under an oath, the Judge having no authority to administer, is not guilty. 6 A. 103.
 7. A Native Christian giving false evidence on oath under Act V of 1840, the Act being not applicable to him but only to Hindus and Mahomedans, is not guilty. 4 M. H. C. 185.

FALSE INFORMATION. S. 182, I. P. C.

1. Affidavit by accused.

1. In support of an application for transfer of a case, a person making false statements in an affidavit, is guilty under S. 182. 13 L. 46, 6 L. 34=1925 L. 312, 1926 L. 12 Cont. 33 A. 163.
2. In support of an application for transfer, a person swore to an affidavit and handed it over to his Pleader, who filed it in Court. It contained false allegations. Held, that as it was open to the accused to instruct his Pleader, not to file the affidavit, there was no information under S. 182 and he was not guilty. 47 M. L. J. 658=1925 M. 123=25 Cr. L. J. 1383.

2. Applicability of S. 182.

1. For a conviction under S. 182, it is not necessary that the false report must be taken down from dictation. 1926 O. 448=95 I. C. 598=27 Cr. L. J. 822.
2. A prosecution under S. 182 will lie irrespective of whether the action which a public servant is asked to take on the information is legal or not. 24 Cr. L. J. 913.
3. False information by means of affidavit by third person in support of an application for transfer, falls under S. 182. 1925 M. 123=83 I. C. 343=25 Cr. L. J. 1383.
4. S. 182 applies to statements made by persons in the nature of evidence given before an inquiring officer. 1928 P. 56=104 I. C. 712=28 Cr. L. J. 872, 10 B. 124, 31 M. 506 & 227 P.L.R. 1914 Cr. Dist.

*False Information—(contd.)***3. Burden of proof.**

1. Burden lies on the prosecution to prove that the accused knew or believed the information to be false. 61 I. C. 171=22 Cr. L. J. 347 (Cal.)
2. The fact that the information is shown to be false does not cast upon the party who is charged under S. 182 the burden of showing that when he made it, he believed it to be true. 110 I. C. 785=29 Cr. L. J. 753.
3. Prosecution must make out that the circumstances were such that the only inference was that he must have known or believed it to be false. 1923 O. 4=69 I. C. 81.
4. Accused is not bound to show that the information given was in fact true. 1922 L. 313=62 I. C. 327=22 Cr. L. J. 503=2 P. L. R. 1922.

4. Complaint under S. 195 Cr. P. C. See False charge—7.

Where information is given to Police and the Police take proceedings, the trying Magistrate is not competent to institute complaint under S. 195 (1) (a), Cr. P. C. 1932 C 511.

5. Distinction between S. 182 and S. 211. See False charge—13.**6. Essential and Evidence.**

1. To constitute an offence under S. 182, it is necessary that accused positively knows or believes the information to be false. It is not sufficient that he had reasons to believe it to be false or did not believe it to be true. 30 Cr. L. J. 1003=1930 L. 54 (1), 32 P. R. 1884 Cr., 53 I. C. 695=20 C. L. J. 791, 29 P. R. 1894 Cr.
2. It is an essential ingredient of an offence under S. 182 that offender should intend to cause or should know it to be likely that the information given will cause the public servant to do or omit to do anything which he ought not to do or omit if the true facts were known. 1930 P. 550=129 I. C. 87, 1925 P. 717.
3. A made a false report of dacoity but the Police prosecuted certain persons under S. 324, I. P. C., who were acquitted. Conviction of A under S. 182 on a Police report is legal. 1930 O. 414=1930 Cr. C. 954=128 I. C. 284.
4. A driver of a motor car driving without a license, when asked for his name by Superintendent of Police, gave a wrong name. Summons were issued to another. He was guilty under S. 182. 7 P. 715=1929 P. 4=30 Cr. L. J. 177.
5. The word "give" in S. 182 cannot be given the restricted meaning of the word "volunteer." 3 R. 577=1925 R. 364=90 I. C. 316=26 Cr. L. J. 1532. *Contra* 227 P. L. R. 1914 Cr.
6. Inability to substantiate one's claim is no offence under S. 182. 1928 P. 574=109 I. C. 805=29 Cr. L. J. 613.
7. Person identifying before Treasury Officer another as the proper payee of certain money rashly and without taking care to ascertain the truth of his identity is not guilty under S. 182, when his object is not dishonest. 1927 C. 78=99 I. C. 57=28 Cr. L. J. 25=44 C. L. J. 230
8. Accused who sold his horse and gave false information of theft is guilty under S. 182. 1922 A. 272=71 I. C. 216=44 A. 647=24 Cr. L. J. 88.
9. Accused may be convicted under S. 182, though the petition containing the information is not signed by him. 11 Cr. L. J. 3=4 I. C. 477.
10. Accused petitioned the Magistrate that a certain person was collecting men to cause him injury, which on enquiry was found false. Held, the order for prosecution under S. 182 of the petitioner is legal. 53 I. C. 821=20 Cr. L. J. 821.
11. Production of a certificate referring to another man, in support of one's application for a post is no offence under Ss. 419—511 but one under S. 182. 8 Cr. L. J. 421=19 M. L. J. 271.
12. A statement made to an investigation Police Officer in answer to his question volunteered is giving information under S. 182. 10 B. 124, 7 P. 715, 1 410 *Contra*.

False Information—(contd.)

13. An informant knowingly giving false information to public servant voluntarily or on being questioned is punishable under S. 182. 1 L. 410=21 Cr. L. J. 818.
14. An expression of suspicion against some persons in a complaint of theft to the Police does not amount to giving false information. 44 I. C. 352=19 Cr. L. J. 336.
15. A truth speaking witness must be protected if he is obliged to speak things which he would hesitate to utter in private life. 13 I. C. 392=13 Cr. L. J. 56.
16. A person at whose instance another person makes a false report to the Police can not be tried under S. 182. 6 A. L. J. 236=9 Cr. L. J. 518.
17. Statement made on oath in an application for transfer of the case by the accused does not fall under S. 182. 33 A. 163 *Contra* 3 L. 46.
18. Asking Magistrate to do an illegal act, e. g., unlocking the house of the petitioner on false or true allegations does not fall under S. 182. 47 I. C. 91=19 Cr. L. J. 895.
19. Submitting resignation containing untrue statements regarding other servants to the Collector without any intention that Collector should use his powers against them, is no offence. 44 I. C. 113=19 Cr. L. J. 257=16 A. L. J. 105.
20. False report of a non cognizable offence made to Police Officer, without expecting any action on his part, cannot form the ground of conviction under S. 182. 57 I. C. 96=21 Cr. L. J. 576, 1932 P. 170, 1933 O 374.
21. A certain building was burnt down and first information report was lodged. During investigation the Police Officer examined the accused, who was prosecuted under S. 182. Held, he was not guilty as it was made under S. 161. 3 R. 577=1925 R. 364=26 Cr. L. J. 1532=90 I. C. 316.
22. Accused is not guilty if he shows reasonable grounds for believing the information to be true. He is not bound to show that it was in fact true. 35 P. R. 1890 Cr.
23. A appeared before a District Magistrate and told him that he was beaten and locked up by a Police Officer but stated that he did not like to make a complaint. The Magistrate examined him on oath and on inquiry his information turned out to be false. Held, he was not guilty under S. 193 but S. 182. 35 A. 102.
24. Accused cannot be convicted under S. 182 for giving false information to the Police that a buffalo was missing, as it is not a report of cognizable offence. 33 Cr. L. J. 314=1932 P. 170 (1)=13 P. L. T. 83=136 I. C. 447.
25. Where evidence of both parties was heard, conviction is not illegal because accused is not given opportunity to prove truth of his case. 1933 C. 532=60 C. 656.
26. It is not necessary that Magistrate must examine the complainant on oath. Offence under S. 182 is complete as soon as information is given. 1936 A. 469.
27. False report to Police amounts to offence when it is of such a nature as might be supposed to lead the Police to make use of their lawful power to the injury or annoyance of any person. 1936 A. 313=37 Cr. L. J. 562.

7. Income Tax return.

Where a person does not sign the declaration in his income-tax return as to his other sources of income, the mere mention of some source of income alone in a previous part of the return which was signed, will not make the return "false." 17 M. L. J. 25.

8. Jurisdiction. See False charge—16.

1. Accused gave false information to Superintendent Police, by means of a letter posted at Kumba Konam which reached the addressee at Tanjore. Held, that only Tanjore Court had jurisdiction. 1932 M. 427=137 I. C. 333=33 Cr. L. J. 452.
2. In case of information by letter posted at one place and received at another place, Courts at both places have jurisdiction to try offence under S. 182. 1936 A. 105=37 Cr. L. J. 157, 1932 M. 427 not foll. 1923 M. 666=24 Cr. L. J. 309, 1924 M. 340 and 1930 B. 358 Rel. on.

9. Personation.

1. Where accused got himself enlisted in the Police force calling himself Jat, being an

False Information—(contd.)

Ahir, a caste whose enlistment was prohibited, he was guilty under S. 182. 14 P. R. 1880 Cr.

2. By reporting falsely that his father had died, the accused induced a Revenue Surveyor to enter his name in the Revenue Register as owner of certain gardens in succession to his father. Held, he was guilty under S. 182. 15 Cr. L. J. 603, (1882) Unrep. Cr. C. 182.
3. A personated C at an examination and got a certificate in B's name. B applied for a post in Government service and attached that certificate. Held, he was guilty under S. 182. 13 B. 506.
4. B appeared before a village Registrar and falsely personated W and expressed a desire to execute a lease in favour of A. C indentified B as W and E and D assured the attesting witnesses that B was W. Held, that C, D and E were guilty under S. 182 and not under Registration Act. (1895) Unrep. Cr. C. 761.

10. Procedure. See False charge, S. 211 (Procedure).

1. High Court can convict an accused under S. 182, even though acquitted by lower appellate Court. 1923 O. 4=69 I. C. 81=23 Cr. L. J. 641.
 2. A person cannot be charged in the alternative under S. 182 or S. 211. Acquittal under S. 182 is no bar to prosecution under S. 211. 20 P. R. 1910 Cr.=140 P. L. R. 1910.
 3. In complaint of theft, the complainant should not be proceeded against under S. 182 after the compromise of the complaint. 46 I. C. 410=19 Cr. L. J. 730.
 4. A prosecution for minor offence under S. 182 is legal when it is doubtful if the facts constitute an offence under S. 211. 37 A. 110.
 5. Accused making a complaint to Magistrate and then dropping proceedings, is no bar to the Police Officer to whom false information is given, to the making of a complaint under S. 182. 49 I. C. 98=20 Cr. L. J. 114=17 A. L. J. 32.
 6. Giving false information to the Police is an offence under S. 182 as well as S. 211. 17 I. C. 791=13 Cr. L. J. 855.
 7. In case of false report to the Police and a similar complaint to the Magistrate, the Police can institute proceedings under S. 182. 1928 A. 342=114 I. C. 189=30 Cr. L. J. 272, 46 A. 43, 17 A. L. J. 32=20 Cr. L. J. 114.
 8. If accused person does not take action under S. 211, Court has authority to make complaint. 1928 A. 333=112 I. C. 770=30 Cr. L. J. 2.
 9. When either S. 182 or S. 211 is applicable, a Magistrate or Superintendent of Police can take action. 26 A. L. J. 533=1928 A. 342=30 Cr. L. J. 272.
 10. A Magistrate is not bound to give opportunity to the accused to prove his case, before acting on the complaint of Police Officer. 53 C. 1065=1931 C. 634=35 C. W. N. 378=32 Cr. L. J. 1241=134 I. C. 919.
 11. Accused gave information to Police about theft and then presented a complaint to a Magistrate who sent it for inquiry to a Sub-Magistrate. On the receipt of report he ordered the issue of summons under Ss 182-211. Held, that the order is illegal, as he did not formally dismiss the complaint. 36 C. W. N. 15=1932 C. 383 (1)=33 Cr. L. J. 514=137 I. C. 849.
 12. A informed a Police Officer that ... Their houses convicted for ...
 13. Where there is a Naraji petition after the case is reported to be false, it is highly improper to prosecute a man under S. 182 without disposing of the Naraji petition. 1932 C. 550, 1932 C. 287 and 14 C. 707 Foll. 1931 C. 634 Dist.
- 11. Regarding offence committed. S. 203, I. P. C.**
1. It is not offence to accompany an informant to Police station who makes a false report. 1933 A. 30=34 Cr. L. J. 445.
 2. It must be proved that the offence was actually committed and accused had knowledge or had reason to believe that it had been committed. (1865) 2 W. R. (C)

False Information—(contd.)

1, (1873) 20 W. R. 66, 6 S. L. R. 143.

3. Giving information means volunteering information. *Ibid.*

4. Where there are circumstances of suspicion, but it is impossible to hold on the record, that accused is one of the murderers, his conviction under S. 203 for giving false information is not vitiated by the existence of such circumstances. 46 C. 427.

5. S. 204 does not apply to a person giving false information to Police during investigation. 7 A. L. J. 1150, (1920) 3 U. B. R. 204, 6 S. L. R. 143.

12. Statement made by accused in defence.

1. Statements made by accused for the purpose of his defence do not fall under S. 182. 2 N. W. P. 128.

2. In a petition of appeal from a conviction the appellant falsely stated that the conviction was against his witnesses. The Appellate Court asked him if he did so. Held, he was not guilty. 12 M. 451, 41 P. R. 1881 Cr., 17 P. R. 1879 Cr.

13. Statement made in a petition.

1. A false statement made in a petition of appeal cannot be the subject of a prosecution under S. 182. 41 P. R. 1881, 34 P. R. 1879 Cr., 29 Cr. L. J. 613.

2. False statement in memorandum of appeal is not covered by S. 182. 17 P. R. 1879 Cr.

3. A person submitted resignation to a Collector as officer of Court of Wards and the petition contained untrue account of an affray and defamatory statements. He was not guilty under S. 182. 16 A. L. J. 105=44 I. C. 113=39 Cr. L. J. 257.

4. Accused wrote a letter to D. I. G., Police, alleging corrupt conduct of a Police official. It was forwarded to S. P. who gave it to D. S. P. for inquiry. Accused made a statement to him which was proved to be false. Held, he was guilty under S. 182. A statement made in answer to a question is also "information." 1 L. 410, 227 P. L. R. 1914 and 31 M. 506 Dist. 10 B. 124 Foll.

14. Statement to Police.

1. A statement made by witness to Police under S. 161, Cr. P. C., is not "information" given to a public servant. 1935 R. 97, 1935 R. 364=3 R. 577=26 Cr. L. J. 1532 Foll.

2. Statement made to a Police Officer in the course of investigation under S. 161, in reply to a question by him is covered by S. 192, I. P. C. It is not confined to information volunteered or given under S. 154, Cr. P. C. 1936 S. 94, 15 Cr. L. J. 650 and 31 M. 506 Not foll. 10 B. 124, 1913 P. 555=34 Cr. L. J. 1916 and 1929 P. 4=7 P. 715 Rel. on.

3. A person making false statement to Police cannot be convicted under S. 193, I. P. C. 18 Cr. L. J. 98, 7 Cr. L. J. 3. See 1933 R. 119.

15. Suspicion or mere belief.

1. A person in whose house theft took place informed the Police that he suspected two persons whom he named as perpetrators of crime. Held, it did not amount to giving false information. 22 C. W. N. 478.

2. A person informed the Collector that certain Zamindars had usurped Government land, with intent to give trouble to such Zamindar and waste the time of the public authorities, it was held that he was not guilty as the information was no more than expression of a private person's belief or opinion so that the Collector might, if he chose, sustain a Civil action against them. 4 A. 498. See 13 B. 506.

3. A person stated to the Police Officer, "I find there has been a theft and I suspect the persons named and I want an inquiry to be made." Held, that if the statement was false, the offence fell under S. 182. 39 A. 715, (1873) Unrep. Cr. C. 72.

16. Telegram.

Accused falsely telegraphed to the District Magistrate that a town was attacked by a gang of 200 robbers and the Magistrate put no faith in the telegram and took no action, it was held that accused was guilty under S. 182. 13 A. 351.

False Information—(concl'd.)**17. Wrong name.**

A driver of a motor car when asked for his name by Superintendent of Police, when driving without license, gave a wrong name and another was summoned. He was guilty under S. 182 7 P. 715=1929 P. 4=113 I. C. 587=30 Cr. L. J. 177.

FALSE KEY.

Mere possession of false key by which it is alleged, the theft was committed is not sufficient to connect the accused with the crime. 1931 S. 154=1931 Cr. C. 525.

FALSE NAME. See False information, S. 109, Cr. P. C., Cheating--26.

Mere giving false name is no offence. 1935 R. 294=158 I. C. 500, 1935 M.913, 4 M. H. C. R. 18. See 7 P. 715.

FALSE PERSONATION.

1. At Election. S. 171-D. See Election--3.

2. Cheating by—. S. 419. See Cheating by Personation.

3. In Court—. See False Personation in Court.

FALSE PERSONATION IN COURT. S. 205, I. P. C.

1. If A personates B at a trial with B's consent. Both are guilty. B is an abettor. (1868) 1 M. H. C. R. 450.

2. It is not enough to show the assumption of fictitious name. It must be shown that it was used as a means of falsely representing some other individual. (1868) 4 M. H. C. R. App. 18.

3. A gave an application in the name of B who was ill. A was not guilty, as there was no intention to falsely personate B. (1867) 8 W. R. (Cr.) 80.

4. Any fraudulent gain or benefit to the offender is not an essential ingredient of the offence 5 Bom. L. R. 138, 1 M. H. C. 450.

FALSE RETURN OF INCOME-TAX. S. 177, I. P. C.

Where no notice under S. 22 (2) is given, the assessee is not bound to make return, but if he makes a false return, he is not guilty under S. 177. 1934 L. 626=35 P. L. R. 544. 15 P. R. 1894 Ref.

FALSE STATEMENT. See False Evidence.**FALSE STATEMENT TO POLICE** See False information--13.**FALSE WEIGHT AND MEASURES.** See Weight and Measures.**FALSIFICATION OF ACCOUNTS.** S. 477-A., I. P. C.**1. By Bank Manager.**

1. The Manager falsified the books of the bank to show a sham profit of Rs. 3,000 and manufactured pronotes to give the balance sheet and account books an appearance of correctness. He is guilty under S. 477-A. 23 P. R. 1915 Cr.

2. Falsification of accounts by Bank accountant with intent to deceive Bank in case of liquidation falls under S. 477-A. 1925 A 654=89 I. C. 520=26 Cr. L. J. 1384=47 A. 948=23 A. L. J. 657, 21 A. 113.

2. By clerk or servant.

1. One who undertakes to perform or does perform the duties of a clerk or servant whether in fact he is or not and though he is under no obligation to perform such duties and receives no remuneration is still clerk or servant (1901) 1 Weir 554.

2. Payment by percentage of gross taking is no bar to relation of clerk or servant. (1909) 2 Cr. App. R. 288.

3. By Managing partner.

1. Where a managing partner of a firm falsifies the accounts, he is guilty. 83 I. C. 182=6 Bom. L. R. 5-3, 1925 S. 328=25 Cr. L. J. 1101.

2. The fact that partnership subsisted is no answer to a charge under S. 477-A. 191 C. 464=138 I. C. 339=33 Cr. L. J. 597.

4. By Postal servant.

1. Postmaster handed over V. P. P. to addressee without payment on a certain date and then altered the account is guilty. 1927 M. 626=102 I. C. 483=28 Cr. L. J. 552=52 M. L. J. 703.
2. Postal clerk retaining money of a V. P. P. for three months and making an entry that it was refused by addressee is guilty under S. 477-A. (1909) 1 U. B. R. 29 (P. C.)

5. Charge.

1. Each act of a falsification of a distinct document amounts to a separate offence and an accused cannot be charged with and tried at one trial in respect of any number of falsification exceeding three in the course of a year. 49 B. 892=1926 B. 110=92 I. C. 689=27 Cr. L. J. 305, 34 C. W. N. 935, 27 Cr. L. J. 793.
2. A series of falsification of accounts made to cover a single act of defalcation may be laid in one charge. 30 Cr. L. J. 958, 14 I. C. 603=13 Cr. L. J. 251.
3. S. 222, (2) Cr. P. C., does not apply to S. 477-A. 26 C. 560, 41 C. 722.
4. It is illegal to combine three specific instances of defalcations under S. 409 with a charge under S. 477-A. 30 M. 323, 41 C. 722, 1933 N. 327=34 Cr. L. J. 673.

6. Essentials and Evidence.

1. Making of false entries in a book or register to conceal a previous embezzlement falls within S. 477-A, as the intention is to defraud. 35 C. 450, 13 C. 349, 42 M. 558, 36 C. 954, 11 M. 411, 8 A. 653, 5 A. 221, 4 B. 657.
2. Falsification without fraudulent intention is no offence. 36 C. 955.
3. A bank accountant noticing that bank might fail obtained securities worth the amount of his deposit by falsification of account, he is liable 47 A. 948, 21 A. 113.
4. Any number of false entries or omission of entries may be proved in order to prove falsification of account. 34 C. W. N. 923=1931 C. 8.
5. It is not necessary for the prosecution to prove that any person was actually deceived by the false document. It is sufficient if the document had that tendency. 1926 L. 385=98 I. C. 599=27 Cr. L. J. 1383.
6. Replacing stamps by used up one does not fall under S. 477-A. 47 C. 71.
7. The offence is complete as soon as the account is falsified. 4 M. L. T. 481.
8. The accused made an unauthorized entry in a book showing that proprietors had no share in the *shamilat* whereas previously they were shown as full owners. Held, that as deed of gift made no mention of *shamilat*, the accused was not guilty. 25 P. R. 1914 Cr.
9. Accused pleaded that his father was partner in the firm and the entry was made under his authority. Held, that prosecution must prove the negative of this plea, otherwise conviction cannot stand. 1934 C. 500=152 I. C. 226.
10. Making of false document to conceal fraud, already committed, falls under S. 477-A. 1933 A. 525, 11 M. 411, 22 C. 313, 35 C. 450 and 37 B. 666 Foll. 44 A. 550, 5 A. 221 and 8 A. 653 Dis. from.
11. Accused debited Rs. 2 as the pay of sweeper by taking the thumb-impression of his nephew. He was held guilty under Ss. 408, 467, 477-A. 1935 B. 30=154 I. C. 559=36 Cr. L. J. 522.

7. For saving oneself:

- A person making false entries to cover defalcations in order to save himself from the consequences of defalcation is not guilty of forgery. 68 I. C. 834, but guilty under S. 477-A. 35 C. 450, 1933 A. 525, 11 M. 411, 22 C. 313, 37 B. 666.

8. Jurisdiction.

- The offence is complete as soon as the account is falsified, any consequence resulting from it is immaterial. The Court within whose jurisdiction it is falsified has jurisdiction and no other. 4 M. L. T. 481.

Falsification of Accounts—(concl'd.)

9. Procedure.

1. The provisions of S. 477-A, Penal Code, are not covered by the provisions of S. 195 (1) (c), Cr. P. C. 1932 S. 53.
2. A, a partner, admitted in the civil suit that he made an entry in the name of C instead of A. C. realized the sum in a Small Cause suit from the firm. A was prosecuted by his partner under S. 477-A. Held, that though confession to raise a point in a civil suit raised a difficulty, the accused should not be discharged. 1932 S. 53.
3. Three charges of embezzlement and corresponding three charges of falsification of accounts cannot be tried together. 1935 N. 178=36 Cr. L. J. 1216, 26 C. 560, 41 C. 722, 49 B. 892, 32 A. 57, 32 A. 219, 44 A. 540, 30 M. M. 328 and 1931 O. 86=32 Cr. L. J. 540 Rel. on. 10 P. 463=1931 P. 349 and 60 I. C. 422=22 Cr. L. J. 230 Not foll.

FALSUS IN UNO FALSUS IN OMNIBUS. See Evidence—3 —11—12.

FAVOUR. See Transfer (Ground)—38.

FEE. See Wrongful loss—4. Legal Practitioners' Act.—14.

FICTITIOUS NAME. See Wrong name. False Personation in Court.

FINDER OF ARTICLE. See Criminal misappropriation—13.

FINDING OF FACT. See Revision—16.

Finding of fact in one case cannot be safe guide to a finding of fact in another case. 1936 N. 160.

FINE. See Sentence—30.

1. Appropriation of—.

Where an accused is sentenced to a fine of Rs. 200 under one section or in default 3 months' imprisonment and also under two other sections to a fine of Rs. 15 or in default to one month's imprisonment for each offence, pays Rs. 30 in Court and requests the Court to credit it against two smaller fines, the amount should be so appropriated. 1931 S. 73=123 I. C. 475=32 Cr. L. J. 922.

2. Compensation out of— See Compensation—13. From injury. From an offence. S. 545.

3. Continuing—. See Daily fine—(below).

4. Daily—.

1. An order for daily fine is illegal. 27¹C. 565.
2. A sentence for daily fine for offence which may be committed after the date of proceedings is illegal. 37 C. 671.
3. There must be proof of continuing offence, before a daily fine can be imposed. 24 A. 309.
4. Daily fine is legal under S. 580, Calcutta Municipal Act. 7 C. W. N. 853.
5. Imposing a daily fine so long as disobedience continues is illegal. 49 A. 245=1927 A. 131=97 I. C. 432=27 Cr. L. J. 1120=25 A. L. J. 93.
6. A daily fine until accused complies with the order passed against him is illegal. 1924 N. 66=72 I. C. 78=24 Cr. L. J. 318.
7. It is not possible to impose a daily fine in anticipation of a commission of an offence. 1925 P. 322=82 I. C. 717=25 Cr. L. J. 1357.
8. Sentence of fine for future offences is illegal. 7 L. 168, 40 A. 569, 27 C. 565, 13 P. R. 1903, 16 M. 230, 24 M. 309, 22 B. 766, 37 C. 671.

5. Distribution of—

Distribution of fine among persons concerned in detection of offence under S. 9, Opium Act is illegal. 13 P. R. 1894 Cr.

6. Excessive—(Ability to pay). S. 63, I. P. C.

1. Ability to pay is no ground for imposing maximum fine. 1929 A. 919=120 I.C. 435

31 Cr. L. J. 88.

2. Where the accused is a man of no large means and the greatest sufferers will be the women and children of the family, a very heavy fine may not be inflicted. 1928 P. 59=104 I. C. 705=28 Cr. L. J. 865.
3. When a sentence of imprisonment is passed, fine should not be added if the accused has no capacity to pay. 30 P. L. R. 168.
4. Capacity to pay fine must be considered. 93 I. C. 704=27 Cr. L. J. 480, 71 I. C. 998=1924 L. 81=24 Cr. L. J. 278=5 L. L. J. 271.
5. Where fine is not suited to the nature of offence and is beyond the means of the offender to pay it, it should not be inflicted merely in order that accused may suffer further period of imprisonment in default. 20 P. R. 1895 Cr.
6. In imposing fine regard must be had to the nature of offence and means of the accused. 18 P. R. 1878 Cr.
7. Whether fine is severe or not depends on the position and status of the accused. 1931 C. 633=134 I. C. 1129=33 Cr. L. J. 28=134 I. C. 1129.
7. **Imprisonment in default of—** S. 64, I. P. C., S. 33, Cr. P. C.
 1. Imprisonment in default of fine cannot be increased to exceed the aggregate punishment awarded in lower Court. 1924 P. 563=3 P. 638=25 Cr. L. J. 1186.
 2. Where the special or local Act provided a procedure of its own for realization of fine, the infliction of imprisonment in default of payment of fine is illegal. 6 M. H. C. R. (App.) 40.
 3. Imprisonment in default of payment of fine need not always be proportionate to the amount of the fine imposed. 1 Bur. L. R. 483.
 4. Magistrate is not authorized to pass a sentence of imprisonment in default of payment of fine in excess of the terms of S. 65, I. P. C. 10 M. 165-166.
 5. Order that the substantive sentence should run concurrently with sentence in default is not illegal, though against the spirit of S. 64. 1931 R. 51=32 Cr. L. J. 637.
 6. Accused can request that a fine paid into Court should be appropriated to a particular offence. 1931 S. 73=132 I. C. 475=32 Cr. L. J. 922=24 S. L. R. 437.
 7. Where a Sessions Judge passes a sentence of fine and on it to pass a sentence in default, he cannot order it subsequently but should apply for enhancement to the High Court. 62 I. C. 880.
 8. S. 64 prohibits that a sentence in default of payment of fine should run concurrently with a sentence passed previously. 32 Cr. L. J. 637 (2)=1931 R. 51.
 9. If an accused is fined Rs. 200 under one section and Rs. 15 each under two sections and pays into Court Rs. 30 with the request that it should be credited towards the smaller fines, the amount should be so appropriated. 32 Cr. L. J. 922=132 I. C. 475=1931 S. 73.
 10. Sentence in default of payment of fine can be passed under S. 391, Calcutta Municipal Act. 1932 C. 63=58 C. 1293=136 I. C. 465=33 Cr. L. J. 303.
 11. The imprisonment in default of payment of fine should run from the expiry of detention for failure to find security under S. 123, Cr. P. C. which was ordered previously. 9 R. 612=1932 R. 50=135 I. C. 614=33 Cr. L. J. 174.
8. **Limit of.**
Only the High Court and Court of Sessions can impose unlimited fine. 20 P. R. 1895
Contra 18 P. R. 1875.
9. **Limit of period of imprisonment in default of—** S. 65, I. P. C.
 1. In case of three charges of bribery, 18 months' imprisonment in default of fine can be ordered. 3 P. W. R. 1919 Cr.
 2. Provisions of S. 65, I. P. C. to special law like Gambling Act. 1926 S. 144
=91 I. C. 394=27 Cr. L. J. S. R. 31.
 3. For an unpunishable offence, a sentence of 5 months in
1925 O. 109=81 I. C. 935=25 Cr. L. J. 1161.

Fine—(contd.)

4. Sentence of four months in default of fine for an offence under S. 225 (d), I. P. C., are illegal. 3 L. L. J. 346=59 I. C. 849=22 Cr. L. J. 145.
5. For a fine of Rs. 50 under S. 352, I. P. C., a sentence of one month's imprisonment is illegal as it is more than one-fourth of 3 months. 10 M. 165 (167)
6. A sentence of transportation in default of fine cannot be passed. 5 M. 28.

9.-A. Limitation for recovery of. S. 70, I. P. C.

Fine cannot be recovered after *six years* of sentence. (1884) Rat. 207, 4 Cr. L. J. 404.

10 Money payable as— S. 547, Cr. P. C.

1. An order for refund of compensation paid to the complainant under S. 543, Cr. P. C., may be enforced under S. 547. 19 A. 112, 7 M. 563, 14 P. R. 1884.
2. If an order under S. 250 is set aside, the money paid as compensation can be refunded under S. 547. 12 P. R. 1885.
3. Diet money to witnesses can be recovered only by civil suit and not under S. 547, Cr. P. C. 1926 C. 289=90 I. C. 488=29 C. W. N. 1033.
4. If the Court orders restitution of property under S. 517 and such property has been disposed of the Court can order payment of equivalent value. Such money can be recovered under S. 547, Cr. P. C. as if it were fine. 1935 Pesh. 98 (100)=1935 Cr. C. 856, 1927 R. 322=28 Cr. L. J. 932.

11. Nature of imprisonment in default of— S. 66, I. P. C.

If the offence is punishable with rigorous imprisonment only, the Court cannot award simple imprisonment in default of fine. 7 W. R. 31.

12. Realization of— S. 386, Cr. P. C., S. 547, Cr. P. C.

1. Compensation under S. 250, Cr. P. C., is recoverable as fine and should be realized according to the mode prescribed by S. 386. 22 C. 139. Hindu complainant dying before joint property is attached, it goes by survivorship and cannot be attached. 1932 P. 301=13 P. L. T. 536=33 Cr. L. J. 958=140 I. C. 72.
2. It is lawful for the Magistrate to issue a warrant of attachment and sale of offender's movable property and order his imprisonment for non-payment. 17 W. R. 7.
3. Rights and interest of shares in movable property of joint Hindu family, of which the accused is a member, cannot be sold under S. 386. 28 P. L. R. 1915. See 49 B. 906=1926 B. 103=27 Cr. L. J. 652=94 I. C. 604.
4. Movable property belonging to accused's brother and deposited as security for appearance of the accused cannot be seized, although they are members of a joint Hindu family. 19 A. L. J. 887=1921 A. 71=64 I. C. 136=22 Cr. L. J. 741.
5. Movable property of the offender in a Native State cannot be seized. 2 Weir 444.
6. The combined effect of S. 38, Cr. P. C., and S. 16, Punjab Land Alienation Act, is that land belonging to a member of agricultural tribe cannot be sold in pursuance of warrant issued by Magistrate to the Collector. 1929 L. 667=30 Cr. L. J. 1006.
7. Civil Court executing warrant of attachment issued by Magistrate which becomes a decree cannot go behind it. 119 I. C. 33=1929 M. 383.
8. Mere report of Railway Traffic Inspector for recovering damages from the person is not sufficient to issue a warrant of attachment. 1929 P. 108=30 Cr. L. J. 635.
9. Immovable property of an agriculturist can be sold under S. 386. 50 B. 84=1926 B. 582=99 I. C. 310=28 B. L. R. 1231.
10. Warrant can only be issued if there is a sentence of fine. 71 I. C. 254=1923 P 57=24 Cr. L. J. 126=3 P. L. T. 762.
11. Warrant of attachment by Criminal Court is preferable to a civil writ, though fine goes to a private person. 40 M. 767=1917 M. W. N. 20=18 Cr. L. J. 426=21 M. L. T. 71.
12. The provisions of S. 386 being penal must be strictly construed. 36 I. C. 833.
13. An order of attachment made under S. 386 is not open to revision 28 P. L. R. 1915, 22 C. 935, 20 M. 88, 20 C. 478.

14. Certain household articles were attached to realise a fine and the father of the accused claimed the articles. The Magistrate on the report of the Naib-Tahsildar rejected his claim. Held, that the household property must be held to belong to the father and the Magistrate should have made due inquiry into the objection. 1931 L. 543 (1)=131 I. C. 912=32 Cr. L. J. 812.
 15. Where in execution of costs under S. 145, Cr. P. C., an order was made for the sale of certain property and a third party objected. Held, that it would be better to proceed under sub-clause (b). 13 P. L. T. 235=1932 P. 212=138 I. C. 310=33 Cr. L. J. 671.
 16. Undivided share in movable property cannot be seized. 1932 P. 292=13 P. L. T. 549=33 Cr. L. J. 872=140 I. C. 101.
 17. The proviso to S. 386 applies in terms only to the issue of a fresh warrant and does not require the withdrawal of a warrant already issued before expiration of the sentence in default of payment. The policy of law is that an offender ought not to be required both to pay fine and to serve the sentence in default. 1935 B. 160, 59 B. 350.
 18. Where the fine was not paid and imprisonment in default of payment of fine begun and the same day Court ordered that the fine be realized from the property of the accused by the Collector. Held, that the order was proper and that proviso to S. 386 (1)(b) Cr. P. C. did not apply as he had not undergone the whole of imprisonment in default. 1935 C. 546=157 I. C. 1031=36 Cr. L. J. 1267.
 19. The expression "movable property" in S. 386 does not include salary not yet drawn. 1934 R. 82.
 20. In case of joint family property the warrant should be sent to the Collector and procedure under S. 386 (b) and S. 386 (a) should be adopted. 1933 S. 43=34 Cr. L. J. 354.
 21. Undivided share of accused cannot be attached without the consent of those jointly interested with him. 1933 C. 401=60 C. 851, 20 C. 478, 1933 C. 402=34 Cr. L. J. 503, 1932 P. 292 and 1932 M. 538 Foll. 1926 B. 103 Not foll.
 22. Bullocks belonging to joint Hindu family cannot be attached and sold under S. 386 (1) (a). 1933 N. 248, 1932 P. 292, 1933 S. 43 Foll.
 23. Attachment of standing crop of joint family is illegal. 1936 M. 560.
 24. If the property attached is claimed by third party, Magistrate should stay sale to give claimant time to establish his right. 1932 B. 476=56 B. 364, 1933 A. 35, 20 M. 88, 1931 L. 543.
 25. No fine can be levied after the period of six years after the passing of sentence. S. 70 I. P. C. (1884) P. 207, 4 Cr. L. J. 404.
 26. Procedure for the inquiry of claims should be that prescribed under S. 88, Cr. P. C. 55 M. 1041=1932 M. 538. But see 56 B. 364=1932 B. 476.
- 13. Recovery of—** S. 386, I. P. C. See—12.
- 14. Refund of—**
- If fine is realized from the joint property for refund of a co-parcener, application for refund by other co-parcener cannot be entertained. 1934 P. 181=35 Cr. L. J. 682=13 P. 317, 1932 P. 292 and 1932 P. 301 Ref.
- 15. Reward out of—** See S. 16, Public Gambling Act and S. 13, Opium Act.
- 16. Sentence of—**
1. In imposing fine, regard is to be had to the nature of offence and the means of the accused. 18 P. R. 1878 Cr.
 2. Fine should not be imposed in order that accused may suffer imprisonment in default of payment. 20 P. R. 1895 Cr.
 3. Magistrate can impose a fine of Rs. 500 under S. 35, Companies Act, for each offence of issuing unstamped share certificate. His power is not limited to Rs. 1,000 in this behalf. 20 C. 676.
 4. Under S. 12, Opium Act, a Magistrate can impose any amount of fine in lieu of con-

fiscation and his power is not limited by S. 32, Cr. P. C. 1921 P. 232=69 I. C. 635.

17. Smallness of—

The smallness of fine for causing injury by fire works to passers by indicates that Magistrate does not take serious view of the matter. Retrial was not ordered, though the trial was illegal as accused were punished in pocket by the proceedings. 1925 A. 301 (2)=86 I. C. 222=23 A. L. J. 5=26 Cr. L. J. 734.

FINGER IMPRESSIONS. See Expert—6.

1. Expert evidence of—. See Expert—6. Thumb mark.

2. Identification by—. See Identification—10.

3. Proof of previous conviction by—. S. 511, Cr. P. C. See Enhanced Punishment—7.

1. A previous conviction may be proved by finger impressions. 32 C. 759, 3 P. R. 1906 Cr., 1 C. W. N. 33.

2. If the identity of the accused is to be proved by comparison of finger prints taken in Court with those contained in the record of previous convictions, the two should be proved to be similar 21 C. W. N. 469.

3. The papillary ridges on the bulbs of the fingers and thumbs by means of which finger impressions are made while proved to be beyond change from birth to death, are never wholly repeated in the case of the fingers of any other person, and therefore furnish a surer test of identity than any other comparable bodily feature 3 N. L. R. 1.

FIRE.

1. Death by—. See Culpable homicide—11.

2. Mischief by—. See Mischief—7.

3. Public Nuisance by—. See Public Nuisance—7.

A Collector is not authorized to set fire to reeds standing on the private property in order to facilitate the deposit of soil or silt excavated from the canal bed. 1927 L. 706=9 L. L. J. 424=105 I. C. 817=28 Cr. L. J. 993.

FIREARMS—KINDS OF. See Wound—12-E.

FIRE WORKS.

1. A festival was being celebrated along a public road. An agreement had been previously arrived at amongst certain members of the community to the effect that firing of fire works should be stopped till the procession passed off, but certain accused fired fire works at random thereby causing injury to passers-by. They were all tried together and convicted. Held, that their joint trial was illegal though their act was punishable under S. 235, I. P. C. 1925 A. 301 (2)=86 I. C. 222=26 Cr. L. J. 734=23 A. L. J. 5.

2. Accused who was in a marriage procession, let off fire works while it was marching past the complainant's loft thatched with straw and which caught fire. Held, that he was guilty under S. 235, I. P. C. 5 B. H. C. R. 67.

3. There is no danger in letting off fire balloons. (1897) P. J. L. B. 623.

4. Accused sent fireworks by train under the false declaration that boxes contained iron locks. The box was dropped by a cooly when it exploded and killed him. Held, that he was guilty under S. 304-A, I. P. C. 22 P. R. 1905 Cr.

FIRING GUN. See Culpable homicide—12. Death by negligence—8. Rash negligent act—9.

FIRST INFORMATION REPORT. S. 154, Cr. P. C.

1. Admissibility.

1. First information report by one who is not an eye witness nor heard from an eye witness is inadmissible as hearsay. 6 L. 437=1025 L. 418=20 Cr. L. J. 14=9 35 P. W. R. 1913 Cr., 318 P. L. R. 1913.

First Information Report—(contd.)

2. A statement made to the Police after the commencement of investigation is not F. I. R. and is inadmissible except under S. 162. 1928 P. 634=110 I. C. 584, 29 Cr. L. J. 728, 1923 P. 550, 16 C. W. N. 145, 13 I. C. 721, 47 A. 280, 17 C. W. N. 1213, 7 C. W. N. 345.
3. F. I. R. is not a substantive evidence. It can be used merely by way of corroboration or contradiction and no further. 47 A. 280=1925 A. 303=85 I. C. 650, 1926 L. 179, 1928 R. 295=29 Cr. L. J. 1042, 1928 L. 913=116 I. C. 187.
4. F. I. R. cannot be used to contradict other witnesses who are unanimous on a particular fact except the maker. 1928 L. 507=108 I. C. 162=29 Cr. L. J. 343, 1928 L. 17=28 P. L. R. 649=105 I. C. 807=28 Cr. L. J. 983.
5. Use of F. I. R. as substantive evidence is illegal. 1928 L. 923=29 Cr. L. J. 734.
6. A list of stolen property handed to Police Officer in the Court of investigation is not admissible. 1925 C. 959=85 I. C. 723=26 Cr. L. J. 579.
7. A first information report is admissible under S. 32 (1), Evidence Act, as the statement of a person (since deceased) relating to the circumstances of the transaction which resulted in his death. 1930 L. 450=31 Cr. L. J. 475.
8. A fresh report made by an accused is inadmissible and cannot be used against him at all. 4 P. R. 1918 Cr.=45 I. C. 273=19 Cr. L. J. 513.
9. F. I. R. can be tendered under S. 32 (1) as a declaration as to the cause of informant's death. 54 C. 237=1927 C. 17=99 I. C. 227=28 Cr. L. J. 99.
10. B made a report to Police that he was slapped by C. as he refused to deliver keys and next day was found murdered by C. Held, that the report discloses the motive for murder and is admissible. 88 I. C. 353=1924 N. 115=26 Cr. L. J. 1121.
11. If on a construction of series of statements made to the Police the last in point of time constituted the 'first information,' the earlier statements were not rendered inadmissible because of S. 162. 1931 C. 745=33 C. L. J. 138=58 C. 1312.
12. Failure to observe prescribed procedure in recording F. I. R. does not affect question of admissibility in evidence. 1935 Pesh. 165.
13. In certain cases F. I. R. may become relevant under S. 6 or S. 8 of Evidence Act and it will then become substantive evidence and be of value as one of *Res gestae*. 54 C. 237, 1931 L. 38=32 Cr. L. J. 522.
14. Unless the informant is examined, F. I. R. cannot be put in evidence. 1920 C. 983, 1 Bom. L. R. 433, 1934 S. 100.

2. By accused.

1. Accused stated in the first information report that he had committed murder. Held, it was inadmissible although the preliminary portions containing the history or narrative of events is admissible. 1921 C. 111=22 Cr. L. J. 562, 14 C. 876, 21 C. 392, 41 C. 601, 37 C. 467, 49 C. 167. See 1935 B. 26.
2. The proposition that if one of accused's party goes first to the Police station and says that complainant's party has committed an offence, the real complaint made later on under S. 154 against the accused must be kept off the record under S. 162 Cr. P. C., is untenable in law. 1930 C. 130=125 I. C. 111=31 Cr. L. J. 771.
3. It sometimes happens that after the first information has been made against the accused, one of the accused's party who is not an accused gives a counter information. As this comes under S. 154, it must be reduced to writing and signed and it does not fall within S. 162. 54 C. 237=1927 C. 17=99 I. C. 227=28 Cr. L. J. 99=44 C. L. J. 253.
4. A statement made by accused implicating himself and others cannot be called F. I. R. so far as he is concerned. 1924 A. 207=77 I. C. 890.
5. Accused gave information to the Police containing an admission which does not amount to confession, it is admissible against the accused. 1923 L. 232, 63 I. C. 822=22 Cr. L. J. 694, 1934 S. 100, 49 C. 167, 41 C. 601, 1926 S. 151, 15 C. 592, 6 C. 530, 7 A. 646.
6. F. I. R. by accused not amounting to confession but incriminating with other

First Information Report—(contd.)

- circumstances is inadmissible. 46 Bom. 961=1925 B. 65, 18 and 55 P. R. 1918 Cr.
7. A confessional statement made to Police immediately after murder and which was recorded in the first information report is inadmissible in evidence. 90 I. C. 148.
 8. A report made to Police amounting to confession is not admissible against the person who makes it. 35 P. R. 1918 Cr., 1935 B. 26, 1933 L. 899, 1923 N. 251, 21 C. 392, 49 C. 167, 63 I. C. 823, 25 Cr. L. J. 1492.
 9. A statement made by accused to a Police Officer, that he committed murder, the statement being made before he was arrested by voluntarily going to the Thana, is admissible under S. 25. 10 Cr. L. J. 193=10 C. L. J. 13. *Contra* 1933 L. 899.
 10. First information report given by accused admitting guilt is inadmissible being confession. If the confession is not a confession, it cannot be treated as no part of the confession; I quarreled with the deceased. 1932 M. 24=33 Cr. L. J. 173, 49 B. 642=1925 B. 529, 41 C. 601, 1925 S. 237, 19 B. 363, 6 B. 34.
 11. Accused made a report to Police that he killed the deceased. Held, it was inadmissible. 1933 L. 899=35 Cr. L. J. 143. 4 P. R. 1918, 35 P. R. 1918, 49 B. 642=1925 B. 529 Ref.
 12. Statement though exculpatory, containing an admission of incriminating circumstance is inadmissible. 1932 M. 24=33 Cr. L. J. 173, 49 B. 642=1925 B. 529, 41 C. 601, 1925 S. 237, 19 B. 363, 6 B. 34.
- 3. Contents of—**
1. There is nothing in law to the effect that F. I. R. must give every detail or any detail. It should be sufficient to induce the Police to leave the Police station and investigate the offence. 1928 L. 913=116 I. C. 817=30 Cr. L. J. 517, 8 L. 605=1928 L. 17=28 Cr. L. J. 983, 1924 L. 17=515.
 2. Omission of the names of witnesses in F. I. R. does not throw doubt on the prosecution story. 1928 L. 657=108 I. C. 370=29 Cr. L. J. 378.
 3. When the F. I. R. is given by one who is not an eye-witness, the omission of the names of some of the culprits or persons who come there is not an adequate ground for distrusting an eye-witness's deposition to the contrary. 1926 L. 369=93 I. C. 1040=27 Cr. L. J. 544.
 4. Where complainant previously knew the accused and in F. I. R. their names were mentioned not as persons who were identified at the spot but as suspects who were plotting to visit the house in the evening, the inclusion of their names carries no weight. 93 I. C. 892=27 Cr. L. J. 492.
 5. Police officer should not record in first information report facts which are not true nor attempt to support it by evidence which is not true. Merely because the Sub-Inspector recorded wrong facts in F. I. R., the prosecution case should not be thrown out. 1934 S. 6=35 Cr. L. J. 736.
- 4. Contradiction in— See—21.**
- Statement of a person differing from a written report handed over by the same person but written by another cannot be admissible against person writing the report. 50 I. C. 487=20 Cr. L. J. 311=17 A. L. J. 760.
- 5. Copy of—**
- Accused is entitled to a copy of F. I. R. by the order of Court or a Police Officer superior to an officer incharge of a Police station. A Head Constable giving copy of F. I. R. is guilty under S. 29, Police Act. 1917 P. 623.
- 6. Defamatory— See Defamation—45.**
- 7. Delay in—**
1. When there is a delay of 20 hours in giving first information report in a riot case, no reliance can be placed on it. 1924 A. 441=81 I. C. 181=25 Cr. L. J. 693.
 2. Delay of 11 days in giving first information report, makes the case doubtful. 1935 C. 975=83 I. C. 495=26 Cr. L. J. 15=51 C. 924.

First Information Report—(contd.)

3. If the first information report is lodged after much delay, it is not trustworthy. 92 I. C. 209=7 L. L. J. 96=27 Cr. L. J. 225.
4. When the fact of burglary was not reported for 4 months and goods of common pattern were found with the accused, he is not guilty. 1923 L. 36=25 Cr. L. J. 560.
5. Delay in F. I. R. without any explanation is fatal. 42 C. 784
6. People very often try to foist crimes committed by some known or unknown persons upon their enemies, after consultation with other people. In many cases accused are acquitted because of suspicion arising from delay in giving information 1924 A. 441, 1926 L. 496, 1923 L. 36, 1923 L. 391, 51 C. 924, 27 Cr. L. J. 821, 1918 L. 37.

8. Discrepancy between F. I. R. and subsequent evidence. See—21.

1. The complainant stated in his first information report that his bullocks were missing but before trial Magistrate stated that they had been stolen. He paid accused certain money for their restoration. The accused was prosecuted under S. 215, I. P. C. Held, that it was not proved that any offence under Penal Code was committed with respect to the bullocks. 1931 L. 157=131 I. C. 369=32 P. L. R. 38=32 Cr. L. J. 729.
2. Where a person's statement in Court is different from one in the F. I. R., conviction cannot be based unless he is corroborated by other witnesses. 1933 O. 148=34 Cr. L. J. 498.
3. Three dacoits were mentioned in the F. I. R. Witness stated that six dacoits took part but identified two after 5 years. Held, that accused should get the benefit of doubt. 1935 L. 146.
4. If the statement contained in F. I. R. is inconsistent with any part of the testimony given in Court, it must be put to him in cross-examination to afford him an opportunity of explaining or reconciling the contradiction. 1931 L. 38=32 Cr. L. J. 522.
5. Benefit of doubt goes to accused in case of discrepancies between F. I. R., and subsequent evidence 1931 L. 157, 1923 L. 385, 1922 L. 410, 1933 O. 148, 12 Cr. L. J. 497, 1922 L. 459, 17 Cr. L. J. 147.

9. False—. See False information. S. 182, I. P. C.

10. First information—what is.

1. A Magistrate cannot direct the Police to treat the complaint made to him as F. I. R. 1928 P. 359=108 I. C. 333=29 Cr. L. J. 374.
2. A statement by a witness to the Police during investigation is not F. I. R. and even if false, the witness is liable to be prosecuted under S. 182, I. P. C. 3 R. 577=1925 R. 364=90 I. C. 316=26 Cr. L. J. 1532, 11 C. W. N. 554, 1925 A. 303.
3. A statement made by the accused implicating himself and others cannot be called F. I. R., so far as he is concerned. 1924 A. 217=77 I. C. 890=25 Cr. L. J. 490.
4. A telegram was sent to the Police that an offence has been committed. The Police Officer went to the spot and recorded his statement. Held, that his statement was F. I. R. 1928 M. 791=110 I. C. 461=29 Cr. L. J. 717.
5. A *ruiqa* drawn up by a Police Officer during investigation embodying the substance of the report of the complainant previously made and some results of the investigation and neither signed nor thumb-marked by the complainant is not F. I. R. 1926 L. 179=91 I. C. 697=27 Cr. L. J. 121.
6. If the information given to Police Officer is such a vague and indefinite that it cannot fall under S. 154 so as to make it incumbent upon him to start investigation, he may reasonably require information which might not fall under S. 162. 2 P. 517=1923 P. 550=73 I. C. 561=24 Cr. L. J. 641=4 P. L. T. 462.
7. First information is that information which is given to the Police first in point of time and not that which Police may select and record as first information. 7 C. W. N. 345, 22 C. 50, *Contra* 58 C. 1312=1931 C. 745, 47 A. 280.
8. When information was given by a chawkidar of an offence, the Sub-Inspector went to the Hospital and recorded the dying declaration and filed it as first information.

First Information Report—(contd.)

- Held, the statement of chawkidar and not the dying declaration was F. I. R. 6 C. W. N. 921
9. Where a person reported to the Police that he had seen a certain woman with her throat cut and the Officer did not record it but subsequently treated on information lodged by the woman's father as the F. I. R. Held, the unrecorded information and not the father's information was F. I. R. 1 P. 401, 1922 P. 535=71 I. C. 353.
 10. Chawkidar gave information to the effect that mother of the accused told him that the latter had assaulted his younger brother and that he saw blood stains on younger brother's head, which was entered in the Diary but not signed by chawkidar. Police proceeded to the spot and took down the statement of accused's wife. Held, the chawkidar's information was F. I. R. and the accused's wife's statement was inadmissible under S. 162. 24 Cr. L. J. 641=2 P. 517=1923 P. 550, 1930 A. 746.
 11. An information given to village Magistrate, which it was his bounden duty to pass on to Police Officer and recorded must be considered as having been given to the latter. 28 M. 565.
 12. A statement which is merely the reproduction of a statement said to have been made by another is not F. I. R. and not admissible in evidence. 8 C. W. N. 218.
 13. Statement that mob was passing by with sticks and swords is not first information of an offence which was subsequently committed by the mob. 1927 P. 100=99 I. C. 169=23 Cr. L. J. 77=S. P. L. T. 166.
 14. A Police Officer can receive information outside his limit. 15 Cr. L. J. 622.
 15. The information which starts the investigation is the real first information. 58 C. 1312=1931 C. 745=135 I. C. 289=33 Cr. L. J. 138.
 16. A statement recorded several days after there has been some development is not F. I. R. and so an information drawn by a Police Officer and finally settled by an attorney is not F. I. R. 16 C. W. N. 145=13 Cr. L. J. 65, 7 C. W. N. 345.
 17. Persons of accused's party went to the Police Station first and second party gave information afterwards, the latter information is F. I. R. 1930 C. 130=125 I. C. 111, 31 Cr. L. J. 771=1930 Cr. C. 130.
 18. A statement casually made to Sub-Inspector is not first information. 1923 P. 158.
 19. The Police Officer must frequently hear of alleged offences from less reliable sources, i.e., village gossip, etc. In such cases it is discretionary with the Officer to take action or not. He may make some preliminary inquiry. But such an informal inquiry is not investigation. 25 I. C. 630.
 20. A informs B (a village Magistrate) of the commission of a cognizable offence. B transmits it to Police. The Police arrive in the village and take statement of A. Held, that the latter statement falls under S. 162. The first information is that given by B. 1930 A. 746, 32 M. 258. 6 C. W. N. 921, 31 M. 506, 11 Cr. L. J. 286.
 21. In every case it is for Court to decide whether statement falls under S. 154 or S. 162. 19 O. C. 130, 1923 P. 550.
 22. The information must relate to a cognizable offence. 58 C. 1312.
11. In non-cognizable cases. S. 155 Cr. P. C. See Investigation—2.
 12. In rape case. See Raps—14. S. 376, I. P. C.
 13. In riot case. See Rioting—11.
 14. Inclusion of accused's name in—
 1. Where complainant previously knew the accused and in F. I. R. their names were mentioned not as persons who were identified at the spot but as suspects who were plotting to visit house in the evening, the inclusion of the names carries no weight. 93 I. C. 892=27 Cr. L. J. 492.
 2. Mere inclusion of accused's name in F. I. R. is nothing, e.g., in riot cases friend, relations are implicated. 17 Cr. L. J. 450.
 15. Non-production of—
 1. The failure to record the statement of first informant and his non-production to the Judge has the serious consequence of depriving the accused of the right of

First Information Report—(contd.)

examination which will make the case of prosecution suspicious. 1 P. 401.

2. The prosecution is bound by practice to produce in Court the first information report made to the Police, but it is not bound to refrain from leading evidence that the report is not accurate. 1924 L. 591=77 I. C. 817=25 Cr. L. J. 465, 7 C. W. N. 345, 6 C. W. N. 921, 1923 P. 359.
3. Being the earliest version of occurrence, it has to be placed before Court and jury. 1926 C. 139, 34 C. 698, 1934 N. 24.
4. Police can prove that F. I. R. is not accurate. 1924 L. 591.

15. Officer in charge of Police Station. S. 4 (P), Cr. P.C.

1. If the officer in charge of Police Station is present in the station house and able to attend to his duties, other persons mentioned in the S. 4 (P) cannot wield the powers. 1928 C. 771, 42 M. 446.
2. If the Sub-Inspector in charge is ill, writer Head Constable can act for him. 1923 P. 547=2 P. 379.
3. S. 154 does not apply unless the information is given to an officer in charge of a Police Station. When Police Officer is on tour and is not officer in charge, S. 154 does not apply. 1928 C. 771.
4. A Magistrate cannot direct Police to treat a complaint presented to him as the first information. 1928 P. 359, 1930 L. 457.
5. An information given to D. S. P. of a murder is F. I. R. 1923 M. 694.
6. A Police Officer receiving information beyond his territorial jurisdiction must pass it to the officer who has jurisdiction to investigate the offence. 25 I. C. 630.

16. Commission of accused's name in—

1. If the accused's name is not mentioned in the F. I. R. although known to the maker the case against him is doubtful. 1927 L. 149=28 Cr. L. J. 17, 1930 B. 244, 11 Cr. L. J. 90, 14 Cr. L. J. 196, 16 Cr. L. J. 212=634=737, 17 Cr. L. J. 279, 1922 L. 28=410, 8 A. 306, 1929 N. 222, 1928 O. 417, 1928 P. 359, 1929 P. 705, 1931 S. 13.
2. Absence of accused's name in F. I. R. is not by itself sufficient proof of his innocence as it is not a statement of the case for the prosecution. 1928 L. 880=111 I. C. 387=29 Cr. L. J. 835, 1932 O. 99=7 Luck 552.
3. Absence of name of the accused in the F. I. R. is not a circumstance in his favour where the information is not by an eye-witness. 1927 L. 63=99 I. C. 77=28 Cr. L. J. 45, 1926 L. 369.
4. Omission of the name of accused in F. I. R. is a strong point against the prosecution and accused should get benefit of doubt. 33 P. W. R. 1911 Cr., 34 P. R. 1914 Cr.
5. Two dacoits were mentioned in the F. I. R. Subsequent statement that four were recognized cannot be believed. 93 P. L. R. 1915=8 P. W. R. 1915 Cr.=16 Cr. L. J. 204, 1928 O. 417=29 Cr. L. J. 989=5 O. W. N. 732=112 I. C. 109.
6. A and B were mentioned as assailants in F. I. R. Subsequently C was substituted for B. Held, that conviction of C is improper although clothes of all the three were blood stained. 14 P. W. R. 1913 Cr.=19 I. C. 196.
7. Accused were mentioned in F. I. R. as suspect and not as persons identified at the spot and they were known to the complainant before. The inclusion of their names carries no weight. 93 I. C. 892=27 Cr. L. J. 492.
8. When F. I. R. is made by one not an eye witness of the affair and the report did not profess to mention the names of all the culprits the distrusting an eye witness deposition. 1926 L. 369=93 I. C. 1040=27 Cr. L. J. 544.
9. When the first information report makes no mention of the offender and the complainant named no body as his assailant, subsequent statement that he had identified the accused at the time of attack is unreliable. 91 P. L. R. 1915=10 P. W. R. 1915 Cr., 16 Cr. L. J. 222=27 I. C. 346.
0. The silence of deceased himself in his first information report as well as of his relatives so long as he was alive on the point of guilt of accused is a circumstance

of which the accused must get benefit, especially when majority of eye witnesses named in F. I. R. are not produced. 1922 L. 28=3 L. L. J. 585.

11. Where the corroborative evidence of an approver consisted of a witness who said that he identified the dacoits but omitted to name them in the F. I. R. Held, it was no corroboration. 114 I. C. 623=30 Cr. L. J. 331=1929 N. 222, 8 A. 306, 1925 N. 78, 1922 N. 172.

12. If the accused's name is not mentioned in F. I. R. Courts demand very convincing evidence to convict the accused. 1926 L. 369, 10 Cr. L. J. 239, 1927 L. 63.

17. Omission of witnesses' name in—

1. If witnesses named in F. I. R. are not produced, the benefit of doubt goes to accused. 1922 L. 28=3 L. L. J. 585.

2. Omission of the names of the witnesses in the F. I. R. who ultimately support the prosecution is not such a matter which would throw suspicion upon the story for the prosecution. 1933 L. 1005, 1928 L. 507, 1928 L. 657=29 Cr. L. J. 378. *Contra*. 1934 O. 325, 4 P. R. 1918.

3. If the F. I. R. is given by one who is not an eye witness omission of witnesses' names is immaterial. 1926 L. 369=27 Cr. L. J. 544, 1933 L. 1005 (2).

4. Non-mention in F. I. R. of the witnessing of crime by a person sleeping on the cot near the deceased is sufficient to discredit him. 1934 O. 315.

18. Recording of.—Duty of Police officer—

1. The failure of the Sub-Inspector to follow the express provision of law in omitting an entry of the information in the station diary would have an important bearing if the real dates of the report is in question but where it is not, there is no prejudice to the accused. 131 I. C. 17=32 Cr. L. J. 638=1931 P. 150.

2. It does not depend on the sweet will of the Police Officer to record F. I. R. or not. 58 C. 1312=1931 C. 745=33 Cr. L. J. 138.

3. The Police Officer should not wait till he had some good reason to believe that a cognizable offence has been committed. Reasonable suspicion that a crime has been committed is sufficient. 6 Cr. L. J. 86.

4. F. I. R. should always be carefully and accurately recorded 16 C. W. N. 145.

5. The failure to record the statement of informant and its non-production has very serious consequences, which deprives the accused of the right of cross-examination. 1 P. 401.

6. A Police Officer can record F. I. R. of cognizable offence outside his station limits though he has no power under S. 157 to conduct investigation into such an offence. 1914 M. W. N. 382=15 Cr. L. J. 622. *Contra* 12 P. R. 1915 Cr.

7. A refusal by Police Officer to record F. I. R. gives a cause of action for a suit for damages. 1925 M. 54.

8. If the Sub-Inspector does not record F. I. R. correctly and truthfully, he is liable under Ss. 177—218, I. P. C. 20 A. 151, 1931 P. 150.

9. It is serious matter to report untrue facts, e.g., stating that the report was recorded before visiting scene of occurrence while in fact it was drawn up afterwards. 1934 S. 6.

10. If the Police Officer in his false report makes any defamatory statement he can be prosecuted under S. 500, I. P. C. 1930 L. 159.

19. Series of—At two places. See—8.

1. On a construction of series of statements made to the Police, the last in point of time can be first information, as in nature things do not always happen according to procedure. 58 C. 1312=1931 C. 745=135 I. C. 289=33 Cr. L. J. 138.

2. Information first in point of time is the first information. 7 C. W. N. 345, 6 C. W. N. 921, 1 P. 401, 2 P. 517.

3. When first information report is lodged in two places, later report is not statement during investigation, but independent F. I. R. and is hence admissible. 1936 P. 11=36 Cr. L. J. 235.

20. Suspicion in—

1. People have no right to launch criminal prosecution against others on mere suspicion. A man is justified in saying to the Police "I have my suspicions against B and you may direct enquiries against him." But if he gives information to the Police that B is guilty of the offence and a prosecution follows, in which there is no evidence to connect B with the crime, then the prosecution must be taken to be both false and frivolous. 1932 B. 177=137 I. C. 129=34 Bom. L. R. 289=33 Cr. L. J. 392.
2. Where complainant knew the accused and their names were mentioned not as persons identified at the spot but as suspects, inclusion of their names in F. I. R. carries no weight. 93 I. C. 892=27 Cr. L. J. 492.

21. Telegram as—

1. A telegram to the Police that an offence has been committed is not a document referred to in S. 154, Cr. P. C. 1928 M. 791=110 I. C. 461=29 Cr. L. J. 717, 1930 L. 457, 25 I. C. 630, 1931 S. 13.
2. The Police Officer went to the spot and recorded the statement of the person sending the telegram. Held, that the statement was F. I. R. 29 Cr. L. J. 717=1928 M. 791.
3. Telegram to Police Officer is not F. I. R. but it cannot be excluded from evidence. The statement recorded after the telegram is really the first information report. A telegram is not a writing given to the Police, signed by the person making the statement. A telegram stands in no better position than a village gossip. 1935 C. 403=156 I. C. 400=36 Cr. L. J. 919=39 C. W. N. 403, 1928 M. 791=110 I. C. 461=29 Cr. L. J. 717 and 1915 M. 312=25 I. C. 630=15 Cr. L. J. 623 Rel. on.
4. Where telegram thumb marked by the complainant is obtained by Sub-Inspector and its authenticity confirmed it is first information report and any other statement made afterwards is covered by S. 162. 1934 L. 413 (2)=152 I. C. 229=15 L. 814.

22. Telephone Message as—

- A telephone message by the doctor of the Civil Hospital to the Police station to the effect that there was some one in the Hospital with a hatchet wound but not mentioning that an offence has been committed, is not a first information report. 1931 S. 13=130 I. C. 378=32 Cr. L. J. 543.

23. Use of—in later proceedings under S. 193 or S. 211, I. P. C.

by a person can be used against him in a subsequent prosecution S. 192-193 or Ss. 211, I. P. C. 1931 C. 637=134 I. C. 33 Cr. L. J. 60.

24. Value and use of—

1. First information report is not substantive evidence and can only be used to corroborate or contradict the matter thereof. It cannot be used to contradict other witnesses. 1928 L. 913=116 I. C. 187=39 Cr. L. J. 571, 1928 L. 507=108 I. C. 162, 1928 L. 17, 47 A. 280, 17 C. W. N. 1213, 6 L. 437, 1932 O. 99=137 I. C. 79, 1934 N. 94, 1930 M. 632, 1934 R. 60, 1936 L. 833.
2. First information report is of great value, because it shows on what material the investigation commenced, and what was the story then told. 11 C. W. N. 554=6 Cr. L. J. 86, 7 C. W. A. 345, 17 C. W. N. 1213.
3. First information report is no evidence of the existence of facts therein mentioned. 1897 A. W. N. 47, 53 M. 590=1930 M. 632.
4. By itself a first information report can hardly be regarded as evidence of a convincing nature. 126 I. C. 511=1930 O. 249=31 Cr. L. J. 1025.
5. Use of F. I. R. as if it were substantive evidence is illegal. 1928 L. 923=29 Cr. L. J. 734, 6 L. 437, 1925 A. 413, 26 M. 91, 1924 A. 164, 1929 A. 916.
6. The statement of a case for the prosecution is not by itself sufficient proof of his innocence. 29 Cr. L. J. 835.

First Information Report—(concl'd.)

7. Discrepancies between the first information report and subsequent evidence, lead to doubt in favour of the accused. 172 P. L. R. 1914, 188 P. L. R. 1915, 224 P. L. R. 1911.
8. First information report is of great importance in criminal cases. 14 P. W. R. 1909, Cr., 34 P. R. 1914 Cr., 23 P. L. R. 1912, 152 and 318 P. L. R. 1913.
9. Conviction based on F. I. R. alone is illegal. If prosecution story on oath is different, it should not be discarded and to rely on the report. 1924 A. 164=74 I. C. 716=24 Cr. L. J. 812.
10. Silence of deceased and of his relatives as long as he was alive as to the guilt of accused is a circumstance against the prosecution. Accused should be given the benefit of doubt. 1922 L. 28.
11. In case of discrepancies between first information report and complaint and subsequent evidence, the accused should get the benefit of doubt. 188 P. L. R. 1915=34 P. W. R. 1915, 9 I. 209, 7 L. L. J. 96.
12. Prosecution is bound to produce first information report in Court but can lead evidence that the report is not correct. 1924 L. 591=77 I. C. 817=25 Cr. L. J. 465.
13. First information report was given at a late stage and after due deliberation. Held, no reliance can be placed on it. 95 I. C. 597, 92 I. C. 209.
14. When complainant previously knew the accused and their names are mentioned not as persons identified at the spot but as suspects, the inclusion of their names in F. I. R. carries no weight. 93 I. C. 892=27 Cr. L. J. 492.
15. The accused should be acquitted if the F. I. R. falsifies the complaint. 29 P. W. R. 1911 Cr., 224 P. L. R. 1911.
16. First information report may be of value as one of the *Res gestae*. 1931 L. 38=130 I. C. 410=32 Cr. L. J. 522=23 P. L. R. 259.
17. First information reports, however important they may be, do not prove themselves and have to be proved according to law. Such a report, if it contains dying declaration is admissible under S. 32(1). 1931 L. 103=135 I. C. 668, 45 C. 237.
18. Information given to Police before starting investigation can be proved if the person making it is witness or if fact of information being given is relevant. 1935 Pesh. 165.
19. Person sleeping on the cot near deceased was not mentioned in the F. I. R. Omission tends to discredit his testimony obtained 3 days after the crime. 1934 O. 315=35 Cr. L. J. 836.

25. What is -

The term first information report is not defined in the Code. It does not necessarily contemplate that only one information of crime should be recorded as F. I. R. All information given to Police may amount to F. I. R. 1935 Pesh. 165.

26. Witness named in—but not called.

1. The fact that certain persons named in the first information report as being witnesses of occurrence does not make it necessary for prosecution to call any one of them. Not does it give rise to presumption under S. 114(g) of Evidence Act. The mere statement of complainant that some one was witness of the occurrence is not conclusive. 58 C. 1335=1932 C. 118. See 1926 C. 728, 1922 L. 28.
2. Omission to examine witnesses named in the first information report tells very heavily against the prosecution. 1934 C. 458=35 Cr. L. J. 904.

27. Writer of—not produced.

1. If the writer of F. I. R. is not produced, it cannot be ascertained whether report is genuine or coloured version. 1934 C. 458=35 Cr. L. J. 904.
2. Unless the informant is examined, F. I. R. cannot be put in evidence. 1920 C. 938, 1 Bom. L. R. 433, 1934 S. 100.

FIRST OFFENDER. (Released on probation of good conduct) S. 562, Cr. P. C.

1. Admonition - S. 562 (1-A), Cr. P. C.

First Offender—(contd.)

1. Release after admonition for offence under S. 457 is illegal. 1935 M. 157=154 I. C. 879.
2. S. 562 (1-A) covers offences punishable only with fine. 1935 B. 156=37 B. L. R. 105, 1926 B. 544=27 Cr. L. J. 1158=97 I. C. 742.
3. Offences under the Railway Act are not easily detected and therefore accused should not be given the benefit of S. 562 (1-A). 1935 S. 90=1935 Cr. C. 376.
4. Person convicted under S. 406 cannot be released on admonition. 1934 R. 203=35 Cr. L. J. 1241, 41 M. 533, 1 L. 612, 31 I. C. 381, 3 Cr. L. J. 21 Foll. 15 Cr. L. J. 375 Not foll.
5. Admonition is not sufficient for accused who bribed or overawed witnesses of the other side. 1936 P. 175.

2. Appeal.

1. An appeal lies under S. 408, Cr. P. C., from an order passed under S. 562 (1). 1926 B. 382=95 I. C. 121=27 Cr. L. J. 873, 52 C. 463, 24 P. R. 1904 Cr., 37 A. 31, 1925 C. 329, 46 A. 828=1924 A. 765=25 Cr. L. J. 1244.
2. The appeal may be preferred even after the expiry of the bond. 20 P. R. 1917 Cr.
3. An order of conviction under S. 380, Cr. P. C., in respect of a case submitted to a first class Magistrate under S. 562, Cr. P. C., is appealable to the Sessions Court. 31 I. C. 33=16 Cr. L. J. 738=17 Bom. L. R. 895.
4. An appeal lies to the Sessions Judge from an order passed by a first class Magistrate under S. 562 in a summary trial. 46 A. 823=25 Cr. L. J. 1244=1924 A. 765.
5. No appeal lies to High Court from an order under S. 562 passed by a Presidency Magistrate. 1932 C. 488=138 I. C. 627=33 Cr. L. J. 639.
6. If accused is released under S. 562 on his own plea of guilty, no appeal lies against the order. 20 P. R. 1917 Cr.=18 Cr. L. J. 401=18 P. W. R. 1917 Cr.

3. Applicability and scope of S. 562.

1. S. 562 does not apply where a sentence of fine, etc., is passed on the accused. 10 L. 722=1930 L. 56=112 I. C. 910=30 P. L. R. 702, 50 I. C. 1,000=20 Cr. L. J. 392=17 A. L. J. 426.
2. The first offender need not be a juvenile offender. He may be of advanced age. 2 Bom. L. R. 817, 11 P. R. 1916 Cr.=17 Cr. L. J. 254=18 Cr. L. J. 469.
3. The manufacture of liquor implies good deal of preparation and it is a consequence of sudden temptation. S. 562 should not apply. 1916 P. R. 1916 Cr.=17 Cr. L. J. 317, 1926 L. 317.
4. A first offender is entitled to the benefit of S. 562, even when without such provisions, the Magistrate would be obliged to pass a sentence of imprisonment, e.g., for an offence under S. 381, I. P. C. 1925 B. 192=86 I. C. 70=26 Cr. L. J. 694.
5. The sending of first youthful offenders to Jail, has the effect of making them hardened criminals after they are discharged from the Jail. The Magistrate must consider this aspect as well. 1926 L. 611=96 I. C. 390=27 Cr. L. J. 934.
6. If the offence indicates not mere thoughtlessness but criminality also such as combination of design, ingratitude, deceit and craft, the section should not be resorted to. 25 Cr. L. J. 1224, 1925 S. 75=82 I. C. 152.
7. The Legislature intended to apply S. 562 to those offenders, who without being persons of depraved character, may on occasions succumb to sudden temptation. 19 P. R. 1916 Cr.=144 P. L. R. 1916=41 P. W. R. 1916 Cr.
8. The powers of S. 562 are not conferred upon the Magistrate for showing favour to any particular class of persons. The sole object is that a true first offender should be given a chance of reformation. 1926 S. 101=92 I. C. 693=27 Cr. L. J. 309.
9. The intention of the law is not to make it essential that the offender must be young or the offence must be trivial in its nature. 1 Cr. L. J. 558, 6 C. W. N. *coliv*.
10. S. 562 does not apply to a person convicted of an offence which not only implies

First Offender—(contd.)

previous preparation but often escapes detection. 7 L. 32=1926 L. 166.

11. Conviction under Bombay Prevention of Gambling Act is a previous conviction within the meaning of S. 562 (1). 1935 B 188.
12. S. 562 should not be applied to one who commits offence well designed and carries it into effect through perjury, forgery and impersonation. 1934 S. 93=35 Cr. L. J. 1149, 1925 S. 75 and 1926 S. 101 Rel. on.

4. Bond.

1. The bond should be to appear and receive sentence when called upon and in the meantime to keep peace and be of good behaviour. 2 Bom. L. R. 112.
2. Magistrate cannot order the accused to appear on a certain date to receive the sentence. 2 Bom. L. R. 702.

5. Imprisonment in default or along with—

1. Order directing imprisonment on failure to furnish security is illegal. 1934 L. 582.
2. If an accused fails to furnish security he should not be detained in prison till the expiration of period for which security was to be given, but a nominal sentence should be passed. 1934 L. 582=35 P. L. R. 368.
3. Sentence of imprisonment cannot be imposed when accused is being released under S. 562. 1934 L. 514, 10 L. 72=1930 L. 56 and 1928 A. 759=30 Cr. L. J. 47 Ref.

6. Inability to furnish security.

1. If the accused is unable to furnish security his position is that of an accused who was convicted and he should be produced for suitable punishment. 1925 M. 496=86 I. C. 59=26 Cr. L. J. 683.
2. The Magistrate should satisfy himself that security can be given before passing the order. If he fails to furnish security, he should be sentenced according to law. 2 R. 360=1925 R. 42=84 I. C. 349=26 Cr. L. J. 285.
3. The Magistrate should not imprison the accused under S. 123, Cr. P. C., on failure to give security under S. 562. 2 R. 360=1925 R. 42=26 Cr. L. J. 285.
4. If accused is unable to furnish security within a reasonable time the Court should pass a nominal sentence to him. 3 L. B. R. 2, 2 R. 360.

7. Jurisdiction.

1. An order under S. 562 can be passed not only by the trial Court but Court of appeal or High Court in revision. 24 A. 306, 29 M. 567.
2. All second class Magistrates in the Punjab are duly empowered by Notification No. 431, Home Department, to exercise the powers under S. 562, dated 18th April, 1910. 109 I. C. 604=29 Cr. L. J. 588=10 L. L. J. 153=29 P. L. R. 215, 8 L. 38, overruling 5 L. 36=1924 L. 454.
3. The provisions of sub-s. (1) of S. 562 governs S. 1-A. also. 1928 N. 343=113 I. C. 911=30 Cr. L. J. 220, 1925 B. 479. See 47 A. 353.

8. Offences to which S. 562 does not apply.

1. The offence under S. 409, Penal Code, is beyond the scope of S. 562, Cr. P. C. 1927 L. 735=100 I. C. 225=28 Cr. L. J. 257.
2. S. 562 does not apply to offence under the Motor Vehicles Act. 1926 B. 230=93 I. C. 992=27 Cr. L. J. 523=28 B. L. R. 297.
3. An offence under S. 420, Penal Code, being an aggravated form of cheating under S. 417, is not covered by S. 562. 1 L. 612, 41 M. 533, 16 P. R. 1911 Cr.
4. Sub-s. (1-A), S. 562, is confined to cases under the Penal Code and does not apply to offences under the City of Bombay Municipal Act. 52 B. 250.
5. S. 562 does not apply to an offence under S. 307, Penal Code. 1928 L. 920=117 I. C. 239=30 Cr. L. J. 7:9
6. S. 562 does not apply to an offence under Cl. 2 of S. 457, I. P. C. 1927 R. 254=103 I. C. 839=28 Cr. L. J. 759=6 Bur. L. J. 83.

First Offender—(contd.)

7. Accused a Lambardar was convicted for pocketing money as agent of the Government. S. 562 does not apply. 1926 L. 350=94 I. C. 130=27 Cr. L. J. 562.
8. Offence under S. 381, Penal Code, is not covered by S. 562, Cr. P. C. 13 P. L. R. 1913=27 P. W. R. 1913 Cr., 1924 R. 12.
9. S. 562 does not apply to a case under S. 411, I. P. C. 1923 P. 297=85 I. C. 35=25 Cr. L. J. 419.
10. Burglary is a serious offence and when detected the accused must be given deterrent sentence. Release on probation of good conduct is no punishment and it would embolden them to commit more crimes. 1932 L. 258=33 Cr. L. J. 500.
9. **Offences to which S. 562 (1-A) applies.**
 1. S. 562 (1-A.) covers offences punishable with fine. 1935 B. 156=37 B. L. R. 105, 1935 B. 402 (P. B.)=37 B. L. R. 739, 1926 B. 544=27 Cr. L. J. 1158 overruled.
 2. Offences under the Railway Act are not easily detected and therefore accused should not be given the benefit of S. 562 (1-A). 1935 S. 90=1935 Cr. C. 376.
10. **Power when to be exercised.**
 1. The offence of stealing a cow and taking it to the slaughter house, is not a 'trivial' offence under S. 562. 39 I. C. 989=18 Cr. L. J. 621=10 S. L. R. 185.
 2. S. 562 should not be applied to persons discovered with cocaine or other dangerous drug upon them, as it is not really the first time they have been in such possession. 1930 A. 19=120 I. C. 264=31 Cr. L. J. 32.
 3. The offence of illicit manufacture of liquor implies good deal of preparation and it cannot be said that it is done in consequence of sudden temptation. S. 562 should not be applied. 10 P. R. 1916 Cr., 1926 L. 317=93 I. C. 702.
 4. The mere fact that accused comes of a respectable family cannot be justification for imposing a lighter sentence, for the more respectable and better educated a man is, the less temptation should there be to commit offences. 1930 P. 216=125 I. C. 572=31 Cr. L. J. 874.
 5. S. 562 should be applied to a case of enticing away widow of 16 years for honourably marrying her. 1929 A. 930=120 I. C. 257=31 Cr. L. J. 25.
 6. In case of rape committed on an infant girl, the accused, although a lad of 17 years, should not be given the benefit of S. 562. 1929 L. 198=29 Cr. L. J. 1096.
 7. A was wounded by bullet by B but being won over by B deliberately gave false evidence to screen him. A was prosecuted for perjury. Held, that a deterrent sentence should be passed and S. 562 should not be applied. 1928 L. 296=29 Cr. L. J. 219.
 8. A was a puppet in the hands of other accused. Held, S. 562, Cr. P. C. 1926 C. 531=93 I. C. 73=
 9. Where a young educated accused is convicted of cheating, he should not be released under S. 562, when he does not make an attempt at restitution. 1926 L. 570=27 Cr. L. J. 836=95 I. C. 756.
 10. A youngman of 20 was convicted of theft and sentenced to 2 months' rigorous imprisonment. He was a first offender and had a good character, the benefit of S. 562 should be given to him. 1921 C. 149=25 C. W. N. 720=66 I. C. 75.
 11. If accused commits a designed offence by forgery, perjury and impersonation, S. 562 should not be applied. 1934 S. 93=35 Cr. L. J. 1149.
 12. If a woman attempts to commit suicide due to family discord and loss of relations, S. 562 should be applied. 1934 L. 514.
 13. In case of deliberate false affidavit, S. 562 is not appropriate. 1934 N. 193 (2).
11. **Previous convict.**
 1. Where an accused is already placed under probation of good conduct on an earlier conviction, a sentence of again placing him under probation under S. 562 for a subsequent offence is against law. 1930 B. 176=31 Cr. L. J. 925.
 2. Where accused is tried for two offences consecutively and is convicted, S. 562 will

First Offender—(concl'd.)

not apply at the time where second judgment is written, as then he must be considered to be a previous convict. 1925 L. 651=27 Cr. L. J. 1016.

3. First offence under S. 405, Penal Code, was committed several years ago and the accused was 55 years old. The amount involved was not large, the sentence under S. 562, Cr. P. C., was upheld. 1930 L. 92=31 Cr. L. J. 653.
4. The order under S. 562 should not be set aside in revision if subsequently previous conviction is discovered. 1925 O. 673=26 Cr. L. J. 1278.

12. Revision.

1. High Court will not interfere with the order of release under S. 562 unless a strong case for interference is made out. 1927 L. 353=100 I. C. 127=28 Cr. L. J. 255, 1929 C. 785=124 I. C. 76=31 Cr. L. J. 618.
2. A person was convicted under S. 408 and order under S. 662 was passed. A considerable time passed when the case came up to High Court in revision. Held, that though usually imprisonment should be given in case of embezzlement, it was not proper to interfere after such a length of time. 1928 L. 926=29 Cr. L. J. 291.
3. However illegal an order might be, High Court would refuse to disturb it unless it was unjust and however legal it might be High Court would not hesitate to disturb it if it were unjust. 1928 N. 343=30 Cr. L. J. 220.
4. High Court, as a Court of revision, is not bound to interfere with an order under S. 562 even when the order is illegal. 94 I. C. 368=27 Cr. L. J. 624, 19 P. W. R. 1909 Cr., 5 P. R. 1906 Cr.
5. High Court can set aside an order under S. 562 and substitute a sentence of imprisonment. 1926 A. 226=92 I. C. 591=27 Cr. L. J. 303.
6. Subsequent discovery of a previous conviction is no ground for interference in revision. 1925 O. 673=88 I. C. 1054=26 Cr. L. J. 1278=2 O. W. N. 593.
7. S. 562 was applied to an offence under S. 457. Held, that though the order was illegal and improper, High Court need not interfere if nothing is to be gained by passing sentence of imprisonment. 1933 L. 393=34 Cr. L. J. 779, 6 I. C. 639 Foll.

13. Sentence of—

1. An order under S. 562, Cr. P. C., cannot be said to be a punishment. It is not one of the various kinds of punishments described in S. 53, Penal Code. Under S. 562 the sentence of punishment is postponed and something which is not punishment is substituted, therefor. 1924 N. 37=24 Cr. L. J. 738.
2. There is no middle course between imprisonment (with or without fine) and an order under S. 562. 1927 N. 49=97 I. C. 1053=27 Cr. L. J. 1229.
3. The order directing the convicts who were released under S. 562 to pay compensation to the complainant is illegal. 1928 L. 134=29 Cr. L. J. 38.
4. A first offender of immature age should not be sent to jail for he will become a hardened criminal by association with convicts. 1930 L. 421=126 I. C. 578.
5. Sentence of imprisonment cannot be imposed, when a person is released under S. 562. 1934 L. 514, 1930 L. 56=10 L. 722, 1928 A. 759 Ref.

FISH. See Theft—32.**FOOD IN STOMACH. See Time of death—1.****FOOD STUFF—Poisoning by. See Poison—8.****FOOT PRINTS. See Track—3.****1. Comparison of—**

1. It is impossible to fix the impression of a bare feet for long in the memory, and the impression of a foot print formerly seen with that belonging to a suspect attested subsequently when the former is no longer under one's eye, is of no utility and can serve no purpose. *Criminal Investigation by Dr. Hans Gross, Ed. 1914, P. 329.*
2. For the impression of a booted foot it always suffices for future use to have an exact description of the impression of the sole with the note of measurements and number, care being taken to indicate all dimensions, the number of nails (not only

Foot Prints—(contd.)

of those which exist but of those which are missing) in the front part of the sole and in the heel separately, the shape and condition of preservation of the latter, patches if there be any, and every other distinctive sign. If the question subsequently arises as to the connection between the sole of which the impression has been found and that of a suspected individual, all that is necessary is to measure and count the whole again. *Ibid.*

3. We must have the two impressions (mentioned above) on the table before us. We must measure and compare them several times before being able to pronounce any opinion about them. *Ibid.*
4. Comparison of foot prints after two months with prints which the tracker saw at the spot, when the original foot prints were not preserved, has no value. 1933 L. 299.
5. It is unsafe to rely completely on the evidence of tracker as to correspondence of tracks. 65 P. L. R. 1917=18 Cr. L. J. 897, 71 P. L. R. 1910.

2. In running.

1. One can conclude, from the length of the step, the force of the impression of the anterior edge of the sole, and from the depth of the ball of the toe, compared with the depth of the impression of the heel, that there has been running, and also whether that running has been rapid or slow. *Criminal Investigation by Dr. Hans Gross, Ed. 1934, P. 340.*
2. In rapid running the impression of the heel is deeper than that of the ball of the toe. Alighting on the ball of the toe is only the result of the slowness of the running, just as alighting on the heel is the result of the rapidity of the running. *Ibid.*

3. In walking.

1. Every person walks by first carrying a big forward and then leaning the centre of gravity of the body upon it, in order to be able to continue in the same manner with the other leg. It is not correct to say that the leg operates like pendulum, on the other hand a complicated mechanical movement brings it to the front. *Criminal Investigation by Dr. Hans Gross, Ed. 1934, P. 334.*
2. This mechanism of walking furnishes us with the following results in connection with foot prints or impressions :—
 - (a) Since at each step the centre of gravity first goes over to the leg upon which the weight is carried, the load must glide from the interior to the exterior edge of the foot. What is shown by very clean foot prints is a certain twisting which starts from the inside edge of the foot and goes towards the ball of the little toe and in consequence of the thrust to detach the foot from the ground passes suddenly under the big toe.
 - (b) The back part of the heel gives the strongest impulsion in walking and ought in consequence to appear much more strongly impressed than the rest of the heel. Hence nearly all men of normal stature use chiefly the exterior and back part of the underneath part of the heel. Brandt of Lindau found that 98 per cent. of soldiers walk in this way, while only 2 per cent. press more on the interior surface of the sole and the heel. This is important, for in a case where the last peculiarity is found, it would be an almost conclusive sign by reason of its rarity.
 - (c) In a foot print there are two deep spots : the posterior edge of the heel, by reason of the energetic thrust of this edge into the soil, and the ball of the big toe, by reason of the pressure which the body exercises upon it.
 - (d) Inside portion of the front part of the foot presents an impression of the whole surface of contact and therefore it appears larger in foot print than it really is. It glides a little outwardly and only at that point produces the deepest impression.
 - (e) The foot, at each pace, before leaving the soil, gives a thrust in order to supply the leg with the spring required to carry it forward. This is particularly necessary in quick walking or when the ground is slippery. The consequence of this thrust is that the anterior edge of the sole makes a deeper cut into the ground. On a firm ground two marks in the form of an arch will be found : the posterior edge of the heel and the anterior edge of the sole. These two marks will give the length of

Foot Prints—(contd.)

foot and one can make certain that foot print comes from a person who walks quickly or carries a burden. If the steps are long, they belong to a tall person.

(f) Distinctive marks are produced in sand, dirt, and thick mud according to the manner of walking. The heel gives way a little at the spot where it was first thrust. There are two impressions of the heel and the balls of the toe, which give the real distance, but owing to slipping of the heel forwards and the ball of the toe backwards, be nearer each other than in reality : that is the foot print will be sensibly smaller than the foot which has produced it.

(g) Tired, aged, infirm or awkward persons are too feeble or unskilful to bend the leg sufficiently at the knee and produce *dragging impressions* on the ground. The sand or snow, etc., must not be too deep, for in this case the raising up of the foot to a sufficient height fatigues even robust persons who would also leave dragging impressions behind them. *Ibid*, Pp. 334—337.

3. Deductions made are only relative and have only comparative value. It is impossible to give measurements or fixed sizes, for the numerous factors—the size, the height, and the other corporeal singularities of the individual walking, his burden, his gait, and the variable nature of the soil—differ in every case, and may be combined in so many diverse ways that it is absolutely impossible to give precise indications on this matter. *Ibid*, P. 337.

4. It is easy to recognise a stoppage, for the hind foot is drawn forward and forms a second impression beside the other. It may even be guessed approximately whether stoppage has been short or prolonged. *Ibid*, P. 347.

5. A person may have been forced to walk backward, in which case the steps are shorter, the directing line is hesitating and uncertain, as we do not know where we are going, the impressions present besides a quite distinctive digging of the toe, when the individual in question is forced to take relatively long pace. *Ibid*, P. 348.

4. Length of step.

1. Length of step is the distance of one foot print from the next, measured from the middle of the heel of the one to the middle of the heel of the other. This distance depends upon the height of the person, the rapidity of the walk and also upon habit. *Criminal Investigation by Dr. Hans Gross, Ed. 1934, P. 345.*

2. As a general rule it may be said that, of two equally agile men, the taller has the longer steps, and of two parallel trails, the foot print more frequently in the same distance belongs to the shorter person and that occurring less frequently to the taller person—presuming the two have walked together at the same speed. *Ibid*, P. 346.

3. Old people, invalids, people afflicted with hernia and other infirmities of the lower part of the stomach, take short steps although of tall stature. People who are in the habit of walking with precaution habitually take short steps. *Ibid*.

4. Long steps are met with among soldiers who have been for years in the army, surveyors, and especially railway employees. These latter are often obliged to walk upon the permanent way and they prefer to walk upon the sleepers the distance of which exceeds the length of ordinary pace. *Ibid*.

5. For a person walking at the same speed, the length of pace, as a rule, remains the same. If a short step is noticed it follows that the walker wishes to avoid a stone or paddle, etc., or perhaps he has looked back while walking. This may be important in determining whether the person in question has passed the spot only after a shower of rain. *Ibid*.

6. The length of pace varies from 50 to 100 cms. (20 to 40 in.), the average length may be taken: for the slow walk of people out for a stroll, 70 cms. (28 in.); for the average pace of business men 80 cms (36 in.). A pace of hundred cms. (40 in.) is only attained in running. A running pace of two metres (6½ feet) is rarely met with. *Ibid*.

7. The pace diminishes with age. A man of forty years old takes a pace about 30 inches and a man of the same height but, thirty years of age takes paces of from 32 to 33 inches. *Ibid*, P. 347.

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Foot Print—(contd.)

6. It is unsafe to rely completely on the evidence of trackers as to the correspondence of tracks. 65 P. L. R. 1917=40 P. W. R. 1917 Cr.=42 I. C. 129=18 Cr. L. J. 897, 71 P. L. R. 1910.
 7. Track evidence of flimsy nature cannot be believed without sufficient corroboration. 91 P. L. R. 1915=10 P. W. R. 1915 Cr.=27 I. C. 346=16 Cr. L. J. 222.
 8. Identification of footprints of accused with shoes is valueless, as there can be a large number of similar shoes. 73 I. C. 331=5 L. L. J. 87=24 Cr. L. J. 587.
 9. A tracker found the tracks of accused near the dead body which was discovered at his instance. There was no motive for murder. Held, that the evidence is not sufficient for murder though ample for a conviction under S. 201, I. P. C. 1928 L. 476=112 I. C. 347=29 Cr. L. J. 109.
 10. It is impossible to base a conviction merely on the track evidence when the main evidence is extremely discrepant and highly unsatisfactory. 96 I. C. 498=27 Cr. L. J. 946.
 11. Tracks, measured three days after the murder and tracker examined after twelve days are of no value, the peculiarities of foot prints would in the probability be obliterated by the physical forces of nature. 1932 L. 557=33 P. L. R. 691.
 12. The mere fact that the track of accused were carried to their village and that accused were known bad characters, held not sufficient to support a charge of dacoity. 33 P. R. 1868 Cr.
11. Varieties in—
1. Straight foot prints generally belong to members of the working classes, those turned outward to individuals of a better class. *Criminal Investigation by Dr. Hans Gross, Ed. 1934, P. 344.*
 2. Females and especially young girls turn out one foot more than another. *Ibid, P. 343.*
 3. We have naturally our feet much turned in, for new born children have the ankle crossed, so that if they could stand up upon their legs, the toes will incline inward. *Ibid, P. 342.*
 4. A man ascending or descending smooth or slippery ground will keep his feet straight even when he is in the habit of turning them outwards, for in this way he is opposed to the direction of slipping and less in danger of falling. *Ibid, P. 341.*
 5. The wearer of tight or unaccustomed shoe will not remain faithful to his natural angle, but will put his foot so as to avoid discomfort of the shoe. *Ibid.*
 6. Every one, even those who walk with toes turned outwards, places the feet straighter when walking bare foot, running or walking upon toes. *Ibid, P. 345.*
 7. Foot prints turning inwards betray crossed or twisted legs. *Ibid.*
 8. If the length of pace is unequal, that is to say, that the paces of the right leg followed by left leg are equal to one another, but smaller than those of the left leg followed by the right leg, which latter are also equal to one another, it may be presumed that the person walking limps, either habitually or by accident due to some wound to the foot. *Ibid, P. 347.*
 9. If the distances between each of the impressions of the right foot and each of the impressions of the left foot are different, and if the lines joining the right heels and those joining the left heels form an irregular zig zag, it is because the central organ of the apparatus of locomotion is defective and the foot print belongs to one who suffers from brain or spine disease; he is paralytic, inebriate, giddy, or badly wounded person. *Ibid.*
 10. If a criminal with small feet, tries to his feet the shoes of another person to produce large foot prints, these can be detected. The criminal, who is generally in an agitated state of mind, easily forgets that as a general rule big feet have long legs and in consequence make long paces, whereas little dainty feet make short paces. The false proportion is often discovered. Some irregularities will appear. The line of march becomes unsteady, the step seems hesitating and uncertain, and when the shoes are too big, dragging and heavy, and this is clearly seen from the impression. *Ibid, P. 349.*

Foot Prints—(concl'd.)

11. The impression left by naked foot varies in the same individual according as to whether he was standing, walking or running at the time. *Lyon's Med. Jur.*, 1901, P. 162.

FORCIBLE ENTRY. By landlord—

A landlord who is entitled to take possession in a case where his tenant is wrongfully holding over, can only take possession peacefully. If his possession is opposed, however wrongfully, he has no right to break the doors and to turn the inmates out, but must go to Civil Court, for redress. 1926 B. 91=94 I. C. 709=27 Cr. L. J. 661=27 B. L. R. 1353.

FOREIGN JURISDICTION. See Jurisdiction.**FOREIGN JURISDICTION ACT (1890.)**

The Indian Extradition Act or the British Foreign Jurisdiction Act does not apply to a British Indian subject residing in the original jurisdiction of High Court for offence committed outside British India. 1932 C. 229=33 Cr. L. J. 322.

FOREIGNER'S ACT (III OF 1864.)**S. 2.**

Relinquishment of the Government of a territory is not only a relinquishment of the right to soil or territory but also of the right over the inhabitants of the country. Where Britain ceded a territory to another state, the British subject ceased to be such on cession. 49 B. 804=1925 B. 489=90 I. C. 310=26 Cr. L. J. 1526.

S. 3.

Government must issue orders about detention or release or removal without delay. Commissioner of Police cannot do any such thing without such orders. 49 B. 222

FOREST ACT (XVI OF 1927)**General.**

If a person is found with a gun and ammunition in a reserved forest, it may be presumed until the contrary is shown that hunting was being engaged in. 1929 M. W. N. 808.

S. 26.

1. The *onus* is on the prosecution that the land trespassed upon, forms a part of the Government forest. 1929 N. 190=124 I. C. 622, 19 M. 165
2. When the owner did not authorise directly or indirectly the grazing of his cattle by servant in the Government forest, he cannot be convicted. 1930 N. 64.
3. Where it is clear from the evidence that the accused cultivating land alleged to be part of a Government forest for at least 7 years, he cannot be convicted under S. 26. 1929 N. 190=124 I. C. 622.

S. 26 (1).

The word 'shoots' means discharges a fire arm. It does not mean going for shooting. 134 I. C. 377=1931 N. 156=32 Cr. L. J. 1140, 1933 A. 630

S. 45.

1. The case of timber found embedded in the bed of a river is covered by S. 45. 133 I. C. 594=1931 C. 45=59 C. 21
2. The object of the Act is to regulate the rights of owners in drift and stranded timber and not to deprive them of these rights. 133 I. C. 594, 24 C. 594

S. 59.

The words "so seized" literally and grammatically refers to the seizure under S. 52 which includes seizure of tools, boats, etc. 133 C. 577=31 Cr. L. J. 117.

FORFEITURE OF BOND. See F. I. I. vol=2**FORFEITURE OF NEWSPAPERS, BOOKS, ETC.** See 92-A=92-G, Cr. P. C.**1. Advertisements**

1. Advertisements can be forfeited under S. 92-A, but advertisements of Exhorting

Forfeiture of Newspapers, Books, etc.—(concl'd.)

books unless sedition by itself cannot be forfeited because it is intimately associated with seditious book. 1930 A. 401=1930 A. L. J. 713=31 Cr. L. J. 840.

2. Burden of proof.

1. Where an application is made under S. 99 to have an order of forfeiture set aside on the ground that the matter published does not fall within the definition of S. 153-A, Penal Code, it is for the applicant to convince the Court that for the reasons he gives the order is wrong order. 49 A. 856=1927 A. 649.
2. It is most convenient that Government Advocate should begin and state the case for the Local Government. But where both parties have been fully heard, the question of *onus* is of no importance. 1930 A. 401=31 Cr. L. J. 840=52 A. 775, 47 A. 293, 9 L. 663=1928 L. 245.
3. Burden of proof does not lie on Government. The applicant has the right to open the case. 1936 A. 314=37 Cr. L. J. 599, 47 A. 298, 49 A. 856 and 52 A. 775 Ref.

3. Costs.

It is reasonable that costs of the other side should be paid by the person to whose action the incurring of those costs was due. 1930 A. 401.

4. Essentials and Evidence.

1. In order to justify forfeiture under S. 99-A it is necessary for the Government to satisfy the Court that on the evidence produced by the prosecution a conviction could have been had under S. 153-A, I. P. C. 9 L. 663=1928 L. 245=111 I. C. 659=29 P. L. R. 385=29 Cr. L. J. 899.
2. If High Court is left in doubt after hearing the application it should set aside the order, which may be said to be contrary to the ordinary practice in an appeal in a civil suit. 1927 A. 649=49 A. 856.
3. Under S. 99-D, High Court is precluded from considering any other point than the question whether in fact the matters contained in the document were seditious or not and within the mischief of S. 124-A, I. P. C. 47 A. 298=1925 A. 195=86 I. C. 55=26 Cr. L. J. 679.
4. Where an applicant has published a series of books the whole series must be looked into in order to determine whether the passages contained therein are seditious or not. 47 A. 298=1925 A. 195=86 I. C. 55=26 Cr. L. J. 679.
5. Where a document admits of two reasonably possible constructions the applicant must have the benefit of that which is most favourable to him. 1930 A. 401.
6. Translations may not be permissible when originals are not proscribed. 1936 A. 561.
7. Books dealing with conditions prevailing in entire world and directed against capitalists do not fall under S. 99-A. 1936 A. 561.
8. Manifesto of Communist party which incites the working classes against capitalist is objectionable under S. 153-A, I. P. C. 1936 A. 561, 1926 C. 1133, 57 B. 253=1933 B. 65, 1923 L. 61=3 L. 405, 1933 C. 139 and 1933 A. 690 Ref.

FORFEITURE OF SEDITIOUS MATTER. See Sedition—8.

FORGED DOCUMENT USING AS GENUINE. S. 471, I. P. C. See Forgery—31.

1. Abetment—

Accused produced in Court two receipts which were forged. There was no evidence to show who committed forgery. Accused is guilty of abetment. But as the appellate Court could not alter a conviction into conviction for abetment, the accused is to be acquitted. 1936 M. 230=37 Cr. L. J. 421, 33 M. 264 Foll.

2. Altering prescription.

Accused obtained a prescription from a Medical man for one tube of morphia and altering it into four tubes, got from a chemist 4 tubes of morphia. Held, he was guilty under S. 471. 53 I. C. 617=22 Cr. L. J. 681.

3. Blank signed papers.

Using blank signed papers is no offence, if the person using it has a sort of authority and is used for the purpose it is meant. 1932 M. W. N. 117. See 1932 P. 335=13 P. L. T. 583=140 I. C. 752=31 Cr. L. J. 81, 38 A. 430.

Forged Document using as Genuine—(contd.)

4. **Certificate.** See Forgery—6.

5. **Charge.**

1. A charge of using forged document should make mention of S. 471 coupled with S. 466 or S. 467 according to the nature of the document forged, as S. 471 does not specify the punishment. 6 B. H. C. 43.
2. The definition of forgery should not be entered in the charge, simply describing the offence as one of using a forged document is sufficient. (1867) 8 W. R. (Cr. L.) 7.
3. In a suit on pronote, the plaintiff was prosecuted under S. 471, I. P. C., subsequently he obtained decree. The charge must be quashed. 1934 O. 114=35 Cr. L. J. 576.

6 **Complaint.**

1. Complaint in writing of the Court before which the offence is committed or the Court to which it is subordinate is necessary. 25 M. L. J. 220, 1936 M. 280.
2. If accused is no party to the proceedings in Court, no complaint by the Court is necessary before which a forged document was produced. 6 N. W. P. H. C. R. 39.
3. Where subsequent to the complaint a suit was instituted in a Court on the document, a complaint by Court is not necessary. 56 C. 1041=1929 C. 633.
4. Court mentioned facts but omitted to mention section of the Penal Code. Accused can be convicted under S. 471. 1936 M. 280=37 Cr. L. J. 421, 27 M. 61 Diss, 1933 M. W. N. 1261 Rel. on.

7. **Copy or certified copy—using.** See Forgery—8.

1. A person may be convicted of using a document as genuine which he knows to be forged, though he produced only a copy in the first instance. (1866) 6 W. R. 41 Cr., 137 I. C. 341=1932 S. 90.
2. Where forgeries were committed by a person inside a record room and certified copies were produced in a suit, the use of such certified copies is an offence under S. 471. 1926 O. 255=93 I. C. 66=27 Cr. L. J. 402.
3. A person taking copies of forged document knowingly and producing them in Court to support title, is guilty. 28 A. 402, 26 Cr. L. J. 929=86 I. C. 993.
4. It is doubtful whether mere filing a certified copy is the user of forged document unless the accused knows the original to be a forgery. A certified copy of a forged document is not a forged document. 43 C. 783
5. The making of a copy of a forgery is not forgery, unless the maker of the copy was authorized to make the copy. 4 P. L. J. 16.
6. The accused was told to produce copies of revenue record in support of his complaint of trespass and he knowingly produced forged copies as genuine. Held, he was guilty. 1925 L. 333=26 Cr. L. J. 1171=6 L. 50.
7. Accused gave his pleader a copy of a document which had been falsified by an interpolation for using it in the trial of a suit. Held, he was guilty under S. 471. 26 C. 863, 52 C. 881, 3 R. 11.
8. The production of a certified copy of a document is a use of document and constitutes an offence under S. 471. 1932 S. 90=33 Cr. L. J. 452 (b).
9. Court is not concerned with motive. 27 P. R. 1914, 47 C. 190.
10. A plea that statement contained is supported by an authority or is true, cannot be taken or proved, and is immaterial. 49 A. 856, 13 L. 152=1932 L. 99.

8 **Decree.**

Accused, a Pleader's clerk, altered the date in the copy of the decree in order to hide his fault in not filing the execution petition in time and filed it with such a copy, he was guilty under Ss. 471—193, I. P. C. (1902) 1 Weir 551.

9. **Diary.**

False alteration of Police diary falls under S. 471. (1869) 11 W. R. 44 Cr.

10. **Document.** See Document.

A hammer for making sleepers is a document within S. 471. 1925 R. 122

11. Essentials of the use of—.

1. Neither the acquisition nor the deprivation of property is an essential ingredient of the offence under S. 471. 1927 L. 724=101 I. C. 493=28 Cr. L. J. 461.
2. The term fraudulently in S. 471 does not necessarily connote deceit and injury to the person deceived. 52 C. 881=27 Cr. L. J. 177=1925 C. 89.
3. If a party to a suit sets up two titles and supports one of them with a false document, he is guilty under S. 471 even if the other title is good. 96 I. C. 850=1925 M. 1072=27 Cr. L. J. 994.
4. A person giving a forged document to an investigating officer is guilty under S. 471. 60 I. C. 674=22 Cr. L. J. 274.
5. If a person actively participates in the process of presentation of a forged document for registration, he can be convicted under S. 471, although he may not have physically presented it for registration. 52 M. 432=1929 M. 450.
6. Whether there has been a user or not must depend on circumstances of each case. 52 C. 881=1926 C. 89=91 I. C. 993=27 Cr. L. J. 177.
7. That the accused did not rely on the document as a valuable security is no defence to a charge under S. 471. 1924 C. 960=82 I. C. 145.
8. The use of a document is fraudulent under S. 471, even though the document itself is unnecessary for the case of the party who uses it and though in fact he has a perfectly good title without it. 9 C. 53, 16 P. P. 1885 Cr., 43 C. 421.
9. If a person puts forward a document to support his claim, he is guilty although it may not be acted upon or used in evidence. 51 C. 469, 43 C. 421.
10. The use of document must be for one of the purposes mentioned in S. 463. 36 M. 387.
11. The filing of a forged document with a plaint is user. 3 P. L. J. 386.
12. A mere statement that a document is genuine does not amount to using it as genuine. 36 M. 392=1925 R. 198, 3 R. 36. See 52 C. 881.
13. The mere filing of a list of documents, without tendering them in evidence is no user. 35 C. 820.
14. Production of a document in obedience to the order of the Court is no user of it. 36 M. 387 *Contra* 52 C. 881.
15. Presentation of a forged document before the Sub-Registrar is sufficient evidence of user. 2 P. 459, 26 Cr. L. J. 1482. See 11 C. W. N. 838.
16. Putting in a document in the course of hearing is a user. 39 C. 463, 1929 P. 60=30 Cr. L. J. 236=113 I. C. 712.
17. Accused, who was plaintiff in a rent suit filed a *kabulyat* which was forged and which purported to be filed by the complainant who was defendant. Held, it was user within the meaning of S. 471. 19 C. W. N. 125.
18. Two persons were jointly tried and the Pleader of the first accused filed a forged document in the case under instructions from the second for the common benefit of both and they both took advantage. Held, that the second accused was also guilty of user. 1929 P. 60=30 Cr. L. J. 236=113 I. C. 712.
19. Whether a document is produced by accused or his agent with his express consent and whether it is produced by the accused on his own motion or pursuant to the order of the Court, he uses it within the meaning of S. 471. 52 C. 881.
20. Accused gave his Pleader a copy of a document which had been falsified by an interpolation, he was guilty. 26 C. 863, 52 C. 881=1926 C. 89.
21. For an offence under S. 471, it is not necessary that wrongful gain or loss should actually be caused. 130 I. C. 492=1931 A. 258=32 Cr. L. J. 559.
22. The nature of user is not material. 1932 C. 390=33 Cr. L. J. 685.
23. Certain co-sharers applied for entry in the revenue papers, so as to include additional names therein and signatures of other co-sharers were put in as though it was

Forged Document using as Genuine—(contd.)

authorized. Held, that accused were guilty under S. 471. 1931 A. 258=130 I. C. 402=32 Cr. L. J. 559=1930 A. L. J. 1451.

24. Receipts were filed in Court in rent suit and were placed before plaintiff for admission or denial. Held, they were used though plaintiff denied them. 1935 A. 521=1935 A. L. J. 493, 35 C. 820.
25. If the document is put in evidence by prosecution and the defence counsel cross-examined the witness upon this evidence, the cross-examination cannot be held to be user within the meaning of S. 471. 1935 C. 657.

12. Fraudulent or dishonest use of—

1. The term fraudulently in S. 471 does not necessarily connote deceit and injury to the person deceived. 52 C. 881=1926 C. 89=27 Cr. L. J. 177.
2. The use of the document must be fraudulent or dishonest. 27 Cr. L. J. 1263=1927 P. 87=98 I. C. 111=8 P. L. T. 104.
3. Fraudulently should not be confined to transactions of which deprivation of property forms a part. 26 C. 512.
4. A person cannot be convicted of fabricating false document if his intention is simply to clear up matters and is not fraudulent and no wrongful gain or loss is caused to any person thereby. 27 Cr. L. J. 1263=1927 P. 87=98 I. C. 111.
5. A man can use a document fraudulently even though it is used for supporting a good title. 51 C. 469=1924 C. 718=26 Cr. L. J. 24.
6. Using a forged document to obtain acquittal is dishonest and the accused is guilty under S. 471. 1929 P. 60=113 I. C. 712=30 Cr. L. J. 236.

13. Knowledge of—

1. The mere fact that a Pleader's suspicion ought to have been aroused by the sight of forged document is not *prima facie* evidence that he knew or had reason to believe the document to be forged. To justify his prosecution, it must be shown that he had knowledge that it was concocted. 22 B. 317.
2. Accused purchased one-ninth share of land amounting to 48 kanals 12 marlas. Eleven years after he produced it before Patwari but was altered to two-ninth share but the area of 48 kanals 12 marlas remained the same. Held, he was not guilty. 25 P. R. 1913 Cr.
3. Document filed by a legal representative will be presumed to have been filed with knowledge and authority of the principal. 1932 C. 545=34 Cr. L. J. 39.

14. Procedure.

1. Accused was convicted under S. 196, I P. C., but it appeared that an offence under S. 471 was committed a retrial was ordered. 96 I. C. 119=27 Cr. L. J. 871=30 C. W. N. 840=44 C. L. J. 113.
2. If owing to absence of jurisdiction accused cannot be charged under S. 467, he can be convicted under S. 471. 13 Cr. L. J. 862.
3. Convictions under Ss. 474 and 471 cannot stand together. 6 N. W. P. 39.
4. The using of forged document is punishable under S. 471 and not under S. 196. 5 C. 717, 44 C. L. J. 113=96 I. C. 119=27 Cr. L. J. 871.
5. A conviction both under S. 167 and Ss. 467/471 is not maintainable. 3 O. W. N. 760=1926 O. 615=99 I. C. 122.
6. Accused charged under S. 467, can be convicted under S. 471. 21 Cr. L. J. 410. See 27 Cr. L. J. 606—969, 26 Cr. L. J. 1557.
7. Accused was charged with using as genuine eleven forged receipts which were put in by him in sets on three occasions. Held, he was guilty and the trial was not illegal as there was only one using in respect of each set. 29 C. 413.
8. Using as genuine a forged document and abetment of forgery are different offences. A person innocent of one can be guilty of another. 1932 C. 545=55 C. L. J. 336=140 I. C. 544=34 Cr. L. J. 39.

Genuine—(concl'd.)

Order or by Pleader.

... has been served with a notice to produce document, if he fails to produce the document has been forged and puts forward as genuine involuntarily, but deliberately using it for a criminal purpose. 1925 C. 89=91 I. C. 993=27 Cr. L. J. 177.

... document in obedience to the order of Court is not guilty under 35 M. 392, 1935 A. 940.

... of the document in Court is not voluntarily, but is in pursuance of the accused and another person who was made custodian of the document to get over some technical objection, it is an offence under S. 471 I. C. 181=26 Cr. L. J. 1093.

... by a counsel it will be presumed to have been filed with the authority of principal, until the contrary is shown. 1932 C. 545. 35 Cr. L. J. 1093.

Receipt

... as true a receipt acknowledging the receipt of money by the complainant, but he was held guilty. 44 C. L. J. 113=96 I. C. 119.

... received a sum of money paid in as fine and misappropriated it and forged a receipt. Held, he was guilty under 31 I. C. 338=25 Cr. L. J. 1378.

... to obtain a contract work was asked to produce an order to the Official Receiver a forged receipt. He produced before the Official Receiver a forged receipt that he paid up the debt to the creditors, who wrote it off as bad. 43 A. 225=18 A. L. J. 1137=22 Cr. L. J. 56.

... he was guilty. 7 A. 459. See 5 C. W. N. 857.

... receipts for the payment of rent in lieu of genuine receipts. He was not guilty. 7 A. 459. See 5 C. W. N. 857.

... expert. Government expert who never came into the witness box and whose report was supported even by an affidavit is inadmissible and cannot form the basis for a conviction for forgery. 1923 A. 601=75 I. C. 148=24 Cr. L. J. 900.

... to obtain a recognition from a Settlement Officer that they were entitled to "Laskur," filed a forged Sanad purporting to grant that recognition. Held, not guilty as there was no wrongful gain or loss. 10 C. 584.

... used, who was presented by the accused in proceedings for the transfer of a property. Held, that his sanction was necessary to initiate proceedings. 1923 M. 87=71 I. C. 63=24 Cr. L. J. 15.

... persons were present in the house and they became users. 1929 F. 171 and P for abetting him. S was sentenced to 4 years for that the sentences were not severe. 1929 C. 203=116 Cr. L. J. 1093.

... documents requires severest punishment. (1865) 3 Cr. L. J. 135=82 I. C. 145=25 Cr. L. J. 217.

... the punishment provided in S. 467 read with S. 471. 1929 C. 203=116 Cr. L. J. 1093.

... an offence under S. 467 is no evidence to prove that the document is forged of which he is charged. 11 Cr. L. J. 1093.

... nature of user is to obtain co-sharers' names therein and sign the preparation of a false document but no part

Forgery—(contd.)

in the forgery of the name of the executant does not commit forgery but simply abets the offence. 25 C. 207.

2. To prepare in conjunction with others a copy of an intended false document and to buy a stamped paper for the purpose of writing such false document and to ask for information as to facts to be inserted in such a false document amounts to abetment. 3 M. 4, 24 P. R. 1882 Cr.
3. A Police Constable's character and service roll in his custody was tampered with in favourable remarks had been taken purporting to have been inserted in the absence of evidence that he himself prepared and inserted the false page. 21 A. 113, (1868) 10 W. R. 7 Cr.
4. A person consenting to act under a power of attorney and attaching his name in token of such consent, does not become a forger if it turns out to be forgery. (1868) 3 W. R. 70 Cr.
5. Accused who lived at Cambay, a Native State, conspired with his partner A, at Cambay to get a valuable security forged by a professional forger at a place in British Territory. The accused sent account books with A to the forger and had the book forged there accordingly. Held, that accused was guilty of abetment. 36 B. 524.
6. A person who did not make sign or execute a document but was instrumental in getting the false document dishonestly or fraudulently made should be convicted under Ss. 467/199 only. 1929 L. 210=113 I. C. 68, 17 C. W. N. 354=14 Cr. L. J. 129.
7. Abetment of forgery and using as genuine a forged document are different offences. A person innocent of one can be guilty of another. 1932 C. 545=55 C. L. J. 336=140 I. C. 544=34 Cr. L. J. 39.

2. Alteration in a document.

1. Every alteration, although unauthorized is not penal unless fraudulent, e.g., correcting a field number in a document. 5 A. 217.
2. Accused took up the plaint, presented to Court, without its permission and entered the number of field not mentioned before. Held, it is not a criminal though foolish act. 25 A. W. N. 93. See 13 Cr. L. J. 588.
3. Filing in Court fabricated in lieu of genuine receipts which were lost is not a dishonest or fraudulent act within the meaning of Ss. 24-25, 7 A. 459.
4. If an accountant falsified his accounts to conceal his previous misappropriation, he is guilty. 5 A. 221, 8 A. 653, 36 C. 955.
5. Alteration, in order to be penal, must be material, viz., which alters or attempts to alter the character of the instrument. 1 M. L. J. 388.
6. Alteration of date, or the account payable, or the time and place of payment or consideration or rate of interest, or a joint into joint and several liability or addition of contracting party or land mortgaged or sum borrowed or tampering with the signatures are material alterations. 25 A. 580.
7. Interpolation of the name of a subscribing witness, in a document which is not required by law to be attested is not material alteration. 38 C. 75, 17 C. W. N. 354, 14 C. W. N. 1076.
8. Merely antedating a document is not forgery unless dishonest or fraudulent. 5 P. 573=1926 P. 535=27 Cr. L. J. 1308, 1927 P. 87=27 Cr. L. J. 1253.
9. In case of alteration, immediate and more probable intention and not a remote intention should be attributed to the accused. 8 A. 653.
10. Alteration of document merely to secure something to which a person is entitled is no forgery. 28 I. C. 102=1915 M. W. N. 278. See 6 C. W. N. 382. *Contra* 16 P. R. 1885 Cr.
11. Unauthorized alteration of a document filed in Court is held to be fraudulent, being intended to be fraud on Court. 6 P. R. 1895 Cr.

Forgery—(contd.)

12. Forging certificate in order to get employment falls under S. 464. 2 P. R. 1895 Cr. 25 C. 512, 15 A. 210, 23 M. 90, 10 C. 534 and 19 C. 380 overruled.
13. Alteration of the date of bond, although it was not required to bring the case within limitation amounts to forgery. 14 P. R. 1881 Cr.
14. If the change of date is immaterial, there is no forgery. 52 I. C. 61=20 Cr. L. J. 573=17 A. L. J. 872.
15. Alterations or interpolations in an incomplete document do not constitute forgery. 41 M. 589. See 48 A. 140.
16. Where the date of a document was altered, so that it may be within time to be registered, it was not forgery but fabricating false evidence. 6 C. 482.
17. The creditors of a Police Constable applied to the Superintendent, Police, that Rs. 2 might be deducted monthly from the debtor's pay and until his debt was satisfied. An order was passed to that effect and the debtor produced a receipt of Rs. 18 the whole amount due, which was in fact one of Rs. 8 only. Held, that he was not guilty, as his intention was that his pay should not be deducted illegally. 7 A. 403.
18. The accused made a change in a document so that it may be taken in evidence, which otherwise it would not have been considered. Held, he was not guilty. 17 A. L. J. 872=52 I. C. 61=20 Cr. L. J. 573.
19. Accused obtained a prescription from a medical man of one tube of morphia and altered it to four tubes and got 4 tubes from a chemist. Held, he was guilty under S. 471. 63 I. C. 617=22 Cr. L. J. 681.
20. Attempting to alter a document to fit in with one's defence is relevant as conduct under S. 8, Ev. Act. 1934 L. 695=35 P. L. R. 138.
21. Change by accused of entries in books is not attempt if books have not left in accused's hand. 1923 P. 307=23 Cr. L. J. 108.

3. Antedating a document.

1. Merely antedating a document is not forgery unless it operates or could operate to prejudice any one. 5 P. 573=1926 P. 535=27 Cr. L. J. 1308, 98 I. C. 111.
2. Mere antedating a will is not forgery. 17 Cr. L. J. 540=36 I. C. 588.
3. Antedating a document to support plea of *alibi* is relevant as conduct under S. 8, Ev. Act. 13 M. 426.

4. Basis of conviction.

1. A conviction for forgery cannot safely be based entirely on comparison of hand writing. 65 I. C. 426=23 Cr. L. J. 74.
2. Conviction cannot be sustained merely on the evidence of expert. 1932 L. 490=138 I. C. 368=33 P. L. R. 697=33 Cr. L. J. 593.

5. Burden of proof.

Prosecution must prove not only that the document is a false one under S. 464 but that it was forged with one of the intents mentioned in S. 463, 19 Cr. L. J. 344=44 I. C. 456=1918 P. 36, 1932 B. 405=34 B. L. R. 598=138 I. C. 708=33 Cr. L. J. 666.

6. Charge.

1. A charge under S. 467 is bad if the intention is not set out. 17 C. W. N. 354=14 Cr. L. J. 129=18 I. C. 881.
2. Where the accused is charged under S. 465, his conviction under S. 468 is illegal as the latter is an aggravated form of forgery. 69 I. C. 628.
3. Accused withdrew money on two different dates by forged cheques. Two charges are necessary. 1933 P. 488=34 Cr. L. J. 892.

7. Complaint.

Where a forged document is produced in Court, not in connection with any other case, but in a prosecution founded upon it for the purpose of conviction, Sessions Judge can take cognizance of offence of forgery without complaint of the Committing

Forgery—(contd.)

Magistrate, 195 B. 545, 195 B. 433-45 B. 608, 44 C. 1002 and 1926 A. 30= 48 A. 60 Dist.

8. Copy.

1. A copy of false document is not a false document. 20 M. L. J. 534, 43 C. 783.
2. The making of a copy of forgery is not forgery, unless the maker of the copy was authorized to make copy. 4 P. L. J. 16.

9. Diary.

1. False alteration of Police diary falls under S. 471. (1869) 11 W. R. 44 Cr.
2. Altering diary to save oneself is not forgery. 1932 B. 545=56 B. 488.

10. Entries in books or Register.

1. Accused who supervised labourers employed in repairing a public road made entries of payment in muster roll in excess of actual payment, was not guilty. 1929 A. L. J. 592=129 A. 396=30 Cr. L. J. 408=1929 A. 396.
2. A beat constable wrote in his book the signature of a headman whose village he had not visited, he was not guilty. (1899) 1 C. B. R. 356
3. Accused was requested to make an entry in the complainant's account books to the effect that he was indebted to him in a certain sum found due on settlement of account. Instead of this he wrote that the sum had been repaid. Held, he was not guilty of forgery but under Ss. 420-511. 12 M. 114, 12 P. R. 1895 Cr.
4. An entry that complainant promised to pay Rs. 39 was made in accused's account books and was thumb marked by the complainant. Subsequently he added that if he did not pay the creditor would take one and a half time the principal including interest. Held, that forgery was not committed. 3 L. 373.
5. Accused made unauthorized entries in books showing certain donees of land as proprietors of their holding without any share of *shamilat*, whereas they were shown full proprietors previously. The deed of gift made no mention of *shamilat*. Held, he was not guilty. 25 P. R. 1914 Cr.
6. A school teacher altering dates in diary, with the intention of disguising facts that diary had not been kept on certain dates and thus escape penalty in form of loss of pay, is guilty under S. 465 1936 R. 380, 28 M. 90 Rel. on.

11. Essentials and Evidence.

1. A false certificate of not very great importance is not a forgery, as it is not made on affidavit. 1929 A. 396=115 I. C. 135=30 Cr. L. J. 408.
2. An entry of excess payment in a Muster Roll would not make it a forged document. 1929 A. 396=115 I. C. 135.
3. Making of false document for supporting even a true or genuine title is forgery. 1926 M. 1072=96 I. C. 850=27 Cr. L. J. 994.
4. An entry to the credit side by accused that if debt is not paid as agreed upon, he will take $1\frac{1}{2}$ time is not forgery. 3 L. 373=1923 L. 11=77 I. C. 225.
5. A person forging signatures of another, in a plaint, to enable him to file it in time to save limitation is not fraudulent. 1930 P. 271, 17 C. 509, 22 A. 55.
6. In making part of a document, the intention and falsity must be proved. 1929 A. 396=115 I. C. 135.
7. To prove forgery there must be possibility of some persons being injured by the forgery. 1930 P. 271=31 Cr. L. J. 1126=126 I. C. 862.
8. If account book kept in ordinary course of business is not regular, it is not a forged one. 1927 P. 47=98 I. C. 56=27 Cr. L. J. 1240.
9. For a conviction for forgery, it must be proved that a document is not executed on a date which it bears and that the parties who executed it do so with fraudulent intent. 6 R. 49=1928 R. 117=109 I. C. 679=29 Cr. L. J. 599.
10. In making out a cheque, the accused intended to pass off as a genuine cheque drawn by himself in his own favour, there is no forgery. 52 C. 347=1925 C. 14.

Forgery—(contd.)

2. A person who personates another before Registrar of Marriages and signs a document of divorce in the name of that other person is guilty under S. 466. 2 Cr. L. J. 8.
- 20. Of record.** S. 466, I. P. C. See Public servant—20—21.
1. A falsification of record made in order to conceal a previous act of negligence, not amounting to fraud, is not forgery. 4 B. 657.
 2. A clerk of Superintendent of Police forged an order, directing a Sub-Inspector to hand over a certain woman to A. Held, he was guilty. 23 A. 353, 13 N. L. R. 76.
 3. A person who at the request of another sent to trap him, fabricates a document purporting to be a notice under the seal and signature of a Deputy Collector, is guilty under S. 466. 14 C. 513, 81 I. C. 986.
 4. Accused removed a file from the Government office and replaced it after consulting with a Pleader. It was discovered that some papers had disappeared and others were altered. Held, he was guilty of theft and forgery. 1926 B. 122.
 5. Alteration of time of unloading of goods by the Station Master is not forgery if his view of unloading time was erroneous. 26 Cr. L. J. 1233=1925 C. 816.
- 21. Of valuable security.** S. 467, I. P. C.
1. An unregistered document, though not a valuable security until the registration is completed, is a valuable security under S. 467. 25 C. 207, 12 M. 148.
 2. Two documents with forged signatures, one of which was intended to be filled up as a promissory-note and the other as receipt, the date or place of execution and the rate of interest were not filled in, were held to be valuable securities. 38 A. 430.
 3. A sanad conferring a title or dignity is not a valuable security. 10 C. 584.
 4. A forgery may be committed of a pronote or Hundi on an unstamped paper even though a statute prohibits the stamp to be annexed afterwards. 55 P. W. R. 1919 Cr., 25 Cr. L. J. 1115=1925 N. 337=88 I. C. 283.
 5. Merely getting a school boy to write an endorsement on the back of unregistered conveyance deed is no offence. 6 C. W. N. 382.
- 22. Personation at an examination.**
1. A falsely represented himself to be B at a University examination, got a hall ticket in B's name and headed and signed answer papers to questions with B's name. Held, he was guilty of forgery and cheating by personation. 12 M. 151.
 2. A person who personates another before the Registrar of Marriages and signs a document of divorce in the name of that other person is guilty under S. 466. 2 Cr. L. J. 8.
- 23. Possession of counterfeit seal to commit—.** S. 473, I. P. C.
1. Accused was in possession of a counterfeit stamp for making an impression by letters or marks on trees in order to indicate that the trees had been passed for removal by the Ranger of a forest. Held, he was guilty under S. 473. 1925 B. 327.
 2. When accused in possession of counterfeit seals and forged documents gives no explanation as to how they came into his possession, it can be inferred that he is keeping them to use them fraudulently. (1865) 2 W. R. 5 Cr.
- 24. Possession of forged document.** S. 474, I. P. C.
1. Accused is not guilty under S. 474 when the offence is committed in relation to proceedings in Court. 7 L. L. J. 118=26 P. L. R. 95, 16 B. 165.
 2. It is not sufficient a proof that the accused might possibly have used an altered document. 1864 W. R. 12.
- 25. Procedure.**
1. A man commits two offences, when they are separate transactions and the commission of one does not necessarily include the commission of the other. 1924 N. 162=77 I. C. 825=25 Cr. L. J. 473.
 2. It is not open to Court to say that, although the offence may be specially one under S. 171 (f), I. P. C., it falls equally under S. 465 and that the accused could be

Forgery—(contd.)

tried equally under either of the two sections. 47 A. 268=1925 A. 230=84 I. C. 714=22 A. L. J. 1104=25 Cr. L. J. 362.

3. Accused cannot be convicted under S. 468 on a charge under S. 465. 69 I. C. 628.

26. Screening or saving oneself. See—34.**27. Sentence.**

1. The offences under Ss. 196 and 465 are indeed serious and difficult to detect and consequently call for deterrent punishment. 1924 B. 555=50 B. 783=97 I. C. 805=28 B. L. R. 1051=27 Cr. L. J. 1173.
2. A sentence of five years is not too severe for a forgery of will. 1936 O. 381.

28. Signature— See—29.

When a legal practitioner signs his name to a document he will be deemed to have read it and to carry in his recollection to the extent that an ordinary competent, careful and reasonable man will carry it and he will be bound by all the implications arising from it just as much as he had written every word of it with his own hand. 48 A. 542=1927 A. 45=98 I. C. 493=27 Cr. L. J. 1373.

29. Similar acts of—

1. Series of similar acts involving forgeries, is evidence of intention, but not of forgery itself. 43 C. 783=17 Cr. L. J. 130.
2. Evidence of the opinion of the other Judges on other documents written or attested by accused in proceedings to which he was not a party, is not admissible to prove his intention or knowledge in his trial for perjury in respect of alleged forged document. 38 I. C. 723=18 Cr. L. J. 339.
3. The accused in a case of forgery and conspiracy had previously given evidence in Civil Court, as to the genuineness of a document. Held, that though the statement could not be admitted as confession, it is relevant as regards intention. 1929 C. 539.
4. In a case of forgery, possession by accused of other documents suspected to be forged is no evidence of his having forged particular document in dispute. 11 Bom. H. C. 90 Explained in 8 B. 223, 43 C. 783.
5. Where the accused is tried for giving false evidence in respect of forged document; the opinion of Judges on other documents written by the accused, expressed in proceedings to which accused was not party, is inadmissible. 38 I. C. 723.
6. Other documents possessed must be proved to be forged. 8 B. 223.

30. Unauthorized signature

1. A petition praying that a fishery lease might be transferred from A to B and purporting to be signed by A and B was presented to the Deputy Commissioner by A. B was not present but his son was and admitted having signed his father's name. Held, he was not guilty of forgery. 4 L. B. R. 45.
2. A who was not the son, natural or adopted, of the deceased B, executed a mortgage-deed of properties of B in favour of C. In the body of the document A was described as the son of B though no such description appeared in the signature. A was known to C for a long time. Held, A was not guilty under S. 464 as he has no intention of causing it to be believed that document was executed by any other person than himself. 32 M. 90.
3. A signed B's name to a petition presented by C to a Mamlatdar requesting his summary assistance for the recovery of rent from B's tenant. Held, that A was not guilty even if he had no authority from B to sign his name. 11 B. H. C. R. 3.
4. Mere signing a telegram in another's name without his authority is no forgery, if there is no intention to cause injury. 26 I. C. 668=16 Cr. L. J. 76.
5. Co-sharers applied for inclusion of their names in the revenue record and signed the petition for other co-sharers. Held, they were guilty under S. 471. 130 I. C. 492=1931 A. 258=1930 A. L. J. 1451.
6. If A signs for B and B is present at the time, A must be held to be authorized to do so. 1935 A. 410=154 I. C. 517.
7. A signed the application for agricultural loans of tenants but not signed by them.

Forgery—(concl'd.)

They took and returned the loan. Held A was not guilty. 1933 R. 114=34 Cr. L. J. 922.

31. Using as genuine a forged document. See Forged document.

32. Vakalat-nama.

Signing a vakalat-nama in the name of co-decree-holders without their authority to do so, and delivering it to a Vakil with instruction to file a petition, stating that debt had been satisfied is held to be forgery. (1866) 6 W. R. 78 Cr.

33. Voting paper.

Where a person obtains a voting paper by putting a thumb impression in the name of another and passes it on in that name, he commits forgery. 47 A. 268.

34. When made to screen or save oneself.

1. Where accused altered certain documents in order to remove the evidence of his criminal mis-appropriation, he is not guilty under Ss. 465—471 and 477-A. for his purpose is not to defraud. 36 C. 955.
2. If an accused manipulates entries in certain registers with the object of screening himself from the punishment of a past offence, he is guilty if he stands to gain by his act. 1925 S. 233=92 I. C. 433=27 Cr. L. J. 257=18 S. L. R. 199.
3. Where accused, to screen his own negligence, altered an office report, held, he is not guilty. 2 N. W. P. H. C. R. 11.
4. The subsequent falsification of *Roznamcha bali* kept in the office of Inspector of Schools by Muharrir incharge thereof, for the purpose of concealing frauds, previously committed, merely to avoid disgrace, is not forgery. 6 N. W. P. H. C. R. 56.
5. A forgery was committed by Sub-Inspector of Police by altering the diary in order to conceal certain irregularities in his investigation. Held, he was not guilty. 56 B. 488=1932 B. 545=142 I. C. 386. Cr. App. No. 525 of 1930 (Bombay) decided on 7th January 1931.
6. There was an alteration in account in order to conceal a breach of departmental rule, which prevented the village accountant from keeping more than Rs. 50 in his own charge for more than five days. He credited two or three small sums later than the date on which they had been received. Held, he was not guilty. Cr. App. No. 525 of 1930 (Bombay) decided on 7th January 1931.
7. A process server forged names on the notices with a view to save himself from the consequence of his neglect of duty or to save himself from trouble, he is not guilty. 1935 R. 203=156 I. C. 888.

FORMER JUDGMENT.

Admissibility of—in a case under S. 401, I. P. C. See Gang of thieves—3.

FOULING WATER. S. 277, I. P. C. See Public Nuisance—18.

FRACTURE OF BONE S. See Wound—10.

FRACTURE OF SKULL. See Wound—11.

FRAUDULENTLY OBTAINING DECREE. S. 210, Penal Code. See False claim in Court, S. 209, I. P. C.

1. Complaint

1. The fact that the fraudulent act did not prejudice the representative of judgment-debtor, is no ground for withholding complaint which should be made, if it would be in the interest of justice. 4 P. W. R. 1917 Cr., 59 P. L. R. 1911=10 I. C. 646.
2. No prosecution is called for if the overstatement of a claim was due to a mistake or negligence but not necessarily imputable to fraud. 11 P. W. R. 1914=23 I. C. 471.
3. The applicant brought a suit against the East Indian Railway for damages for detention of his goods and obtained a decree. It was found that the value of goods when purchased was overstated in the suit with a view to the claim for damages and his deposition was apparently false. Held, that a sanction to prosecute under S. 193 was rightly granted. 1924 N. 35=75 I. C. 703=25 Cr. L. J. 15.

*Fraudulently obtaining Decree—(concl'd.)***2. Essential.**

1. The gravamen of the offence consists of fraud. Secondly the decree or order of execution must be either for a sum not due or for a sum larger than what was due. 33 C. 193.
2. If there is an omission to enter part satisfaction in an application for execution of a decree, fraud must be proved in order to establish the offence under S. 210, 1929 L. 676=116 I. C. 711=30 Cr. L. J. 666=11 L. L. J. 103=30 P. L. R. 392.
3. The fact that the decree was not set aside, might be admissible as evidence to prove that there was no fraud, though it is no bar to prosecution for offence under S. 210, Penal Code. 33 C. 193.
4. There is of course no fraud, where there was a mistake. 7 A. L. J. 93=5 I. C. 695.
5. If there is misapprehension of the order of the Court, the element of fraud is not proved. 64 P. L. R. 1914.
6. It is immaterial whether Court had or had not the power to pass decree. 20 Cr. L. J. 698.

3. Execution of decree fraudulently.

1. The offence of causing a decree wholly or in part satisfied, to be executed is not completed as soon as an application for execution is presented or when the judgment-debtor is summoned to show cause why it should not be executed. It is only complete if the judgment-debtor appears and either makes no objection or if he makes an objection, it is overruled and the Court has thereupon proceeded to execution. 13 P. R. 1902 Cr.
2. If upon hearing the objections of judgment-debtor, the Court refuses to execute the decree, the decree-holder does not cause a decree to be executed and there is no scope for the operation of S. 210, I. P. C. 23 C. 971 (975) *Contra* 53 A. 416.
3. The rule that uncertified payments shall not be recognized by any Court executing the decree, has no application to a Court other than the executing Court. 19 B. 288, 29 P. L. R. 1911. See 16 C. 126, 4 M. 325, 9 M. 101.
4. Where a fraudulent application is made to execute a decree for a sum not due and there is an order of attachment which is set aside on objection being made, the case falls under S. 210, I. P. C. 53 A. 416=1931 A. 305=32 Cr. L. J. 367. 23 C. 971 Dist.
5. Accused cannot be heard to say that as decree was satisfied out of Court, a Criminal Court could not take cognizance of the offence under S. 210, I. P. C. 7 P. R. 1885 Cr.
6. If the decree-holder conceals from the Court the fact of payment by him in satisfaction of decree and seeks execution of decree, offence falls under S. 210 and not under S. 406. 1936 S. 123.

4. False claim in Court. S. 209, I. P. C. See False claim in Court.**5. Jurisdiction.**

1. Plaintiff got a decree in Court A for part of his claim and then presented a fresh plaint for items disallowed in Court B and got an *ex parte* decree, action can be taken in Court B under S. 210, I. P. C. 6 L. 445=1925 L. 524, 1 P. L. J. 298.
2. The question of jurisdiction of the Court adjudicating the claim as false is immaterial. 52 I. C. 666.

FRAUDULENT CONCEALMENT OR CLAIM OF PROPERTY. Ss. 206-207, I. P. C.

1. Civil suit mentioned in Ss. 206-207 is suit actually pending. 1930 R. 128.
2. Removal of property which is not liable in execution of decree is not fraudulent. 18 Cr. L. J. 784=19 Bom. L. R. 535.
3. Suit includes rent suit tried by a Collector. 2 B. L. R. 4.
4. A Collector distrained two tents to recover arrears of land revenue and entrusted them to accused who concealed them. Held, not guilty. 1888 A. W. N. 237.

Fraudulent Concealment or Claim of Property—(concl'd.)

5. Fraud cannot be presumed. 3 Cr. L. J. 92.
6. Where a debt has been attached, the transfer of decree on the basis of attached debt is no offence. 3 Cr. L. J. 92.
7. If the transaction is for valuable consideration, it is valid though the object is to defeat the creditor. 24 C. 825, 3 M. H. C. R. 231. See 8 A. 178, 23 M. 184, 4 B. 70, 22 C. 185, 22 B. 255.
8. Gift of whole of property to wife to defeat creditors is invalid. 13 B. 297.

FRAUDULENT TRANSFER. Ss. 421—423, I. P. C.**1. Execution of fraudulent deed of Transfer. S. 423, I. P. C.**

1. Document was executed with false recital as to consideration with fraudulent intent without the consent of the person in whose favour it is executed, the executant is punishable under S. 423. 1933 P. 495=34 Cr. L. J. 846. 48 C. 911 Ref.
2. A *kabuliat* is not a document under S. 423. 46 C. 986.
3. Accused, with a view to create evidence of marriage, got up a registered document containing false recital that he had married and that he purported to transfer certain land to her in lieu of dower. Held, guilty under S. 423. 48 C. 911.

2 Fraudulent Transfer. S. 421, I. P. C.

1. Moveable property of insolvent vests in the receiver and is available for distribution among creditors. The fraudulent disposition of the same so as to prevent distribution among creditors is an offence under S. 421, I. P. C. 1936 B. 167=37 Cr. L. J. 577. 1926 C. 898=96 I. C. 459 and 1932 C. 310 Rel. on.
2. The right to cut trees to convert to charcoal is moveable "property". 1936 B. 167=37 Cr. L. J. 577. 13 Bom. L. R. 874 Rel. on.
3. The word "property" in S. 421 includes chose in action. 1936 B. 167.
4. The Presidency Town Insolvency Act does not bar a Magistrate to try an insolvent under S. 421. 1929 R. 14=30 Cr. L. J. 345.

3. Similar Act of—

Evidence of similar fraudulent transfers affected on the same day is admissible to prove fraudulent intent. 16 B. 414.

FREE FIGHT. See Riot—11. Right of private defence—11.

FRESH COMPLAINT. See Complaint—8.

FRESH TRIAL. See Absence of complainant, S. 403, Cr. P. C.

FRIENDSHIP. See Transfer (Grounds)—39.

No inference of complicity of crime can be drawn from the fact of friendship between the accused, who are co-villagers. 1922 P. 88.

FRIVOLOUS COMPLAINT. See Compensation.

FRONTIER CRIMES REGULATIONS. (III of 1901.)

S. 1.

1. Frontier Crimes Regulations apply to Mianwali District. 8 P. R. 1913 Cr.
2. Regulations apply to Leiah Tahsil. 25 P. R. 1915 Cr.

S. 15.

Where after the trial of Sessions case was completed and just before hearing of arguments, the Public Prosecutor acting under the telegraphic instructions from Deputy Commissioner, withdrew from the prosecution, in order that the case might be referred to Council of Elders (Jirga). Held, that the Sessions Judge was bound to stay proceedings, and the acquittal was set aside. 15 P. R. 1903 Cr.

S. 59.

1. Joint trial under Arms Act and the Regulation is valid. 1933 Pesh. 90.
2. In case of conviction of a woman, of an offence punishable under S. 30 of the Regulations for an act not punishable under the Penal Code, by a Magistrate of first

Frontier Crimes Regulations—(concl'd.)

class, under S. 59 of the Regulations, but after a trial without the assistance of the Council of Elders, the appeal lies to the Sessions Judge. 19 P. R. 1910 Cr.

FUGITIVE OFFENDER'S ACT. (1881, 44 and 45 Vict. Chapter 69).**Ss. 13, 14, 19.**

1. Appellate Court can order additional evidence. 57 M. 259, 51 M. 603 Dist.
2. If a Magistrate did not endorse a warrant after satisfying himself that it was properly issued under S. 13, the arrest and the subsequent proceedings are not legal and therefore the amount by the sureties must be returned to them. 11 Cr. L. J. 622.
3. Every order under S. 14 for return of a prisoner is appealable. 57 M. 259.

S. 33.

The word "return" in S. 23 is not to be read as implying that the offender is a fugitive from the country to which he is being sent for trial. 1928 S. 161=29 Cr. L. 7. 1089.

FULUS IN UNO, FALSUS IN OMNIBUS. (False in particular false in all). *See Evidence—11.*

1. It is a dangerous maxim, especially in India, for if a whole body of testimony were to be rejected because the witness was evidently speaking untruth in *one* or more particulars, it is to be feared that witnesses might be dispensed with. There is always a fringe or embroidery to a story, however true in the main when main part of the deposition is true, it should not be arbitrarily rejected because of a want of veracity on perhaps some very minor point. *Field's Law of Evidence in Br. India, 8th Ed., Pp. xl, xli.*
2. But the case will be different if one of the *essential* circumstances in the story be clearly unfounded. This to use a felicitous expression of Mr. Hallams "*is to pull a stone out of an arch* the whole fabric must fall to the ground" *Ibid.* *See also Constitutional History of England, Vol. II, P. 637.*

FUNERAL CEREMONY. *See Trespass on burial places.*

Mere utterance of the words "do not cremate the body" unaccompanied by any attempt to prevent the cremation is not "disturbance" within the meaning of S. 297, I. P. C. 2 P. R. 1919 Cr.=49 I. C. 337=20 Cr. L. J. 145=44 P. L. R. 1919.

FURTHER CROSS-EXAMINATION. *See Cross-Examination—16.***FURTHER INQUIRY.** S. 426, Cr. P. C. *See Complaint—14.***1. Against order of acquittal.**

1. In the absence of allegations of improper conduct against the trial Court, further inquiry should not be ordered, when accused is acquitted. 72 I. C. 950=1921 P. 465.
2. If accused is acquitted under S. 465, a committal under S. 437, Cr. P. C., and under S. 467 is improper. 18 Cr. L. J. 834=22 C. W. N. 117=41 I. C. 658.
3. An order of acquittal is not open to revision when the offence is not serious and no injustice is caused. 1925 O. 321=27 Cr. L. J. 854=95 I. C. 934=2 O. W. N. 50.

2. Calling for record. *See Record—1.***3. Delay in—**

Mere lapse of time is not sufficient to refuse further inquiry. 23 Cr. L. J. 745.

4. Framing of charge by revision Court.

Sessions Judge can only direct further inquiry and not frame a charge. 1932 L. 362.

4-A. Framing charge of minor offence.

If the Magistrate frames charge of minor offence, it amounts to discharge of major offence. Sessions Judge can direct further inquiry with regard to major offence. 1936 N. 87=152 I. C. 925, 24 M. 136, 1928 P. C. 254=50 A. 722 and 42 A. 128 Rel. on 20 C. 633 and 23 M. 225 Not foll.

Further Inquiry—(contd.)

5. Grounds for and against.

1. Further inquiry should not be ordered, when different views can be taken of evidence. 24 Cr. L. J. 342=1927 A. 734=100 I. C. 822.
2. Disbelieving a witness is no reason for directing further inquiry. 27 Cr. L. J. 565=94 I. C. 133.
3. Further inquiry will be ordered when Magistrate has discharged the accused without considering the necessary evidence. 13 B. 376.
4. Any mistake of law or irregularity in the proceedings is a sufficient ground. 14 C. P. L. R. 161, 16 C. W. N. 1078=13 Cr. L. J. 764.
5. Further inquiry can be ordered upon the material which is already on the record, though there is no further evidence forthcoming. 10 B. 131, 14 M. 334, 25 Cr. L. J. 736=1925 A. 238, 14 P. R. 1871 Cr., 15 C. 608, 2 P. R. 1901 Cr.=32 P. L. R. 1901. *Contra* 8 M. 336, 63 P. R. 1837 Cr., 31 P. L. R. 1900, 25 Cr. L. J. 191=1924 C. 229=76 I. C. 431.
6. The fact that the revisional Court takes different view of the evidence, is no ground. 85 I. C. 726=1925 A. 477=25 Cr. L. J. 582, 44 A. 691, 100 I. C. 822.
7. If the order of discharge is not perverse and there is no suggestion of further evidence forthcoming, further inquiry should not be directed. 49 A. 879=26 A. L. J. 703=28 Cr. L. J. 601=1927 A. 804=102 I. C. 777.
8. Misappreciation of evidence is no ground for further inquiry. 31 Cr. L. J. 417=1930 N. 102=122 I. C. 434, 31 M. 133. *But see* 4 L. L. J. 411 and 10 S. L. R. 68.
9. Further inquiry should not be ordered unless there is palpable error in the order of Lower Court. 1929 C. 755=31 Cr. L. J. 475=123 I. C. 246. *Contra* 1935 B. 137=59 B. 125 (57 B. 430 overruled).
10. If the accused had been subjected to Magisterial inquiry three times, he should not be harassed fourth time. Rattan Lal 328.
11. Further inquiry cannot be ordered on the bare chance of an offence coming to light 1923 M. 59=23 Cr. L. J. 592=43 M. L. J. 564=68 I. C. 624.
12. When a complaint under S. 107, Cr. P. C., is dismissed *in limine*, further inquiry cannot be directed. 1931 L. 185=127 I. C. 716=31 P. L. R. 350.
13. When the matter is of a Civil nature, further inquiry should not be ordered at all. 1 Bom. L. R. 852.
14. Further inquiry should not be ordered, when there is no prospect of public advantage by reopening the case. 1923 M. 134=23 Cr. L. J. 600.
15. Further inquiry should not be directed unless the order of discharge is manifestly perverse or foolish or is based upon a record of evidence which is manifestly incomplete. 24 Cr. L. J. 369, 24 Cr. L. J. 622, 10 P. R. 1911 Cr., 90 I. C. 385, 1928 L. 97, 1926 L. 50=26 Cr. L. J. 1393, 1926 M. 130, 1934 A. 944.
16. Further inquiry should not be ordered unless there is possibly only one conclusion that accused is guilty. 3 L. L. J. 97, 10 L. W. 630.
17. Further inquiry should be directed in exceptional cases and for cogent reasons. 27 P. L. R. 397=94 I. C. 133, 1927 L. 775.
18. When accused is discharged, generally speaking, further inquiry should not be ordered. 1923 L. 329=24 Cr. L. J. 369=72 I. C. 369.
19. When a Magistrate thinks that a *prima facie* case has been made out, he can order further inquiry. 1934 A. 944.
20. A District Magistrate can interfere even if there had been full inquiry. 1935 A. 439=154 I. C. 513.
21. The power to interfere under S. 436 is not limited to a point of law. 1935 A. 439=154 I. C. 513.
22. Where the case was closed by a Magistrate as desired by the Deputy Commissioner, further inquiry was ordered. 1935 R. 137.
23. Further inquiry should be ordered in exceptional cases and for good reasons shown.

Further Inquiry—(contd.)

The order should be perverse or foolish. 1933 L. 561=34 Cr. L. J. 735.

24. Further inquiry should not be ordered in the interest of justice. 1933 L. 561.
25. Burden lies on prosecution to show why further inquiry should be ordered. 1933 L. 561=34 Cr. L. J. 735.
26. Dismissal of complaint on perusal of Police papers and without giving opportunity of arguing the case is not proper. 1933 S. 395. 12 B. 161 Ref.

6. Interference by High Court.

1. If the order of discharge is set aside on insufficient grounds, High Court can revise it. 15 C. 608.
2. If the Sessions Judge did not state reasons for ordering further inquiry, the order is liable to be set aside in revision. 8 C. W. N. 456, 1934 A. 51=56 A. 285.

7. Misappreciation of evidence.

Sessions Judge can set aside an order of discharge on the ground that he disagrees with the appreciation of evidence by the Magistrate. 1935 B. 137 (F. B.)=59 B. 125=155 I. C. 101, 53 B. 125 overruled. (*Case law discussed.*)

8. Notice. S. 436 (Proviso.)

1. An order directing further inquiry without notice to the accused is illegal. 1923 A. 122=23 Cr. L. J. 70, 1921 A. 55, 1923 L. 689, 1923 A. 484, 24 Cr. L. J. 184, 1923 L. 689, 1923 L. 689=25 Cr. L. J. 523, 1933 L. 1018 (2).
2. Upon dismissal of a complaint under S. 203, notice is not necessary to the accused. 1927 B. 436=23 Cr. L. J. 515, 23 Cr. L. J. 650, 49 M. 918=1927 M. 19=28 Cr. L. J. 129, 1923 C. 508, 47 A. 722
3. Notice to show cause against further inquiry after discharge is always proper course to adopt. 1923 L. 158=73 I. C. 510, 2 P. R. 1901 Cr., 1 L. 215.
4. Notice as a general rule must be issued, though failure to give is not illegal. 23 Cr. L. J. 693=1922 L. 59.
5. When a further inquiry is ordered against an order under S. 203, Cr. P. C., notice is necessary, as the accused is not discharged. 1935 Pesh. 141=158 I. C. 31.
6. If the complaint is dismissed after summoning the accused, the order of discharge cannot be set aside without notice to accused. 1934 A. 51=56 A. 285.

9. Powers of Magistrate making inquiry.

1. The Magistrate who is directed to make further inquiry cannot question the propriety of the order. 10 B. 131.
2. Magistrate can take further evidence, which he omitted in the first inquiry. 13 B. 376.
3. Magistrate must take evidence *de novo*. 6 A. 367, 9 A. L. J. 310=13 Cr. L. J. 255.
4. Magistrate can try the accused for any other offence that may be established by further evidence adduced. 7 M. 454.
5. Magistrate cannot act under S. 203, but must proceed under S. 204 and try the case, when further inquiry is directed. 11 C. W. N. 316, 10 P. W. R. 1918 Cr., 5 Cr. L. J. 112.
6. After further inquiry complainant is entitled to produce whole of his evidence and Magistrate is bound to record it. 10 P. W. R. 1918 Cr.
7. Magistrate conducting further inquiry can charge and try accused. 1934 M. 209=35 Cr. L. J. 691, 32 M. 220.
8. The Magistrate can act upon the evidence already recorded by the first Magistrate, as S. 350 does not apply. 1936 S. 146.

10. Recording reasons.

1. An order setting aside discharge without solid and sufficient reasons is bad in law. 15 C. 608, 1913 M. W. N. 638, 13 C. W. 76, 32 C. 1090.
2. If the order of Sessions Judge for further inquiry does not specify reasons it is liable to be set aside. 8 C. W. N. 456, 3 S. L. R. 7.

Further Inquiry—(contd.)

11. Scope of S. 436, Cr. P. C.

1. No further inquiry can be directed when no complaint was made against a person and no regular process was issued against him. 39 C. 238.
2. An application under S. 107 is not complaint and therefore S. 436 is inapplicable to persons discharged. 46 A. 235, 1931 A. 53=130 I. C. 630=1930 A. L. J. 1475=32 Cr. L. J. 556.
3. Proceedings under S. 133, Cr. P. C., are not covered by S. 436, Cr. P. C. 88 I. C. 995, 23 C. 395, 25 C. 425.
4. A District Magistrate cannot direct a retrial by himself. 22 Cr. L. J. 49.
5. Order under S. 119, Cr. P. C., cannot be revised by District Magistrate. 51 A. 408.
6. S. 436 does not apply to proceedings under S. 145. 117 I. C. 59, 20 C. 729.
7. No further inquiry can be ordered when accused is acquitted. 20 C. 633, 8 M. 296, 5 C. W. N. 72, 7 C. W. N. 493, 38 M. 585.
8. When proceedings have been stopped under S. 249, Cr. P. C., and accused released, there can be no further inquiry. 9 P. R. 1913 Cr.
9. Further inquiry with regard to proceedings under S. 144 is incompetent. 27 C. 658.
10. Further inquiry in a case under S. 488, Cr. P. C., cannot be ordered. 5 C. 536, 17 C. P. L. R. 127.
11. Accused not present before Magistrate who dismissed complaint against him, has no right to appear when he orders further inquiry. 1929 P. 230=30 Cr. L. J. 1069.
12. District Magistrate cannot order further inquiry of an offence under S. 304-A, as it is triable by Court of Sessions as well as by a Magistrate, 1st Class. 1934 O. 327.

12. Who can apply for—

Third party can apply to set aside discharge. 56 C. 1023=1929 C. 319.

13. Who can be directed to make—

1. Further inquiry should ordinarily be made by the same Magistrate. 8 M. 296, 8 M. 336. See 36-A. 53-129.
2. When the first Magistrate dealt with the case in a most unsatisfactory way, further inquiry should be held by another Magistrate. 32 M. 220.
3. The District Magistrate may be directed to make further inquiry even though he exercises powers under S. 30. 15 P. R. 1904 Cr.
4. The District Magistrate may direct a Subordinate Magistrate to make further inquiry. 8 M. 18, 7 A. 853.
5. Sessions Judge cannot select a particular Magistrate. 10 C. 207
6. When a case is sent to Sub-Divisional Magistrate, for further inquiry, he can transfer it to a 2nd Class Magistrate. 2 Weir 563.

14. Who can direct—

1. District Magistrate, Sessions Judge and High Court have co-ordinate powers to order further inquiry. 15 C. 608, 32 M. 220.
2. As a matter of procedure the application should first be made to the lower tribunal. 28 A. 268
3. If a complaint is dismissed by District Magistrate under S. 203, High Court will not interfere unless the application has been made to the Sessions Judge. 28 A. 268, 1904 A. W. N. 232.
4. If Sessions Judge orders further inquiry District Magistrate cannot make a contrary order and *vice versa*, since both have got concurrent jurisdiction. 12 A 434, 17 C. W. N. 451.
5. When further inquiry is refused by one of the officers, the other should not order it. 22 C. 573.
6. A Deputy Magistrate placed in charge of current duties of the District Magistrate cannot act under S. 436. 11 C. 236.

Further Inquiry—(concl.)

7. High Court cannot order further inquiry under S. 436 in a case of discharge by Presidency Magistrate but can do so under S. 15, Charter Act. 33 C. 1282 or under S. 439, Cr. P. C. 36 C. 974.

G.

GAIT—IDENTIFICATION BY— See Identification—11.

GAMBLING. See Public Gambling Act, Diwali Gambling.

Gambling is not ordinarily punishable as offence, unless carried on in a common Gaming House, or in a public street or place. 3 N. W. P. H. C. R. 1 and 134.

GANG OF DACOITS—S. 400, Penal Code.

1. Belonging to—

1. The word "belong" implies something more than a casual association. It involves the idea of continuity rather than permanency and also of long connection to warrant the inference, that the accused had identified himself with the gang. 1928 C. 309=110 I. C. 449=29 Cr. L. J. 705=47 C. L. J. 471, 63 I. C. 455=1921 A. 32 7 I. C. 1012, 19 A. L. J. 725.
2. Merely belonging to a dacoit gang or associating with them is not within the section which punishes only an association for *habitually* committing dacoity. Relations, dependants and servants of the dacoits are thus excluded. 1 C. W. N. 146, 9 P. R. 1880 Cr., 18 P. L. R. 1910, 1886 A. W. N. 65, 255 P. L. R. 1912.
3. The term "belong" indicates a more or less intimate connection with a body of men with the common purpose of habitually committing dacoity. 1930 O. 455.
4. Mere membership of a robber tribe is not sufficient. 37 P. R. 1869 Cr.

2. Essentials and Evidence.

1. The mere fact that the women lived as wives or mistresses with dacoits is not sufficient to convict them, unless they are associated with them for the purpose of habitually committing dacoities. 9 A. L. J. 565=10 I. C. 23.
2. The section excludes persons who merely assist or shelter dacoits. 1 B. L. R. 156.
3. Persons associating with the dacoits for friendship sake or joining them in drinks or meeting them at fairs, weddings or other social functions are not guilty. 110 P. L. R. 1916=35 I. C. 1003.
4. Evidence showing the actual participation by accused in any given dacoity is evidence both of his association with the gang and his object in such association. 128 I. C. 739=1930 Cr. C. 1079=1930 O. 455, 11 Cr. L. J. 551=7 I. C. 1006
5. Evidence of commission of an offence or that the accused were bound down under S. 110, Cr. P. C., is admissible. 52 C. 595=1925 C. 872=26 Cr. L. J. 1037, 38 C. 408, 36 P. W. R. 1912, 47 C. 154 and 27 C. 139 Dist.
6. Evidence of previous dacoities committed by the gang is admissible 1 C. W. N. 146 (149), 14 C. 710, 38 C. 408, 27 C. 139.
7. For convicting a person belonging to a gang, the Court need not look for the complicity of each accused in every one of the dacoities proved to have been committed. If one or more of the accused had taken part in the dacoities, the presumption is strong that a gang had committed all these dacoities. 89 I. C. 836=1925 O. 374=26 Cr. L. J. 1412=27 O. C. 385.
8. Evidence that members of the gang committed several burglaries is relevant to the charge. 1925 O. 144=26 Cr. L. J. 123, 38 C. 408 *Cont.* 32 M. 179.
9. Evidence of bad character or having been bound is admissible not as evidence of character but to prove habit and association. 1930 O. 455, 52 C. 595=1925 C. 872=87 I. C. 925=26 Cr. L. J. 1037.
10. It is not necessary that the gang should be of habitual dacoits but there should be a gang which is associated for habitual dacoity. 1888 B. U. C. 418.
11. Accused cannot be convicted merely because he belongs to tribe or caste of professional dacoits or he belongs to a criminal tribe or committed other offences than dacoity. 32 M. 179, 16 C. W. N. 69=13 I. C. 279.

Further Inquiry—(contd.)

12. That the accused was suspected of being implicated in a dacoity or was believed to be a dacoit, is inadmissible in evidence. 27 C. 139, 37 P. R. 1869 Cr.
 13. A number of dacoities committed on the same day would not condemn an offender into a habitual dacoit, just as receiving stolen goods of the proceeds of different robberies from a dozen thieves does not make the receiver a habitual one. 19 C. 190.
 14. Previous conviction and orders are merely corroborative evidence and are not basis of conviction. 32 M. 179.
 15. Only those persons can be convicted under S. 400 who have either taken part in the crime or been employed for the purpose of scouting or in other way facilitating the commission of crime. 1 O. W. N. 660.
 16. Association for the habitual pursuit of dacoity is the gist of the offence under S. 400. 16 C. W. N. 69.
 17. A conviction can be had even if no dacoity is proved. 1923 C. 309=29 Cr. L. J. 705.
 18. Evidence under S. 400 that accused habitually commits theft is inadmissible. 45 B. 958=1923 B. 71=25 B. L. R. 214=24 Cr. L. J. 867=75 I. C. 67.
 19. Evidence of previous conviction is admissible under S. 400 to prove habit and association. 1930 O. 455=128 I. C. 739=7 O. W. N. 862.
3. **Jurisdiction.** S. 181, Cr. P. C.
- A resident of Native State was arrested in that State and was charged in British India for belonging to a gang of dacoits who had committed dacoities within the jurisdiction of that Court. It was held that Magistrate had jurisdiction over him. 1 P. R. 1911 Cr.

4. **Procedure.**

1. Where a sentence is already passed for the offence of committing dacoity, there is no bar to the passing of a sentence under S. 400. 1925 O. 374=26 Cr. L. J. 1412.
2. A conviction under S. 400 cannot be considered bad in law merely because the evidence on the record would also have justified a conviction of a specific offence under S. 395. 1930 O. 455=1930 Cr. C. 1079.
3. S. 400 is highly penal one and the offence is one of a very special character and entirely the creature of statute and it must therefore be strictly construed. 23 W. R. 18, 16 C. W. N. 69.

5. **Sentence.**

In the case of a gang consisting of desperate men prepared to proceed to all lengths in carrying out their crimes, the heaviest possible sentences should be passed. 68 P. L. R. 1911.

GANG OF THIEVES (BELONGING TO—). S. 401, Penal Code.1. **Belonging to—** See Gang of dacoit—1.

1. The word "belong" used in S. 401 is a very comprehensive term. A person who receives stolen property from a gang of thieves is not within the section. 1927 L. 524=99 I. C. 851=28 P. L. R. 19=28 Cr. L. J. 179.
2. For other cases see Gang of dacoit—belonging to.

2 **Essentials and Evidence.**

1. Evidence of previous conviction of theft is admissible to prove habit. 14 Bom. L. R. 373=15 I. C. 811, 191 P. L. R. 1915.
2. Evidence that accused was bound down under S. 110, Cr. P. C., on the ground that he was by habit a robber, thief or house breaker is relevant for proving this offence. 38 C. 408, 27 C. 139, 3 P. R. 1915, 13 P. R. 1914, 36 P. W. R. 1912, 1930 S. 211.
3. Evidence of any number of offences extending over any period is relevant. S. 234, Cr. P. C., does not apply to such cases. 55 I. C. 994, 21 Cr. L. J. 386=47 C. 154=31 C. L. J. 192.
4. If a large number of thefts are committed in a locality during the presence of a gang there is evidence of habitual association. 1923 L. 327=24 Cr. L. J. 703.

Gang of Thieves (belonging to)—(contd.)

5. S. 401 should not be resorted to when the accused might have been responsible for distinct and individual offences. The Police should not be encouraged to sweep into a wide net large number of persons whom they suspect or who give them trouble. 1886 A. W. N. 16, 37 P. R. 1869, 9 P. R. 1880, 36 P. W. R. 1912, 3 P. R. 1915 Cr., 110 P. L. R. 1916.
6. It is not necessary that every person guilty of this offence should have actually taken part in any theft, since it is association only that is punishable. 1929 O. 321=118 I. C. 423, 13 P. R. 1914 Cr.
7. Mere joining a gang of thieves is insufficient. To make a person liable there must be proof of the community of purpose and intention. 110 P. L. R. 1916.
8. Where the gang is a fluctuating body and draws recruits from every locality, the men who come and go are not guilty under S. 401, as they are not habitual associates of dacoits. 16 A. W. N. 1886.
9. Evidence though not believed for the purpose of conviction under S. 379 or S. 392 may yet be relied upon for the purpose of conviction under S. 401. 1929 O. 321=118 I. C. 423=30 Cr. L. J. 922, 1928 O. 430=29 Cr. L. J. 1009.
10. If once it is proved that gang was formed for the purpose of habitually committing theft, all persons who join afterwards in committing one or more thefts come within S. 401. 1923 L. 666=77 I. C. 984=25 Cr. L. J. 520.
11. Reports made to the Police from time to time showing the names of particular suspects are inadmissible as being hearsay. 1930 S. 211=31 Cr. L. J. 1046.
12. The evidence that Punchayat made enquiry into theft and called a person before it as suspect or that a person accepted money to search the stolen property does not prove any ingredient of S. 401. 1926 L. 439=94 I. C. 264=27 Cr. L. J. 600.
13. Stolen property was traced through accused's information. He is not guilty under S. 401 as the existence of gang is not proved. 1925 L. 604=26 Cr. L. J. 1024.
14. Evidence of repute as to accused person being of bad character or a thief is not admissible. 13 P. R. 1914 Cr.
15. Habit can be proved by an aggregate of acts. 9 P. R. 1880 Cr.
16. Indian British subjects associated with foreign subjects in foreign territory for purposes of habitual theft or robbery are liable. 33 P. R. 1886 Cr.
17. The *agoo* (habitual receiver of stolen property) is a member of gang. 13 P. R. 1914 Cr.
18. Mere membership of robber tribe is not sufficient for conviction. 37 P. R. 1869 Cr.
19. Where accused arrested together had committed thefts, etc., but there was no proof of habitually committing theft, S. 401 does not apply. 9 P. R. 1880 Cr., 13 P. R. 1914 Cr.
20. Proof of concert with persons associated for purposes of habitually committing theft or robbery is necessary. 37 P. R. 1869 Cr.
21. Certain persons were found together away from their houses and were in the habit of visiting *melas* (fairs) together and one of them was arrested in the act of picketing pocket and when arrested many of them gave false names. Held, the offence under S. 401 was not proved. 27 C. 139.
22. Evidence of commission of several thefts, of meeting together at different places, before and after the commission of thefts and burglaries and evidence of systematic thefts of cattle by individual accused are sufficient to support conviction under S. 401. 47 C. 154=55 I. C. 994=21 Cr. L. J. 386=31 C. L. J. 192.
23. The possession of stolen property by gang and the fact that the country through which the gang passed was free from petty crimes when they were not about, are admissible facts. 7 O. C. 163=1 Cr. L. J. 690.
24. T es and it is perhaps
 " " well advised to
 " " 1932 L. 298=

25. Mere fact that accused received stolen property from the gang is not sufficient to convict them under S. 401. 1932 L. 486=138 I. C. 424=33 Cr. L. J. 584. 1927 L. 524 Rel. on. 13 P. R. 1914 Cr. and 1930 R. 114 Dist.

3. Former judgment.

A former judgment in which accused was convicted of dacoity is admissible for the purpose of proving that the accused is a person of criminal tendencies to commit theft, who may be a member of the gang. The judgment does not show that he had any habit of committing theft in the period under consideration. 1925 B. 195=89 I. C. 527, 38 C. 408, 14 Bom. L. R. 373=13 Cr. L. J. 539=15 I. C. 811.

4. Procedure.

1. A conviction under S. 401 is not bad in law merely because the evidence on record would also have justified a conviction under S. 379 or S. 392. 1929 O. 321=118 I. C. 423=30 Cr. L. J. 922=6 O. W.N. 441.
2. The fact that a person is bound down under S. 110, Cr. P. C., does not preclude his being tried under S. 401, Penal Code. 55 I. C. 994=21 Cr. L. J. 386=47 C. 154.
3. Police should proceed with substantive cases and leave gang cases alone. 1932 L. 298.

5. Sentence.

1. While assessing sentence under S. 401, the Magistrate should take into consideration previous conviction and orders under S. 110, Cr. P. C., even when S. 75, Penal Code, does not apply. 1930 S. 211=126 I. C. 468=31 Cr. L. J. 1046, 39 B. 36.
2. Separate sentences for being member of a gang associated for the purpose of committing burglaries and for actually taking part in burglaries though legal, are not strictly equitable, for it is double punishment. 1932 L. 298=33 Cr. L. J. 251.

GANGRENE—DEATH BY— See Culpable homicide—13.

GAPS IN PROSECUTION. See Examination of accused—12.

GESTURE. See Deaf and Dumb.

1. **Confession by—** See Confession—Conduct—.

2. **Insulting modesty of a woman by—** S. 509, I. P. C. See Insulting modesty of a woman by gesture.

3. **Statement by—**

Statement can be made by gesture even. 1926 R. 112=94 I. C. 706=27 Cr. L. J. 653.

GIFT TO RECOVER STOLEN PROPERTY, S. 215, Penal Code.

1. Attempt.

1. Mere proposal to the owner of the lost property to recover it on the receipt of a certain amount on the condition that thieves should not be prosecuted is sufficient under S. 215. 45 A. 159=1923 A. 83=76 I. C. 191=25 Cr. L. J. 127.
2. If there was a demand of a larger sum for the return of stolen property and the owner offered a smaller sum which was refused, it is not an attempt under this section. 20 A. 389, *Contra* 2 L. B. R. 310=1 Cr. L. J. 1116, See 45 A. 159.
3. A proposal for payment of an illegal gratification is an attempt under S. 215, whether it fructifies into an agreement or not. 1 Cr. L. J. 1116=2 L. B. R. 310.

2. Defence.

It is a defence to a charge under S. 215 for the accused to say that he was the actual thief and that he was brought to justice to bring the offenders to justice. 1923 S. 163 Cr. L. J. 481=46 A. 915.

3. Essentials and Evidence.

1. S. 215 does not apply to actual thief. 8 L. 253, 1925 L. 563=88 I. C. 353, 23 A. 81, 50 A. 186=1923 A. 22=29 Cr. L. J. 21.
2. Where a thief took money to recover stolen property but took no steps to bring the thieves to justice he is guilty under S. 215. 26 A. 915=1924 A. 783=85 I. C. 225=25 Cr. L. J. 481.

Gift to recover stolen Property—(concl'd.)

3. Where accused was offered money to trace out horses of the owner which were lost and which work he undertook and failed. He is not guilty. 50 A. 186=1928 A. 22=106 I. C. 437=29 Cr. L. J. 21=25 A. L. J. 866.
4. Where no offence is proved, acceptance of reward is not penalized. Accused was found in possession of complainant's cow and took 12 rupees for its return which he subsequently refused. He is not guilty as it was not proved that he was deprived of cow by means of an offence. 9 P. R. 1915 Cr.=29 I. C. 669, 6 I. C. 250.
5. Where buffaloes of one S were stolen, which the accused agreed to find if he was paid money and promised to say nothing about the payment and took no steps to trace the thieves. He is guilty of attempt. 45 A. 159 (160)=1923 A. 83.
6. Complainant stated in the first information report that his bullocks had gone astray but before trial Magistrate stated that they were stolen. He paid accused money in order to secure the restoration of bullocks. Held, that it was not proved that an offence punishable under the Penal Code had been committed in respect of missing bullocks. 1931 L. 157=32 P. L. R. 38=131 I. C. 369, 9 P. L. R. 1915 Cr., 6 I. C. 250.
7. To convict accused it is not sufficient that he undertook to trace out and restore the lost property on payment of some remuneration. It must be further proved that property was lost by commission of an offence and he is endeavouring to screen the offender. 131 I. C. 800=1931 A. 710, 1932 P. 241=11 P. 392.
8. Taking money in order to help to find stolen property and convict thief is no offence. The important point is that offender should know the criminal and screen him from justice. 1935 S. 105.
9. The primary aim of the section is to punish all trafficking in crime by which a person, knowing that property has been obtained by crime, and knowing the criminal makes profit out of the crime while screening the offender from justice. 50 A. 186=1928 A. 22=29 Cr. L. J. 21=106 I. C. 437.
10. Screening or attempting to screen offender is not ingredient of offence. 1933 C. 599.
11. Taking money to return donkey which had gone stray, is not an offence under S. 215, 1936 S. 145.

Procedure.

1. S. 215 does not apply to a thief and therefore a double conviction under S. 215 and S. 379 or S. 411 is illegal. 28 I. C. 997=16 Cr. L. J. 421, 24 I. C. 351, 9 I. C. 421=12 Cr. L. J. 72, 23 A. 81.
2. Where an accused person has taken a ransom for the restoration of stolen property and fails to return it, he can be convicted under S. 420, Penal Code, and conviction need not be confined to S. 215. 1923 R. 37=21 Cr. L. J. 529.

IFT TO SCREEN OFFENDER FROM PUNISHMENT. Ss. 213-214, I. P. C.**Compounding of an offence unlawfully.**

1. Ss. 213-214, I. P. C., punish the unlawful compounding of an offence. If there was no offence, accused is not guilty although he may have intended to screen one whom he suspected to be an offender. 23 C. 420, 37 B. 658.
2. The intention of the legislature is to suppress mal-practice when offences have really been committed, or when persons really guilty are screened and not to ensure general veracity on the part of the public in regard to imaginary offences. 14 M. 400, 23 C. 420. See 23 Bom. L. R. 823.
3. An Advocate writing a threatening letter to a Magistrate to return bribe paid to him by his client and promising to hush up the matter if money is returned, the Advocate is guilty and he cannot plead instructions of client as defence. 132 I. C. 553=1931 R. 83=32 Cr. L. J. 934.

Essentials and Evidence

1. The concealment or suppression must be an offence. If a person is acquitted of an offence the foundation of offence under S. 213 or 214 fails. 37 B. 658, 46 I. C. 424.
2. S agreed to give 10 rupees to a witness, in consideration of his not giving evidence against K who was charged with house breaking. He refused the offer and gave

Gift to Screen Offender from Punishment—(concl'd.)

evidence but K was acquitted. Held, S cannot be convicted under S. 214 as K was acquitted. 14 M. 400, 23 C. 420.

3. Where two of the accused had offered a gratification to a public servant, for his screening them and not proceeding against them, whose books he had seized. Held, that S. 214 applied and not Ss. 164—109, Penal Code. 13 P. R. 1831 Cr.
4. Accused in breach of forest rules, worked two sawpits instead of one and when detected by the forester offered him five rupees for not proceeding further with the case. Held, he is not guilty, as the amount was offered for compounding the offence, though to a person who had no authority to compound it. 15 I. C. 990.
5. Actual concealment or screening even for a short time is sufficient. The fact that the very same person subsequently did prosecute even to conviction would not purge the offence. 52 C. 151=1925 C. 85=25 Cr. L. J. 345.
6. Where a person is acquitted of the principal offence, no conviction under Ss. 213-214 lies. 23 C. 420, 37 B. 658, 46 I. C. 424.
7. S. 213 has no application where only an acceptance of or attempt to obtain or agreement to accept, any gratification or restitution on a promise to conceal, screen or abstain is proved and no more. 52 C. 151=1925 C. 85=26 Cr. L. J. 345.
8. G entrusted certain jewellery to M, who pledged the same with S under circumstances which constituted such pledging an offence of criminal breach of trust. The jewellery was returned on the undertaking not to prosecute him for criminal breach of trust. M was accused under S. 406 but was acquitted. S and G were charged under S. 213. Held, they were not guilty as no criminal breach of trust was proved. 37 B. 658=15 Bom. L. R. 694=14 Cr. L. J. 463=20 I. C. 613.

GOOD BEHAVIOUR. See Security for good behaviour.

GOOD CHARACTER. Ss. 53-54, Evidence Act. See Bad Character.

1. Evidence of—

1. The mere fact that a person has enjoyed the confidence of his superiors or that he had in fact led a life of honesty during the past, is no reason to suppose that he will not succumb to temptation at the close of his career, but before a man of this type and such antecedents is adjudged guilty, the evidence against him must be of unimpeachable character. 1978 L. 647=110 I. C. 676=29 Cr. L. J. 740.
2. No importance can be attached to the evidence of good character when the case against the accused is clear. 8 B. 223 (227), 16 C. 310.
3. Unless evidence of good character is led, the bad character of the accused cannot be proved. 42 C. 957, 7 P. R. 1895 Cr., 15 P. R. 1888 Cr., 11 P. R. 1908 Cr.
4. Where accused leads evidence of good character by way of defence, the Code does not entitle the prosecution to lead rebutting evidence as a matter of right. But Magistrate may, in his discretion, allow such evidence to be given. 1930 M. 448=31 Cr. L. J. 1198.

2. In case of proceedings under S. 110, Cr. P. C. See Security for good behaviour from habitual offenders.

GOODS OF COMMON PATTERN. See Identification of things—5.

GOOD FAITH. S. 52, I. P. C. See Defamation—18.

1. Good faith does not require logical infallibility, but due care and attention. The due care and caution must, in each case, be considered with reference to the general circumstances and capacity and intelligence of the person whose conduct is in question. 31 B. 293, 56 C. 1013, 36 C. 375, 51 A. 313.
2. The question of good faith must be considered with reference to the position of the accused and circumstances under which he acted. 12 B. 377.
3. Where accused chained up his brother who was subject to fits of violent insanity in a town where medical aid was available, he did not act with due care and caution. (1923) 21 A. L. J. 391.
4. Accused who was uneducated in matters of surgery, cut piles with an ordinary knife, and caused death; he did not act in good faith, although he had performed similar

Good Faith—(concl'd.)

operations on previous occasions. 14 C. 566.

5. Where a Police Constable after questioning a person who was carrying three bundles of cloth under his arms and receiving unsatisfactory replies, arrested him. Held, that the putting of questions was an indication of good faith. 12 B. 377, 31 B. 293.
6. A Police Officer, seeing a horse, resembling one which his father had lost a short time previously, tied up in B's premises jumped to the conclusion that it was a stolen horse, while in fact it was not, arrested him without any due inquiry or credible information. Held, that he acted without exercising due care and caution. (1868) 10 W. R. 20 Cr.
7. If a Police Officer makes a search without complying with the preliminary requirements of S. 165, Cr. P. C., it is not made in good faith. 10 P. 821=1932 P. 95.
8. Due care and caution imply a genuine effort to reach the truth, and not the ready acceptance of an ill-natured belief. 17 Bom. L. R. 82, 27 I. C. 657, 41 C. 1023, 1934 O. 124.
9. Accused seeing a child stooping down and believing him to be a demon, dealt a blow. Held, he was guilty under S. 304-A. 11 P. R. 1888.

GOVERNMENT. S. 17, I. P. C. See Sedition—1.

According to the definition, Government means Local Government. A Collector acting in the management of Government property such as Khas Mehal is Government. 26 C. 158=3 C. W. N. 115.

GOVERNMENT NOTIFICATION.

A Judge should not take Judicial notice of Government notification. Government Gazette should be produced and put in evidence. 1928 A. 355=107 I. C. 578.

GOVERNMENT OF INDIA ACT (1919). Now see Government of India Act 1936, S. 72.

1. The question whether an emergency exists or not is one of fact which the Court may inquire into. But the Governor-General may be in possession of facts which he may not be willing, or be compelled, to disclose. All that the Court can do is to enquire whether there is evidence from which the Governor-General may reasonably conclude that an emergency exists. 55 B. 263=1931 B. 57=32 Cr. L. J. 403.
2. The power given to the Governor-General by S. 72 is an absolute power and cannot be reviewed by Courts. 12 L. 280=1931 P. C. 111=32 Cr. L. J. 727.
3. It is not incumbent on Governor-General to state reasons for promulgating an ordinance. 12 L. 280=1931 P. C. 111=32 Cr. L. J. 727=131 I. C. 415.

GRIEVOUS HURT. S. 325, I. P. C.**1. Abetment of—**

Where the accused came to the spot armed with a *lathi*, even if he did not injure any body, he at any rate intentionally aided the infliction of such injuries and is guilty under Ss. 325—109, I. P. C. 1931 O. 274=132 I. C. 529=32 Cr. L. J. 905.

2. Where several persons combine to attack with *lathis* their common enemy, each abets the conduct of others within the meaning of S. 107. Each one of them being present S. 114 applies. The test is whether grievous hurt was probable. 1936 A. 437.
3. A person removing loin cloth of victim so as to facilitate thrusting of *lathi* into his rectum is guilty of abetment. 1935 O. 468=36 Cr. L. J. 1151.
2. At the time of house breaking. S. 459, I. P. C. See House breaking—5.
3. By dangerous weapon. S. 325, I. P. C. See Grievous hurt by dangerous weapons.
4. Charge.
 1. It is necessary to satisfy the kind of grievous hurt committed by the accused, but if the accused is made liable by reason of S. 149, it should be so stated. 37 M. 237.

Gift to Screen Offender from Punishment—(canold.)

evidence but K. was acquitted. Held, S cannot be convicted under S. 214 as K was acquitted. 14 M. 400, 23 C. 420.

3. Where two of the accused had offered a gratification to a public servant, for his screening them and not proceeding against them, whose books he had seized. Held, that S. 214 applied and not Ss 164—109, Penal Code. 13 P. R. 1881 Cr.
4. Accused in breach of forest rules, worked two sawpits instead of one and when detected by the forester offered him five rupees for not proceeding further with the case. Held, he is not guilty, as the amount was offered for compounding the offence, though to a person who had no authority to compound it. 15 I. C. 990.
5. Actual concealment or screening even for a short time is sufficient. The fact that the very same person subsequently did prosecute even to conviction would not purge the offence. 52 C. 151=1925 C. 85=26 Cr. L. J. 345.
6. Where a person is acquitted of the principal offence, no conviction under Ss. 213-214 lies. 23 C. 420, 37 B. 658, 46 I. C. 424.
7. S. 213 has no application where only an acceptance of or attempt to obtain or agreement to accept, any gratification or restitution on a promise to conceal, screen or abstain is proved and no more. 52 C. 151=1925 C. 85=26 Cr. L. J. 345.
8. G entrusted certain jewellery to M, who pledged the same with S under circumstances which constituted such pledging an offence of criminal breach of trust. The jewellery was returned on the undertaking not to prosecute him for criminal breach of trust. M was accused under S. 406 but was acquitted. S and G were charged under S. 213. Held, they were not guilty as no criminal breach of trust was proved. 37 B. 658=15 Bom. L. R. 694=14 Cr. L. J. 463=20 I. C. 613.

GOOD BEHAVIOUR. See Security for good behaviour.

GOOD CHARACTER. Ss. 53-54, Evidence Act. See Bad Character.

1. Evidence of—

1. The mere fact that a person has enjoyed the confidence of his superiors or that he had in fact led a life of honesty during the past, is no reason to suppose that he will not succumb to temptation at the close of his career, but before a man of this type and such antecedents is adjudged guilty, the evidence against him must be of unimpeachable character. 1978 L. 647=110 I. C. 676=29 Cr. L. J. 740.
2. No importance can be attached to the evidence of good character when the case against the accused is clear. 8 B. 223 (227), 16 C. 310.
3. Unless evidence of good character is led, the bad character of the accused cannot be proved. 42 C. 957, 7 P. R. 1895 Cr., 15 P. R. 1888 Cr., 11 P. R. 1908 Cr.
4. Where accused leads evidence of good character by way of defence, the Code does not entitle the prosecution to lead rebutting evidence as a matter of right. But Magistrate may, in his discretion, allow such evidence to be given. 1930 M. 448=31 Cr. L. J. 1198.

2. In case of proceedings under S. 110, Cr. P. C. See Security for good behaviour from habitual offenders.

GOODS OF COMMON PATTERN. See Identification of things—5.

GOOD FAITH. S. 52, I. P. C. See Defamation—18.

1. Good faith does not require logical infallibility, but due care and attention. The due care and caution must, in each case, be considered with reference to the general circumstances and capacity and intelligence of the person whose conduct is in question. 31 B. 293, 56 C. 1013, 36 C. 375, 51 A. 313.
2. The question of good faith must be considered with reference to the position of the accused and circumstances under which he acted. 12 B. 377.
3. Where accused chained up his brother who was subject to fits of violent insanity in a town where medical aid was available, he did not act with due care and caution. (1923) 21 A. L. J. 391.
4. Accused who was uneducated in matters of surgery, cut piles with an ordinary knife, and caused death; he did not act in good faith, although he had performed similar

Good Faith—(concl'd.)

operations on previous occasions. 14 C. 566.

5. Where a Police Constable after questioning a person who was carrying three bundles of cloth under his arms and receiving unsatisfactory replies, arrested him. Held, that the putting of questions was an indication of good faith. 12 B. 377, 31 B. 293.
6. A Police Officer, seeing a horse, resembling one which his father had lost a short time previously, tied up in B's premises jumped to the conclusion that it was a stolen horse, while in fact it was not, arrested him without any due inquiry or credible information. Held, that he acted without exercising due care and caution. (1969) 10 W. R. 20 Cr.
7. If a Police Officer makes a search without complying with the preliminary requirements of S. 165, Cr. P. C., it is not made in good faith. 10 P. 821=1932 P. 95.
8. Due care and caution imply a genuine effort to reach the truth, and not the ready acceptance of an ill-natured belief. 17 Bom. L. R. 82, 27 I. C. 657, 41 C. 1023, 1934 O. 124.
9. Accused seeing a child stooping down and believing him to be a demon, dealt a blow. Held, he was guilty under S. 304-A. 11 P. R. 1888.

GOVERNMENT. S. 17, I. P. C. See Sedition—1.

According to the definition, Government means Local Government. A Collector acting in the management of Government property such as Khas Mehal is Government. 26 C. 158=3 C. W. N. 115.

GOVERNMENT NOTIFICATION.

A Judge should not take Judicial notice of Government notification. Government Gazette should be produced and put in evidence. 1928 A. 355=107 I. C. 578.

GOVERNMENT OF INDIA ACT (1919). Now see Government of India Act 1936.**S. 72.**

1. The question whether an emergency exists or not is one of fact which the Court may inquire into. But the Governor-General may be in possession of facts which he may not be willing, or be compelled, to disclose. All that the Court can do is to enquire whether there is evidence from which the Governor-General may reasonably conclude that an emergency exists. 55 B. 263=1931 B. 57=32 Cr. L. J. 403.
2. The power given to the Governor-General by S. 72 is an absolute power and cannot be reviewed by Courts. 12 L. 280=1931 P. C. 111=32 Cr. L. J. 727.
3. It is not incumbent on Governor-General to state reasons for promulgating an ordinance. 12 L. 280=1931 P. C. 111=32 Cr. L. J. 727=131 I. C. 415.

GRIEVOUS HURT. S. 325, I. P. C.**1. Abetment of—**

Where the accused came to the spot armed with a *lathi*, even if he did not injure any body, he at any rate intentionally aided the infliction of such injuries and is guilty under Ss. 325—109, I. P. C. 1931 O. 274=132 I. C. 529=32 Cr. L. J. 905.

2. Where several persons combine to attack with *lathis* their common enemy, each abets the conduct of others within the meaning of S. 107. Each one of them being present S. 114 applies. The test is whether grievous hurt was probable. 1936 A. 437.
3. A person removing loin cloth of victim so as to facilitate thrusting of *lathi* into his rectum is guilty of abetment. 1935 O. 468=36 Cr. L. J. 1151.
2. At the time of house breaking. S. 459, I. P. C. See House breaking—5.
3. By dangerous weapon. S. 326, I. P. C. See Grievous hurt by dangerous weapons.
4. Charge.
 1. It is necessary to satisfy the kind of grievous hurt committed by the accused, but if the accused is made liable by reason of S. 149, it should be so stated. 37 M. 237.

Grievous Hurt —(contd.)

2. A person charged under S. 149 and S. 325 may be convicted under S. 325. 27 M. 746. (F. B.) Dissenting from 16 C. W. N. 1077.
3. A person charged under S. 397 may be convicted under S. 325. 37 M. 237, 22 M. 15, 24 M. 641, 26 M. 243.

5. Compounding of offence.

The offence is compoundable by the person whom hurt is caused. If the person hurt is dead, his heir is not entitled to compound it. 37 A. 419, 25 P. R. 1919 Cr.

6. Detention in hospital for over 20 days.

1. When there is a medical evidence that the assaulted person was in hospital for more than 20 days, the Court should see that there is evidence, to the effect that the injured person was in severe bodily pain or was unable to carry on his daily vocations. 1931 L. 280=134 I. C. 829=32 Cr. L. J. 1254.
2. Mere remaining in hospital for more than 20 days does not make a simple hurt a grievous one. 32 Cr. L. J. 1254=1931 L. 280=134 I. C. 829.

7. Diseased spleen.

1. Accused struck a cartman on the rib with a stick who died owing to diseased spleen, he was guilty under S. 325. 2 A. 766, 3 A. 776.
2. Accused gave a blow with a light bamboo stick not more than an inch in diameter, to the deceased who was suffering from diseased spleen, he was guilty under S. 325. (1865) 2 W. R. 39 Cr.
3. In such cases, dealing violent blow is not "grievous hurt"; nor can the grievous hurt be presumed from mere suddenness of the death. The only conviction possible is one of simple hurt. 23 W. R. 65 (66), 26 P. L. R. 430, 1925 L. 559.

8. Essentials and Evidence—Death taking place.

1. Accused admitted grievous hurt in a written statement given in defence of charge under dacoity for which he was acquitted. Admission cannot be used to pass an order of conviction for grievous hurt. 1928 O. 373=29 Cr. L. J. 763.
2. A poor old sweeper at mid-night was taking cow-dung cakes belonging to accused when the accused gave him severe beating with a *dang*. Held, that he is guilty under S. 325 and not S. 307. 1927 L. 801=28 Cr. L. J. 619.
3. When accused knew that he would be smashing his victim's skull by his blow, he should be committed for culpable homicide. 1930 B. 483.
4. Accused in a fit of temper lost self-control and gave a blow on the head with a *dang* which resulted in the death. He is guilty under S. 325, I. P. C., as there was no intention to cause death. 1929 L. 863.
5. Three persons caused the death of a person by beating who died of shock from multiple injuries which included fracture of five ribs. One of the injuries in itself could be called fatal and no particular injury could be attributed to any individual assailant. The accused were guilty of grievous hurts only. 1929 L. 456=114 I. C. 704=30 P. L. R. 171=30 Cr. L. J. 368.
6. When the intention of causing death or injury likely to cause death is absent, the accused are liable under S. 325 only. 1928 O. 36=101 I. C. 177, 1923 L. 43=81 I. C. 179=25 Cr. L. J. 691.
7. When seven accused attacked the deceased with the intention of beating him and gave two incised wounds of trivial character and there was no medical evidence to prove that death was due to injuries, accused are guilty under S. 325 read with S. 149 and not S. 304. 1929 L. 178=118 I. C. 433=30 Cr. L. J. 917.
8. When the common object is to inflict a grievous hurt accused cannot be convicted of culpable homicide. 1927 L. 881=9 L. J. 529.
9. A blow was given with a stick on the head in revenge for previous beating which caused internal bleeding or a clot of blood on the surface of the brain which caused death, accused is guilty under S. 325. 1925 L. 559=88 I. C. 286=26 P. L. R. 430=26 Cr. L. J. 1118.
10. When the accused did not lift his *lathi* above his head but swinging side-ways

Grievous Hurt—(contd.)

struck a blow and it was proved that he intended to rupture the deceased's liver, the case falls under S. 325. 1925 O. 135=25 Cr. L. J. 1145.

11. It must be proved that the grievous hurt was caused by the accused voluntarily, that is, intending to cause it or knowing likely that it would be caused. 30 I. C. 193.
12. It is not the business of Medical Officer to qualify a hurt as grievous or simple. A certificate of medical witness is not evidence, he must be examined in the presence of the accused. 12 W. R. 25.
13. Causing death of child by accident by beating his mother, conviction under S. 325 is proper. 1924 O. 228=74 I. C. 533=24 Cr. L. J. 89.
14. Emasculation of himself by accused is not punishable under S. 325. 22 P. R. 1878 Cr.
15. When two persons broke the thigh and ulna of a person and struck him at 9 places even when he had fallen on the ground and there was only one injury on the head the ultimate inference is that they did not mean to kill him and therefore they are guilty under S. 325. 8 L. 521=1927 L. 217=28 Cr. L. J. 266.
16. When a man has been struck on the head and a fracture is caused and to surround and beat him with *lathis*, is to cause hurt which endangers life within S. 320. 1928 P. 46=104 I. C. 708=28 Cr. L. J. 868.
17. Blow with a hockey stick on the head resulting in the death due to internal bleeding falls under S. 325. 1925 L. 559=88 I. C. 286=26 Cr. L. J. 1118.
18. Accused striking on head of deceased by *dang* lying some 12 *karams* away under sudden impulse is guilty under S. 325 and not under S. 302. 1935 L. 335=151 I. C. 390. 1929 L. 863 Rel on.

9. Joint attack.—Whether Murder, Homicide or grievous hurt.

1. Where three men attacked others with *dangs* causing two grievous hurts, two are guilty for the grievous hurts. 1924 L. 555=85 I. C. 941=26 Cr. L. J. 653.
2. A joint attack was made on two men armed with *Jatrus* on others who died of injuries received. They are guilty under S. 325. 1925 L. 318=86 I. C. 341.
3. When five persons attacked another and death was due to a single blow but it was not proved who inflicted the fatal blow, they should be convicted under S. 325 read with S. 114. 1925 L. 117=86 I. C. 337=26 Cr. L. J. 753.
4. If it is not shown which of the two appellants dealt the blow causing grievous hurt, both cannot be convicted under S. 325 unless they had a common intention of causing grievous hurt. 1923 L. 35=25 Cr. L. J. 560, 37 P. R. 1914.
5. If several accused had the common intention of attacking a person with *lathi* and each accused used his *lathi*, all are guilty under S. 325. 1936 A. 437. 35 A. 560 Ref. 1931 L. 523 and 9 A. L. J. 180 Not foll.
6. In case of joint attack, if blow of one caused the death of victim, he would be guilty of homicide; but if he cannot be identified then all would be liable for hurt. 40 A. 103, 114 I. C. 704; or grievous hurt 2 P. W. R. 1920, 54 I. C. 51. 72 I. C. 611, 22 I. C. 768, 6 L. L. J. 268, 29 A. 282, 19 M. 483, 151 I. C. 391, 149 I. C. 343; or homicide. 40 A. 686; or even murder. 35 A. 329, 35 A. 560—596.

10. Jurisdiction.

Where a person was assaulted by accused in Baroda and had his leg broken there and came to British India and remained in Hospital for 2 months. Held, that only Baroda Court had jurisdiction. 8 Bom. L. R. 513.

11. On provocation. S. 335, I. P. C.

1. A person who by a single blow with a deadly weapon kills another entering into his room at dead of night where he and his wife were sleeping for the purpose of having sexual intercourse with his wife, is punishable under S. 335. 3 W. R. 55.
2. If the accused deliberated about the choice of weapon, though he did not use it in a cruel manner, he cannot get the benefit of the compassionate provision of S. 335. 12 W. R. 8, 19 W. R. 35.
3. But if the offence is serious like nose cutting, it would aggravate the offence as much

Grievous Hurt by Dangerous Weapons—(contd.)

3. Death by external causes.

1. Deceased, being struck on head with *takwa*, died of septacæmia long after the wounds. The injury by itself was not dangerous to life. The offence falls under S. 326 and not S. 304. 1931 L. 103=135 I. C. 668=1931 Cr. C. 167.
2. Accused while drunk fired at blank range at the deceased and wounded him on the upper portion of his thigh. The wound became septic causing death after 2 months. Conviction should be under S. 326. 1929 L. 433=120 I. C. 183=31 Cr. L. J. 44.
3. Deceased was struck on the shoulder and legs with a cutting instrument and as a result of shock and bleeding he died within 12 hours of hæmorrhage. The accused is guilty under S. 326. 1923 O. 97=73 I. C. 49.

4. Essentials and Evidence.

1. In case of fight over *bund* when one party wanted to cut down the *bund* and the other party wanted to protect its property, the death was caused from injuries to several assailants while protecting the *bund*, held that the offence fell under S. 326. 1929 P. 523=1929 Cr. C. 283.
2. Blow with a spear on fleshy part of the body is not necessarily fatal and if grievous, offence under S. 326 is committed and if the blow is simple, the offence falls under S. 324. 1930 L. 950=129 I. C. 483=1930 Cr. C. 1046.
3. If the injury is one which endangers life, the presumption in the absence of exceptional circumstances is that accused knew, he would cause death. 1930 Bom. 480=129 I. C. 351.
4. Where the accused struck two *lathi* blows, one severe and the other slight on the head of the deceased conviction under S. 326 is safer than S. 304 (2). 1929 L. 37=115 I. C. 66=30 Cr. L. J. 378.
5. When the only blow with *takwa* on the head was not dangerous but death was due to septacæmia, the accused was guilty under S. 326. 1931 L. 103.
6. In case of mutual infliction of injuries on each other, conviction should be under S. 326 and not under S. 307 where there were no eye-witnesses. 1925 R. 133=2 R. 558=84 I. C. 1049=26 Cr. L. J. 409.
7. In case of joint assault with deadly weapon common intention is presumed. 1924 L. 216=72 I. C. 513=24 Cr. L. J. 401.
8. Accused inflicted an injury on abdomen with pen-knife on certain provocation and without any pre-meditation, he is guilty under S. 326. 1924 L. 234=73 I. C. 695=24 Cr. L. J. 663, 63 I. C. 450=22 Cr. L. J. 658=1922 L. 26.
9. Where a number of accused dealt *lathi* blows with the result that the persons assaulted died of it, the reasonable inference is that they intended to cause grievous hurt punishable under S. 326. 1922 N. 141=66 I. C. 665=23 Cr. L. J. 313.
10. In a case of boyish quarrel the accused stabbed the deceased with a pen-knife. He is guilty under S. 326. 1922 L. 26=22 Cr. L. J. 658, 3 L. L. J. 581.
11. If the grievous hurt is caused by a razor the offence falls under S. 326 as it is an instrument for cutting. 19 P. R. 1902 Cr.
12. Evidence of medical man must invariably be taken. (1834) S. L. J. B. 292.
13. *Dhatura* is not essentially lethal, still if it is given in large doses causes death. The accused is guilty of murder, otherwise he may only be charged for grievous hurt under S. 326. 31 A. 148, 30 A. 568, 40 A. 360 (363), 19 P. R. 1919, 25 I. C. 351.
14. Deceased was struck on shoulder and legs with a cutting instrument and as a result of shock and bleeding died in 12 hours. Accused was guilty under S. 326. 73 I. C. 49, 1923 C. 97, 115 I. C. 66.

5. Exceeding right of private defence.

1. Where a person exceeds right of private defence and inflicts a stab wound he is liable under S. 326. 1912 M. W. N. 67.
2. The Court views with leniency the offence of one who has exceeded his right of private defence. 182 P. L. R. 1914.

Grievous Hurt by Dangerous Weapons—(concl'd.)

6. Nose cutting.

1. Nose cutting is a serious offence deserving maximum penalty. The Court enhanced the sentence of imprisonment for 2 years into one for 4 years including solitary confinement for three months. 20 P. R. 1915 Cr.=31 I. C. 382.
2. The case of nose cutting should be committed to the Court of Sessions. The sentence awarded was for a term of eight years. 16 B. 580.
3. The amount of punishment for cutting off a wife's nose for intriguing with another man depends on the time of the commission of the grievous hurt, whether at the instant, or long after the husband found himself dishonoured. 4 W. R. 17.

7. Poison—Death by. See Poison.

1. *Dhatura* is not essentially lethal, still if given in large doses, causes death. The accused is guilty of murder, otherwise he may be charged for grievous hurt, under S. 325. 31 A. 148, 30 A. 563, 40 A. 369 (353), 19 P. R. 1919, 25 I. C. 351.
2. Administration of poison may amount to murder although the primary intention of the accused was not to cause death. 31 A. 148. *Cont.* 30 A. 568.
3. The offence depends on the nature and quantity of poison. 31 A. 148.

8. Procedure.

Conviction under S. 325 is no bar to trial under S. 302 if the death occurs. 7 P. R. 1912 Cr.

9. Razor.

1. If the grievous hurt is caused by razor, the offence falls under S. 326. 19 P. R. 1902 Cr.
2. Accused severed one ear and cut off a portion of the other ear of his wife on grave and sudden provocation. Held, he was guilty under S. 335 and should be sentenced to two years' rigorous imprisonment and a fine of Rs. 100. 1932 L. 194=136 I. C. 734=33 Cr. L. J. 368.

10. Sentence.

1. Husband tied his wife by her arms and legs to a bedstead and with a pen-knife cut off her nose and upper lip on the ground that she confessed having an intrigue with another man during his absence. Sentence of two years was enhanced to 8 years 16 Bom. 580.
2. Accused in a petty quarrel stabbed the accused in abdomen with a pen-knife 4" long. It was found that the liver of the deceased was injured which accused could not have foreseen. He was awarded 3 years' imprisonment under S. 325. 22 Cr. L. J. 658=1922 L. 26, 73 I. C. 695.
3. Nose cutting is a serious offence deserving maximum penalty. 20 P. R. 1915 Cr.=31 I. C. 382=16 Cr. L. J. 782.
4. If grievous hurt is caused by *chharies* in excess of right of self-defence the sentence should not be severe. 182 P. L. R. 1914.
5. In case of sudden quarrel arising in the heat of passion a lenient sentence should be awarded. 1930 L. 311=30 P. L. R. 582.
6. Accused fired at blank range while drunk and caused wounds on the thigh of the deceased. The deceased died of the wound becoming septic after two months. He should be given maximum sentence under S. 325. 1929 L. 433=120 I. C. 183=31 Cr. L. J. 44=11 L. L. J. 44.

GROUNDS OF APPEAL. See Appeal—29

GUARDIAN. See Kidnapping—10.

GUN SHOT WOUND. See Attempt to murder—4. See Wound—12.

H.

HABEAS CORPUS. See 491-491-A, Cr. P. C.

1. Appeal against the order of—

1. The order of single High Court Judge directing issue of writ of Habeas Corpus is

Habeas Corpus—(contd.)

appealable. 50 B. 616=1926 B. 332=27 Cr. L. J. 721.

2. When a petitioner obtains a rule calling upon the other side to show cause why a child should not be delivered to her and the rule is discharged, the order discharging the rule is a judgment within the meaning of clause 15 of the Letters Patent, and is therefore appealable. 14 B. 555.

2. Applicability and Scope.

1. S. 491 does not apply to a case where there has been a conviction and sentence. 44 C. 723.
2. Where the person wanted, is in the custody of Native State, power to issue directions under S. 491 (1) cannot be exercised. 1929 A. 347=30 Cr. L. J. 1083=1929 A. L. J. 520=119 I. C. 527.
3. The power under S. 491 cannot be exercised in a case where there is dispute merely as to who should be guardian of a particular minor. 52 A. 491.
4. High Court cannot award costs in an application under S. 491. 193 M. 102=55 M. 1049.
5. It is not reasonable to apply under S. 491 where the bail application is pending in the Sessions Court. 1929 L. 522, 114 I. C. 444=30 Cr. L. J. 301.
6. Application under S. 491 to produce a lunatic wrongfully confined is misconceived. S. 33 Lunacy Act, is appropriate. 1936 S. 156.

3. Exercise of power under S. 491.

1. The power under S. 491 (1) (b) is to be exercised in matters of urgency, where, for instance the father is suddenly deprived of the custody of his sons and there is danger to the life of the sons in the transferred custody. It is a remedy for a person deprived of his liberty. 52 A. 491=1930 A. 250=31 Cr. L. J. 719.
2. Habeas Corpus proceedings are proceedings calling upon a person to demonstrate his authority to hold another in custody. If his authority is legitimate Court cannot interfere. 1926 S. 126=91 I. C. 69=27 Cr. L. J. 37=20 S. L. R. 128.
3. Decision regarding status, *e. g.*, validity of marriage cannot be given in proceedings under S. 491. 1934 L. 647.

4. Extradition—Illegal Arrest under—

1. High Court can interfere under S. 491 and set at liberty persons arrested under illegal extradition warrant. Temporary release on bail pending further inquiry does not oust the jurisdiction. 1934 A. 148=35 Cr. L. J. 1296.
2. If a person is detained under S. 10, Extradition Act, for over two months and extension is not obtained from the Local Government High Court can interfere. 1935 P. 419.

5. Fresh or second application.

1. Each Judge of the Supreme Court of Nigeria has jurisdiction to entertain an application for a writ of Habeas Corpus in term, time or in vacation, and he is bound to hear and determine such an application on merits, notwithstanding that some other Judge of the same Court has already refused a similar application. 1928 P. C. 300=113 I. C. 273=26 A. L. J. 1169=30 Cr. L. J. 113.
2. When an application under S. 491 is dismissed, a second application to the same effect and object is not maintainable. Common law rule relating to application for writ of Habeas Corpus is not applicable. 1934 A. 22=56 A. 271, (1928) A. C. 459=139 L. T. 527 Ref.

6. Legality of detention.

1. A was arrested and remanded to Police custody on suspicion of being connected with offence under S. 302 read with S. 120-B. The order of Magistrate was not clear but there were circumstances to show that he was convicted with the conspiracy. Held, that the custody is not illegal. 1930 L. 945=31 P. L. R. 780=129 I. C. 481.
2. The question whether or not a particular person is legally detained under the Bengal Criminal Law Amendment Act, has to be dealt with under the Criminal

Habeas Corpus—(contd.)

Procedure Code. 54 C. 727=1927 C. 496=102 I. C. 647.

3. The sentences passed under Martial Law are legal. 55 B. 763=1931 B. 57.

7. Minors and their custody.

1. The High Court before passing an order in respect of a minor child, ought to take into consideration the interest and welfare of the child. 12 Bom. L. R. 891=11 Cr. L. J. 687, 48 M. 299.
2. The Court will not ordinarily force a child to remain in custody to which the child objects. 33 M. 288, 48 M. 299.
3. Where the father has delegated the guardianship of his children to another person, the question whether the father is entitled to resume the guardianship depends on the children's interests and welfare. 38 M. 807 (P. C.)
4. Where the mother had for eight years neglected her child who had been educated at a Mission school, the High Court refused her application for custody of the girl aged 15 years, on the ground, that if granted, it would be detrimental to the welfare of the child. 16 B. 307.
5. Powers of Habeas Corpus may be exercised for restoration of child to its natural guardian. 1926 R. 76=95 I. C. 65=27 Cr. L. J. 737.
6. Minor applicant's nephew went to visit his sister. There was no suggestion as to the sister or her husband not being proper persons. Held, there was no improper detention and the order under S. 491 should not be passed. 1927 R. 329=104 I. C. 705=28 Cr. L. J. 865=6 Bur. L. J. 111.
7. Father, a motor driver, applied for a writ of Habeas Corpus for custody of his son aged 7. There was no body in the house to look after such a child. The Court must look to the child's interest and should not interfere. The proper course is under Guardian and Wards Act, S. 25. 1929 M. 33=126 I. C. 111=31 Cr. L. J. 985.
8. If mother in charge of a minor child, is likely to be converted to Christianity no writ would be issued, but proceeding can be had under Guardian and Wards Act. 1928 M. 1087=112 I. C. 472=29 Cr. L. J. 1048.
9. A person keeping a minor married girl with her consent in spite of another legally entitled to her custody is guilty of illegal detention. 53 M. 72, 16 C. 487.
10. A divorced Mohammedan lady applied under S. 491 Cr. P. C. for custody of her minor child. Held, that High Court should not entertain and the applicant should move District Judge under Guardian and Wards Act. 1935 A. 55=154 I. C. 638=36 Cr. L. J. 554.

8. Power to issue.

1. The power to issue a writ of Habeas Corpus is not taken away by the introduction of Martial Law. 45 M. 14=23 Cr. L. J. 490.
2. High Court can grant the writ in the *Mofussil*. 45 M. 922=23 Cr. L. J. 614.
3. High Court on its criminal appellate side is invested with jurisdiction to deal with an application under S. 491, Cr. P. C. 52 C. 319=1925 C. 278.
4. High Court is not deprived of its jurisdiction to issue writ of Habeas Corpus, by S. 491-A. 50 B. 616=1926 B. 332=27 Cr. L. J. 721.
5. The remedy under S. 491, Cr. P. C., is open to the husband who prays for an order directing to hand over his minor wife to him, though he can as well have recourse to the provisions of Guardian and Wards Act. 53 M. 72.
6. High Court can interfere under S. 491, even where the proceedings were taken by District or Chief Presidency Magistrate under S. 7, Extradition Act. 53 B. 149; 42 C. 793 held too widely stated. 7 B. L. R. 463. 41 C. 400, 1922 P. 442 Rel. on.
7. It is wrong that High Court should under S. 491 retry for itself a question which has already been determined by the same Court in the ordinary original jurisdiction. 56 C. 32=1928 C. 367=32 C. W. N. 889.

*Hanging—(contd.)***4. Causes of death in—.**

1. Simple blocking of the air-passages (asphyxia pure and simple). *Taylor's Med. Jur.*, 1928, Vol. I, P. 684.
2. Congestion of venous blood in the brain (pressure on jugular veins). *Ibid*, P. 684.
3. Lack of arterial blood to the brain (pressure on carotids). *Ibid*, P. 684.
4. Synope from the pressure on the vagus nerves. *Ibid*, P. 684.
5. Injury to the spinal column and the cord. *Ibid*, P. 684.
6. Combinations of any of the above. *Ibid*, P. 684. See *Lyon's Med. Jur.*, 1935, P. 291.

5. Was body hung before or after death.

1. Among the external appearances, it is chiefly to the mark produced by the cord on the neck that medical jurists have looked for the determination of the question. *Taylor's Med. Jur.*, 1928, Vol. I, P. 692-693.
2. The circumstance that an ecchymosed mark may be produced by suspending a recently dead body bears out the statement of Merzdorff—that it would be in the highest degree difficult, if not utterly impossible to determine medically from an inspection whether a man had been hanged while living, or whether he had been first suffocated and his body suspended immediately after death. *Ibid.*, P. 693.
3. Sometimes, besides ecchymoses, there are abrasions of the skin in the course of the cord, and these are known to have been produced during life by the effusion of blood which accompanies them. *Ibid*, P. 693.
4. The depression made by the ligature may be hard and brown, although it does not usually acquire this colour until some hours have elapsed after death. *Ibid*, P. 693.
5. There is no certain and constant sign by which the hanging of a living person can be determined from an inspection of the dead body. *Ibid*, P. 694.
6. All the external marks may be simulated in a dead body, and the internal appearances do not always furnish characteristic evidence. *Ibid*, P. 694.
7. A ligature mark on the neck does not necessarily indicate suspension of the body; but when due to suspension of the body, it is usually high upon the neck, oblique and non-continuous, or if situated lower on the neck it is continuous. *Lyon's Med. Jur.*, 1935, P. 299.

6. Was it accident, suicide or homicide**A. Marks of ligature and injuries :—**

1. Suicides more frequently take the material that is most accessible—braces, handkerchiefs, etc., or there may be evidence to show where the material came from and how it reached its destination. *Taylor's Med. Jur.*, 1928, Vol. I, P. 698.
2. In hanging, the mark of the cord is generally oblique, being higher at the back part of the neck, in consequence of the loop formed by it yielding more in this direction than in front. But it is an error to suppose that this want of obliquity in the impression can afford any evidence in favour of the act having been homicidal. *Ibid*. P. 698.

hanging—(concl'd.)

8. In cases of death from hanging, the presumption is always in favour of suicide, even if the body is found partly suspended. *Lyon's Med. Jur.* 1935, P. 300.
9. A person who is weak, insensible or even asleep may be murdered by a single individual by hanging. *Ibid.* P. 301.

B. Circumstantial evidence—

1. We should observe whether the doors and windows of the apartments are secured on the inside or on the outside ; whether the dress of the deceased is at all torn or discomposed, or the hair dishevelled ; whether the attitude of the body is such as to show interference after death ; whether there are marks of blood about the body, on the ligature, or in the room ; whether the hands are bloody, or present marks of wounding or struggling ; whether the rope or ligature corresponds to the impression seen around the neck ; and lastly, whether the cord is of sufficient strength to support the weight of the deceased. *Taylor's Med Jur.* 1928, Vol. I, P. 705.
2. The strongest evidence of homicide is often found in the attitude and the state of the dress of the dead body. *Ibid.* P. 705.
3. When there are indications of violent struggling, the dress may be found disordered, unless it has been smoothed or arranged by the murderer after the death of the deceased. *Ibid.* P. 706.
4. In this connection sight must not be lost of the peculiar tricks of lunatics, who will occasionally throw a room into great disorder before committing suicide, and, moreover as they may have made an attempt (previous to hanging) by cutting, blood may be scattered about the room. *Ibid.* P. 706.
5. The presence of marks of self inflicted mechanical violence tends to strengthen the presumption of suicidal hanging. *Lyon's Med. Jur.* 1935, P. 302.
6. Two cord marks on the neck, one having the characters of a strangulation, and the other those of a hanging mark, may be found in a case of hanging, if the cord has been passed twice round the neck. *Ibid.* P. 302.

HARBOURING AN OFFENDER. Ss. 216, 216-A., 216-B. and S. 212, Penal Code.

1. Essentials and Evidence.

1. To warrant conviction under S. 216 it must be shown that the warrant to arrest was a legal one and the harbouring was with the intention of preventing him from being apprehended. 52 B. 151=1928 B. 184=29 Cr. L. J. 317.
2. It is not essential under S. 216 that the person harboured should be found guilty. It is sufficient to show that an offence was alleged against him. 52 M. 73=1928 M. 114=1928 M. W. N. 588=30 Cr. L. J. 183=113 I. C. 545.
3. Accused must know that the person harboured is a proclaimed offender. 84 I. C. 1055=6 L. L. J. 478=26 Cr. L. J. 415=1925 L. 103.
4. Assisting evasion of apprehension is harbouring. It is immaterial whether the evasion lasts six hours or six years. 1923 L. 223=24 Cr. L. J. 659, 72 I. C. 949, 23 I. C. 701.
5. A person charged for harbouring offender did not know that he was proclaimed offender till Police Officer informed him. But after this information he gave false information in order to assist evading apprehension and eventually the offender was found in his house. Held, he is guilty. 1930 L. 99 (2)=11 L. L. J. 377=31 Cr. L. J. 772=125 I. C. 178, 1926 L. 206=7 L. 30.
6. The knowledge of the harbourer cannot be presumed from a mere publication of the name of the offender in the Criminal Intelligence Gazette, nor it can be inferred from the offender adopting false name and harbourer misdescribing him as his relation. 23 I. C. 201=15 Cr. L. J. 349.

2. Harbour, meaning of— S. 216—216-B. I. P. C.

1. The word harbour should be construed liberally. A person harbouring another in a house is guilty although the house belongs to a different person. 16 I. C. 509=13 Cr. L. J. 701=14 Bom. L. R. 583.
2. "Assisting a person in any way" is not limited to methods *Ejusden Gensur* with supplying other necessary things. 40 I. C. 731=21 C. W. N. 1062=18 Cr. L. J. 731. See 25 A. 264.

Harbouring an Offender—(concl'd.)

3. Giving false information to Police about proclaimed offender or warning him of approach of Police in order to enable him to escape is an offence. 7 L. 30=1926 L. 206=94 I. C. 131, 72 I. C. 949, 21 C. W. N. 1062.
 4. On the appearance of the Police to apprehend accused's brother, he gave a sign to him by which he took warning and escaped. Held, that the accused is guilty. 1925 O. 423=89 I. C. 152, 26 Cr. L. J. 1288=25 A. 261 Diss.
 5. Lending a pony to a dacoit merely to facilitate the removing of loot is not an offence under S. 216-B. 1924 A. 676=83 I. C. 711=26 Cr. L. J. 151.
 6. Mere giving of meal to proclaimed offenders is not an offence under S. 216. 1925 L. 289=84 I. C. 1050=26 Cr. L. J. 410. See 1935 R. 294, 25 A. 261.
 7. "Harbours" means shelters, protects or offers asylum to the offender. 1923 L. 223=73 I. C. 691=24 Cr. L. J. 659, 1935 R. 294=158 I. C. 500.
 8. 'Harbour' includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunitions or means of conveyance or assisting a person in any way to evade apprehension. Mere knowledge of the whereabouts of an offender does not amount to harbouring him. 1935 C. 550=157 I. C. 1030, 1935 R. 294=158 I. C. 500, 73 I. C. 691, 21 C. W. N. 1062.
 9. Where the father who was asked to produce his son who was charged with an offence and was absconding, produced him when the Police demanded him, he was not guilty under S. 216-B merely from this fact. 1935 C. 550=157 I. C. 1030.
 10. Where the accused men actually tried to mislead the Police by telling lies as to the whereabouts of an offender. They were found by Court, not to have harboured him. 25 A. 261.
 11. The word "harbour" must be liberally construed, so that an occasional visitor to an escaped convict might be convicted of this offence. 14 Bom. L. R. 583=16 I. C. 509
- 3. Harbouring dacoit or Robber.** S. 216-A., I. P. C.
1. Harbouring dacoits in general does not fall under S. 216-A. The section renders it penal to harbour persons who intend to commit a particular dacoity. 1925 S. 295=87 I. C. 916=26 Cr. L. J. 1028=19 S. L. R. 111.
 2. For harbouring dacoits S. 216-A, Penal Code, is applicable and not S. 110. Cr. P. C. 51 A. 459=1928 A. 682=116 I. C. 804=30 Cr. L. J. 694.
 3. The offender must know or have reason to believe the person harboured a dacoit or robber and his intention must be to facilitate or screen. 1895 B. U. C. 775.
- 4. Harbouring escaped offender.** S. 216, I. P. C.
1. The essence of criminality lies in the intention to prevent the apprehension of an offender. Merely harbouring a dacoit with the knowledge is no offence. 1923 L. 223=73 I. C. 691, 24 Cr. L. J. 485, 23 I. C. 701.
 2. Harbouring a person for whose arrest an order is passed to enforce a punishment already passed is an offence under S. 216. 11 C. L. J. 109=11 Cr. L. J. 95.
- 5. Persons hired for unlawful assembly.** See Unlawful Assembly—7.
- 6. Sentence.**

Although the acquittal of the person harboured cannot affect the legality of conviction, it may be taken into consideration in awarding sentence. 52 M. 73.

HARMING REPUTATION. See Defamation—18.

HARRASMENT OF ACCUSED. See Transfer (Grounds).—41.

HASTY TRIAL. See Transfer (Grounds).—44.

1. An accused should not be tried in a hasty manner without giving him reasonable adjournment to enable him to produce the whole evidence in support of his defence. 113 P. L. R. 1914=18 P. W. R. 1914 Cr.
2. A trial was held on Sunday and was finished the same day. Although it is not illegal, yet highly irregular and the conviction should be set aside even if the accused did not ask for adjournment. 31 I. C. 352=17 Bom. L. R. 918=16 Cr. L. J. 752, 1930 N. 255-124 I. C. 619=31 Cr. L. J. 705.

*Headings of sections***HEADINGS OF SECTIONS.** *See* Interpretation of statute—8.**HEARING COUNSEL** *See* Arguments—2.**HEARSAY EVIDENCE.** *See* Dying Declaration.

1. In India, it is most dangerous to accept vague statements of hearsay information. Often it so happens that what a man hears, he believes that he saw it himself. 192+ O. 187=7+ I. C. 535=24 Cr. L. J. 791.
2. It is admissible evidence for a living witness to state the opinion on the existence of a family custom and to state as the grounds of that opinion, information derived from deceased persons. But it must be the expression of independent opinion based on hearsay and not mere repetition of hearsay. 23 A. 37 (51).
3. Under the Evidence Act hearsay evidence is inadmissible to prove a fact which is deposed to on hearsay, but does not necessarily preclude evidence as to a statement having been made upon which certain action was taken or certain results followed. 1926 M. 1003=97 I. C. 785=24 M. L. W. 227.
4. Hearsay evidence amounting to evidence of general repute is admissible in proceedings under Chapter VIII of Cr. P. C. (security cases). 6 Bom. L. R. 34, 6 B. 34, 2 P. W. R. 1909 Cr
5. Hearsay is always admissible as substantive evidence whether that evidence be elicited in examination or cross examination. But hearsay may be admissible in cross-examination in so far as it touches the question of the credibility of the witness examined. 16 C. 210.
6. Former statements of a person giving the date of his own birth are admissible under the combined operation of Ss 21 (1), 32 (7) and 13 (a), Evidence Act, but they do not possess any probative force because the source of his information being only hearsay. 213 P. L. R. 1910=1 I. C. 505.
7. The moment a witness commences giving hearsay or other inadmissible evidence, he should be at once stopped. It is not safe to rely on a subsequent exhortation to the Jury to reject hearsay evidence and to decide on legal evidence alone. 7 W. R. Cr. 25.
8. The evidence of a witness that complainant identified the articles which were recovered is inadmissible as hearsay. 1924 L. 727=25 Cr. L. J. 1347=82 I. C. 707.
9. Deceased made a statement prior to her death as to the motive of the accused. Held, it cannot be proved by hearsay evidence, by the testimony of a witness who heard her make the statement. 54 M. 931=1931 M. 689=33 Cr. L. J. 51.
10. When the evidence of a witness is hearsay, it is not relevant and should be disregarded. 2 C. W. N. 193
11. When hearsay evidence is improperly admitted, the question for the appellate Court is whether rejecting that evidence, enough remains to support the finding. 6 B. L. R. 495.
12. A deposition containing hearsay evidence cannot be transferred under S. 223, Cr. P. C. 3 P. 781=1925 P. 51=25 Cr. L. J. 270

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Hostile Witness—(concl'd.)

declaring him hostile, the question and answer are both inadmissible and cannot be taken into consideration. 1 P. 758=71 I. C. 117. 53 C. 372=1926 C. 139=27 Cr. L. J. 266=92 I. C. 442.

4. A hostile witness is one who from the manner in which he gives evidence shows that he is not desirous of telling the truth, to the Court. 31 Cr. L. J. 1207=1930 C. 276=31 Cr. L. J. 1207=57 C. 1266, 49 C. 93, 13 C. 53.
5. Where a prosecution witness is cross-examined by the prosecution as hostile, his evidence should be rejected altogether. 56 C. 145, 53 C. 372, 71 I. C. 657, 1930 C. 276=57 C. 1266, 47 C. 1043, 1923 C. 463, *Contra* 36 C. W. N. 356, 106 I. C. 100=1927 Bom. 501, 9 P. 474, 1923 C. 463=71 I. C. 657.
6. If a witness unexpectedly turns hostile in cross-examination and the defence has elicited new matter from a prosecution witness, the Court may under S. 154 permit the prosecution to test the witnesses' veracity on this point by cross-examining him in turn. 42 C. 957.
7. If a witness is called by the prosecution and then cross-examined as hostile, his evidence should not on that account be left out of account. It should go along with other evidence to the jury to decide the truth. 36 C. W. N. 356=1932 C. 523, 1930 P. 247=124 I. C. 836=31 Cr. L. J. 721=9 P. 474.
8. The fact that the statement of the witness differed from the statement recorded by the Sub-Inspector shortly after the occurrence, is not a sufficient reason to cross-examine him as hostile. 1923 C. 463=24 Cr. L. J. 193, 1930 C. 276.
9. If the defence is compelled to call a prosecution witness as defence witness, the defence has the right to cross-examine him 28 C. 594
10. The mere fact that at a Session trial a witness tells a different story from that told by him before the Magistrate does not necessarily make him hostile. The proper inference in such a case is that he is neither hostile to this side nor that, but that the witness is such that he should not be believed unless supported by other evidence. 13 C. 53, 2 C. 642 (644), 61 C. 399=1934 C. 636.
11. Before contradicting a witness by a previous statement, it must be shown to have been made voluntarily. 1934 C. 636=61 C. 399.
12. A witness who has resiled from some portion of his statement and who has been allowed to be cross-examined by prosecution, may be believed partly. 1935 B. 36=154 I. C. 600=36 Cr. L. J. 532.
13. Cross-examination of hostile witness is in the discretion of Court. Permission should be freely given. 1933 P. 488=34 Cr. L. J. 892.
14. Simply because a witness is declared hostile his evidence cannot be considered worthless. 1933 P. 517=146 I. C. 993, 1931 C. 401=58 C. 1404 Rel. on.
15. The definition that a hostile witness is one who is not desirous of telling the truth is dead and buried. 1933 P. 517, 58 C. 1404.
16. If prosecution apprehends that a witness will not adhere to the statement already made, it cannot directly ask him if he made any statement. It can be asked in cross-examination only when he is declared hostile. 1 P. 758=1923 P. 62, 20 A. 155.
17. That the testimony of a witness is adverse to party calling him is sufficient to obtain leave to cross examine him. Value of his testimony should be judged from cross-examination. 1933 P. 517=146 I. C. 993, but see 1934 A. 226, 6 C. W. N. 513 Rel. on.
18. Either side can rely upon the evidence of hostile witness, but the evidence must be considered as a whole. 1933 P. 517=146 I. C. 993.
19. The fact that witness's answer is in direct conflict with evidence of other prosecution witnesses is no reason for declaring him hostile. 1936 M. 516.
20. It must be shown that statement made in favour of defence is due to enmity to the prosecution. 44 I. C. 33=19 Cr. L. J. 241.
21. Police diary can be referred to by prosecution to see whether a witness has turned hostile. 1918 P. 459.

House Breaking to commit Offence.

HOUSE BREAKING TO COMMIT OFFENCE. Ss. 457-458. See *Lurking house trespass*.

1. After making preparation for hurt. S. 458, I. P. C.

S. 458 applies only to the house breaker who actually has himself made preparation for causing hurt to any person and not to his companions who have not themselves made such preparation. 4 L. 399=1923 L. 509=25 Cr. L. J. 398.

2. Attempt.

1. Where the accused with intent to commit house breaking, tried to enter a shop, but were captured as soon as they opened the door, were guilty of an attempt to commit house breaking. 1925 C. 56=106 I. C. 340=29 Cr. L. J. 4.

2. In a case of conviction of attempting to commit house breaking by night with intent to commit theft, a sentence of whipping is illegal. 3 B. H. C. R. 37 Cr.

3. Accused reached the roof of a house and began to go down the ladder when he retraced his footsteps and jumped down from the back of roof. Held, he was guilty of attempt to commit offence of house breaking. 1933 L. 433 (1).

3. Charge.

1. Where the accused was convicted of house breaking by night and of house trespass in respect of the same acts. Held, that the second head of the charge was superfluous. (1886) Cr. R. No. 50 of 1886. Unrep. Cr. C. 302.

2. A charge of house trespass with intent to commit adultery can be entertained without a complaint by the husband or person having the care of the woman. 2 P. R. 1877 Cr.

3. Persons charged with offence under S. 457 or S. 460 cannot be jointly tried with person accused of receiving stolen property. 1936 A. 337=163 I. C. 253.

4. Charge should specify the intention of accused. 22 C. 391.

5. Conviction under S. 457 is bad if the intention found is different from that set in the charge. 1922 P. 5, 13 Cr. L. J. 224, 24 Cr. L. J. 119, 23 A. 82.

4. Essentials and Evidence.

1. Criminal intention can be inferred from circumstances of the case and it is from those circumstances that the Court must find whether the intention to commit some such offence as is contemplated by S. 457 is made out or not. 14 P. R. 1883 Cr.

2. Where the door of the shop was broken open, the conviction should have been for house breaking by night. (1865) 4 W. R. 19 Cr.

3. Where the accused pointed a tank from which stolen property is recovered. But the tank was accessible to public in general and was not the property or within the sole control of the accused, it is not sufficient for conviction. 1929 M. 846=57 M. L. J. 548=1929 M. W. N. 765, 17 A. 576, 1 P. R. 1917 Cr.

4. Accused was seen carrying away some bundles on the night of burglary. He produced certain clothes, which the owner of the shop broken into, identified as belonging to him. The clothes were incapable of identification and were such as any merchant might stock. Held, that unless it was proved that the bundles contained the cloth from the shop or the property produced is stolen property, conviction cannot be had. 1925 L. 493=92 I. C. 587=25 P. L. R. 593=7 L. L. J. 277.

House Breaking to commit Offence—(contd.)

7. A, with a view to support a fraudulent claim of title to a house, broke into it at night during the temporary absence of the owner, assaulted the servants and took forcible possession of the house, he was guilty under S. 457. 35 M. 186. See 41 M. 156.
8. Accused entering the complainant's house to commit adultery with a woman whom he knows to be the wife of the complainant, he was guilty under S. 457. It was necessary that the complainant should bring a specific charge of adultery. 23 A. 82.
9. It is the duty of Court trying a case under S. 457 to satisfy itself that when accused committed trespass to commit adultery, he had not the consent or connivance of husband. 1925 C. 160=82 I. C. 50=25 Cr. L. J. 1186.
10. Evidence against the accused was that he went in company of S who stole lemonade bottles and that he had no business at that time in the street and that he along with S. asked to be pardoned. Held, there was a strong suspicion though not for conviction. 12 L. L. J. 321.
11. Entry upon the roof of a house is criminal trespass but not house trespass or house breaking. 9 P. R. 1887 Cr.
12. Opinion of the investigating officer as to whether the hole in wall was made from outside or inside, is not legal evidence. 1935 A. 981.
13. Going on the roof of house is not entering building. 1933 L. 433 (1).
14. Mere intention to commit theft is sufficient. Theft need not be actually committed to bring the case under S. 457. 1936 A. 337=163 I. C. 253.
5. **Grievous hurt at the time of—** S. 459, I. P. C.
 1. S. 459 does not apply when the principal act done by the accused is a mere attempt to commit lurking house trespass or house breaking. 8 A. 649.
 2. The offence of house breaking is complete when entry into the house is effected and any grievous hurt subsequently caused by the persons breaking into a house cannot be said to be grievous hurt caused whilst they were committing the house breaking. 49 A. 864=1927 A. 536=102 I. C. 490=28 Cr. L. J. 554, 8 A. 649.
 3. When a party of men armed with *lathis* go and commit burglary and actually use *lathis* in trying to escape, the provisions of S. 459 are applicable. 117 I. C. 802=30 Cr. L. J. 838=11 L. L. J. 230=30 P. L. R. 125.
 4. Accused while making a hole were disturbed by a watchman. In order to escape one fired a pistol and the other two used *lathis*. Held, they were guilty under Ss. 452—511. 17 P. R. 1876 Cr., 2 P. R. 1882 Cr.
 5. S. 459 is applicable not only to a particular burglar who is shown to have caused grievous hurt but to all who have taken part in the burglary. 11 L. L. J. 230=117 I. C. 802=30 Cr. L. J. 838.
 6. Where accused commits lurking house trespass and grievous hurt in a courtyard and it is not proved that courtyard is a part of the house, conviction under S. 457 and not S. 459 can lie. 1934 C. 557.
6. **Joint liability of burglars for death caused** S. 460, I. P. C.
 1. Accused and another attempted to break into a house to commit theft and when interrupted, one of them killed an inmate. There was no evidence to show which of them caused the death. Held, that the accused could not be punished for transportation for life under S. 460, as house breaking was attempted only. 16 P. R. 1874 Cr., 12 P. R. 1880 Cr., 12 P. R. 1891 Cr.
 2. S. 460 cannot be extended to include acts done prior or subsequent to the actual offence of house breaking. 2 P. R. 1882 Cr.
 3. Accused left the house on alarm being raised, but in the courtyard stabbed R. who tried to seize them and injuring him so that he died later. They were pursued and captured. Held, that S. 460 did not apply as stabbing was done after the house breaking was complete, and therefore they were guilty under Ss. 457, 458, and 326, Penal Code. 27 P. R. 1916 Cr.=18 Cr. L. J. 350.
 4. A man who in the commission of lurking house trespass by night voluntarily attempted to cause grievous hurt to the owner of the house who tried to capture

House Breaking to commit Offence—(contd.)

him was guilty under S. 460 and not under Ss. 457—324. (1865) 2 W. R. 52 Cr.

5. Four accused broke into a house, and on alarm being raised, they ran away, when a neighbour caught hold of an accused. His companions inflicted injuries on him who died on the spot. Held, that S. 450 did not apply, as house breaking was complete before the injuries. 2 L. 342=23 Cr. L. J. 164.
 6. Number of persons entered a house at night to abduct a woman and mortally wounded the inmates. They are guilty under S. 460 and not under S. 302—34 or 304—1. 1936 L. 911.
- 7. Presumption from possession of stolen property.**

1. The presumption of guilt arising under S. 114, Evidence Act, from the possession of stolen property does not extend to the offence of house breaking under S. 457. 9 Mys. L. J. 25.
2. Stolen property was found in a house occupied by two brothers. They offered no explanation. Held, they are guilty under S. 457 when they were seen together with another charged with the same offence on evening previous to offence. 1936 A. 386=162 I. C. 964.

8. Procedure.

1. Accused was convicted of house breaking by night to commit mischief and assault and also under Ss. 426, 352 separately. Held, that the sentences were legal. 12 M. 36.
2. An accused person convicted of house breaking followed by theft, is liable under S. 457 only. 5 P. 464, 2 P. L. T. 125. See 2 B. L. T. 19.
3. It is not necessary to specify any particular offence under S. 457. 16 C. W. N. 696.

9. Scaling a wall.

Scaling a wall to effect entrance into a house is house breaking. (1865) 2 W. R. 65 Cr., 1934 A. 833.

10. Sentence.

1. Separate sentences cannot be passed under Ss. 457 and 380 for house breaking immediately followed by theft. 5 P. 464, 1930 P. 385=123 I. C. 393=31 Cr. L. J. 492.
2. S. 562, Cr. P. C., does not apply to an offence under S. 457. 103 I. C. 839=28 Cr. L. 759=1927 R. 254=6 Bur. L. J. 83.
3. When a Police man whose duty it was to protect the lives and property of the subject was convicted under S. 457, a sentence of 5 years' rigorous imprisonment was not excessive. 1930 L. 667=31 Cr. L. J. 877.
4. Burglary is a serious crime and whenever detected, the accused should be given deterrent sentence. 1932 L. 258=33 P. L. R. 215=137 I. C. 716=33 Cr. L. J. 500.
5. For attempting to commit house breaking by night with intent to commit theft, a sentence of whipping is illegal. 3 Bom. H. C. R. 36.
6. Release after admonition of the accused is illegal in case of house breaking. 1935 M. 157=154 I. C. 879.

11. To commit adultery. See House trespass.—14.**12. Unchained door.**

In case of entry into the house by merely pushing in shutters of doors which was not chained or locked, conviction under S. 457 cannot stand, as it is not house breaking 23 Cr. L. J. 278=1922 N. 26=66 I. C. 422.

13. What is house breaking. S. 445, I. P. C.

1. Breaking open of a cattle shed in which agricultural implements are kept amounts to house breaking. 18 Cr. L. J. 469.
2. Entry into a house by scaling a wall is house breaking. (1865) 2 W. R. 65 Cr.

House Breaking to commit Offence—(concl'd.)

3. Entering a house by merely pushing in shutters of door which was not chained or locked, does not come under S. 445, cl. 6, and is not house breaking. 1922 N. 26=66 I. C. 422=23 Cr. L. J. 278.
4. Entering into a house and effecting departure with a vessel under his arm, amounts to house breaking (1892) 1 Weir 530.
5. Mere putting of a hand into a hole in the wall without putting it through the hole is not an entry into the house. 4 L. 399=25 Cr. L. J. 398=1923 L. 509.
6. A, being an inmate of his uncle's house, broke open his chest and took property from it. Held, he was not guilty under S. 457 but under S. 379. 6 N. W. P. H. C. R. 301.

HOUSE TRESPASS. Ss. 448, 451, 452 and 456, I. P. C. See Criminal trespass.**1. Abetment.**

1. If a son is prohibited from carrying away things to his mistress, she is not guilty of abetment, when he carries away things from the house. 11 P. R. 1869.
2. A wife, committing adultery with a stranger, is not guilty of abetment of house trespass. 5 P. R. 1871 Cr.

2. After making preparation for assault. S. 452, I. P. C.

1. An accused charged under S. 452 cannot be convicted under Arms Act. 4 R. 355.
2. The collection of *lathis* and brick bats, by the trespassers, on the property is clear evidence of their threatening behaviour and indicates an intention to annoy and intimidate. 6 P. 794=1928 P. 124=29 Cr. L. J. 99=106 I. C. 691.
3. Trespass into the shop of the complainant for assaulting him is not offence under S. 452, though under S. 448. 76 I. C. 392=25 Cr. L. J. 168.

3. Attempt.

1. The removal of a trap-door with the intention of committing house trespass amounts to an attempt. (1883) Unrep. Cr. C. 183.
2. Entry in a verandah coupled with an attempt to push open a door amounts to attempt to commit criminal trespass 8 B. L. T. 17.

4. Bona fide claim. See Criminal trespass—4.

1. Where the accused's intention in doing an act complained of was to assert his title and gain and hold possession of the premises as against complainant, he was not guilty. 47 A. 855=26 Cr. L. J. 1273=1925 A. 540.
2. Entering a house under claim of right is no offence. 81 I. C. 823=1925 P. 167, 75 I. C. 353=1923 R. 157=24 Cr. L. J. 929.
3. Where coins were unearthed and taken possession of without the consent of the landlord, and the landlord's Manager exacting by force by making house searches and took the man who unearthed and coins to Police, is not guilty of theft but under S. 448, as he was acting under *bona fide* claim of right. 1924 P. 665=84 I. C. 346=26 Cr. L. J. 282.

5. Building. See Building.**6. Burden of proof—mistaken.**

1. Where accused is found at midnight in the complainant's house uninvited, the burden is on him to show that his intention was innocent. 29 A. 46, 37 A. 395, 44 C. 358.
2. Accused was found in complainant's room at night. He pleaded that he entered it by mistake. There was no evidence that he entered with the intention of committing adultery or any other offence. Held, he was not guilty under S. 448, I. P. C. 1935 P. 523.

7. By decree-holder.

Where the decree holder entered a house, along with the Civil Court Officers, to execute a decree obtained against one of the inmates of the house, no criminal trespass is committed. 1930 C. 720=34 C. W. N. 583, 15 A. L. J. 808.

*House Trespass—(contd.)***8. By servant.**

Where coins were unearthed without the consent of the landlord and the Manager entered and made forcible searches of the houses to exact those coins, he was guilty under S. 448, 84 I. C. 346=1924 P. 665=26 Cr. L. J. 282.

9. Creditor breaking open complainant's door.

An execution creditor breaking open complainant's door to distrain property is not guilty of trespass. 2 M. 30.

10. Entry—what is—.

1. The mere putting of a hand into a hole in the wall without putting it through the hole is not an entry in the house, under S. 448. 4 L. 399=1923 L. 509=25 Cr. L. J. 398.
2. By placing his hand through the railing accused technically commits offence under S. 457. 1934 A. 833.

11. Entry in Court.

The accused entered a Court Room where a case was being conducted. The presiding officer asked him to leave the room and on his disobeying pushed him out. Held, he was not guilty under S. 448, as no abusive language was used. 81 I. C. 141=25 Cr. L. J. 653=1923 R. 145.

12. Entry in the absence of complainant. See Criminal Trespass—22.**13. Entry on roof.**

Entry on roof is not house trespass but a criminal trespass. 9 P. R. 1877 Cr., 20 A. W. N. 151, 9 P. R. 1890 Cr., 1933 L. 433 (1).

14. Entry to commit adultery or sexual intercourse. S. 456, I. P. C.

1. A mere entry into a house to have sexual intercourse with a woman living there is not criminal trespass as consent of the woman will be presumed. But where there was no pre-arrangement between the accused and the lady and all the ladies in the house were startled, the accused is guilty. 4 P. 459=26 Cr. L. J. 954. 4 C. L. J. 169, 19 M. 240, 41 M. 156 Dist. 22 C. 391 Ref.
2. Where a stranger, uninvited effected an entry in the middle of night into the sleeping apartment of a respectable lady and when an attempt was made to capture him, used great violence, he was guilty under S. 456. 16 C. 657, 22 C. 391, 22 C. 994, 44 C. 358, 18 P. R. 1905 Cr., 4 P. 459.
3. Where accused was found at midnight in the complainant's house and the wife of the complainant cried out that thief was taking away her *hansli*, he was guilty. 29 A. 46, 37 A. 395.
4. Accused was found at night inside the complainant's house where he had gone to visit the latter's widowed daughter-in-law, a woman of loose character, with whose knowledge or consent he probably entered. Held, that he was not guilty. 12 P. R. 1898 Cr., 50 P. L. R. 1919.
5. Entering a house with intent to have sexual intercourse with a woman whom accused knows to be the wife of another, is an offence. It was not necessary that complainant should bring a specific charge of adultery. 23 A. 82.
6. Entering a cattle pen to prosecute an intrigue with an unmarried girl of over 16 years is no offence. 28 P. R. 1905 Cr.
7. Accused entered into the house of the complainant in his absence to have sexual intercourse with his mother who was a widow, it is no offence. (1896) 1 Weir 537.
8. Accused entering a house in the absence of owner, which was occupied by the owner and his concubine, at her invitation, was not guilty. 22 O. C. 121.
9. Entering a house to have illicit intercourse with a widow is no offence. 38 A. 517. See 17 P. R. 1908 Cr.
10. But where accused could not prove that he had an intimacy with the widow living in the house, he was guilty. 37 A. 395, 23 A. 82, 19 A. 74, 22 C. 391, 12 P. R. 1906 Cr.

House Trespass—(contd.)

11. Accused entered in a house to carry on intrigue with a girl on receiving information that her father was absent, but was caught by her uncle before he could get away. Held, he was not guilty, as it could not be said that accused intended or expected that his conduct would cause annoyance by being made public. 1926 L. 600=96 I. C. 871=27 P. L. R. 385, 12 P. R. 1906 Cr.
 12. A person was found inside the house of another at night and he pleaded in defence that he entered at the request of one of the inmates and secondly that he had no intention to annoy or insult. Held, as he had taken the precaution of keeping his presence in the house secret and was not forbidden to enter the house by the owner, he was not guilty. 40 A. 221, (1923) 1 L. C. 340. 81 I. C. 239=1925 L. 23
 13. A person entering a house after having taken all precautions to avoid discovery cannot be said to have entered with intent to cause annoyance to the person in possession. 1926 L. 600=96 I. C. 871=27 Cr. L. J. 1015, 12 P. R. 1906 Cr. Expl., 17 P. R. 1908 Diss. from.
 14. A man who enters the house of the complainant who was absent and had gone to attend the work, to have sexual intercourse with his wife, it may be safely presumed that he neither consented nor connived at the adultery of his wife. The accused is guilty under S. 451. 1925 L. 635=89 I. C. 319=26 Cr. L. J. 1343, 8 P. W. R. 1921 Cr., 22 Cr. L. J. 266
 15. Where in K's absence from house, accused entered the house with the consent of his wife to commit adultery. Held, he was guilty under S. 451. 59 I. C. 550=22 Cr. L. J. 118
 16. Where the house trespass is with intent to commit adultery, it must be shown that there has been no consent or connivance on the part of the husband of the woman. 19 A. 74
 17. A Court trying a charge of trespass with intent to commit adultery must find out whether the accused had not the consent or connivance of the husband. 1925 C. 160=82 I. C. 50=25 Cr. L. J. 1186.
 18. A person entering a house with the intention of carrying out his amours with married woman, is guilty under S. 448. The owner has the right to arrest him and if he evades arrest the owner is perfectly justified under S. 59, Cr. P. C. to pursue him for arrest. 1935 Pesh. 83=156 I. C. 704.
 19. Accused was found in a house occupied by two widows. Intention to annoy was presumed and he was held guilty. 16 C. 657, 22 C. 994.
 20. Accused entered complainant's house. He pleaded that he entered by mistake. There was no evidence that he entered to commit adultery. Held, he was not guilty. 1935 P. 523.
- 15. Essentials and Evidence.**
1. Where a *Dakhal Nama* only gave formal possession of the house to the complainant against the accused, the latter was not guilty if he entered or remained on the land. 1925 A. 592=88 I. C. 357=26 Cr. L. J. 1125.
 2. Actual possession, by the person alleged to be intended to be annoyed, insulted or intimidated, is essential under S. 448. 47 A. 855, 2 A. 465, 88 I. C. 357=1925 A. 592=26 Cr. L. J. 1125.
 3. Intention is one of the most important ingredients of the offence under S. 448. 1928 C. 263, 81 I. C. 716=1925 N. 50=25 Cr. L. J. 1004.
 4. When the object of the accused, as found by Court, was to break down the building which would have the effect of compelling complainant to leave and the Court treated that result as intended. Held, that there was no intent to annoy, etc. 75 I. C. 353=24 Cr. L. J. 929=1923 R. 157.
 5. The accused entered a house, remained there and committed an assault. It was held that though original entry might be lawful, the remaining in the house was unlawful and then he committed an offence. (1883) 1 Weir 528.
 6. A person entering a lock-up with intent to convey food to an undertrial prisoner, is not guilty of house trespass. 2 A. 301, See 5 A. W. N. 50,

Hurt—(contd.)

6. Where in a sudden fight the parties exchanged stick and fist blows but one of them threw a heavy piece of wood and fractured the skull of the deceased. Held, they were guilty under S. 323. 162 P. L. R. 1913. 1 P. 212.
 7. Accused surprised the deceased carrying on an intrigue with his mistress, tied him up by a post and gave him thrashing in order to teach him a lesson who died because of weak constitution and enlarged spleen. Held, he was guilty under S. 323. 57 I. C. 826=21 Cr. L. J. 666, 46 I. C. 525.
 8. Accused aimed a blow on a dark night at the complainant which accidentally fell upon his child whom his wife was carrying on her arms as she intervened to ward off the blow. The child died. The accused is guilty under S. 323 as blow if it had reached the complainant would have caused only a simple hurt. 21 Bom. L. R. 1101=54 I. C. 485.
 9. If death is caused on account of an enlarged spleen, the accused is guilty under S. 323. 4 C. 764, 2 A. 522, 2 A. 766, 3 A. 776, 3 A. 597, 7 M. H. C. R. 119.
 10. The accused, in a fit of temper, hit an old man on his turbaned head with a stick and fractured his brittle skull. He had no intention to cause more than a hurt. He died. Held, that he was guilty under S. 323, I. P. C. 1931 M. W. N. 1152.
10. **Death of complainant.** See Abatement.
11. **Definition of.**
The definition of hurt appears to contemplate the causing of pain, etc., by one person to another. 22 P. R. 1878 Cr.
- 12 **Essentials and Evidence.**
1. Removal by force of a person other than a person against whom a decree for ejectment from house possession is obtained, is punishable under S. 323. 1930 C. 720=34 C. W. N. 583=127 I. C. 551.
 2. When there are serious irregularities in conducting a house search and the occupier of the house beat the constable, the offence falls under S. 323 and not under S. 332. 1930 P. 387=125 I. C. 784=31 Cr. L. J. 937.
 3. A person beating the public servant entrusted with the duty of execution of warrant of attachment, is guilty under S. 323. 1927 L. 851=28 Cr. L. J. 972.
 4. Where an accused who had a quarrel with his daughter pelted brick-bat at his house knowing that there were occupants in it and one of them was hurt, the accused is guilty under S. 323 and not under S. 336. 36 I. C. 145=17 Cr. L. J. 465.
 5. In case of mere altercation and squabble between the parties only a technical offence is committed and the accused should be acquitted. 6 P. W. R. 1919 Cr.=50 I. C. 351=20 Cr. L. J. 303.
 6. Conviction under S. 323 is bad if accused is only abused. 1 P. W. R. 1916 Cr.
 7. Two out of four persons with the common object of beating the complainant assaulted him while the other two stood ready armed with *lathis* to take part if required. Held, that the latter two were guilty under S. 323. 18 Cr. L. J. 382.
 8. Unless the evidence is good enough to warrant a clear finding as to the facts and as to the guilt of the accused, no conviction can be had under S. 323 or S. 325 on the ground of enmity and fight and serious injuries caused in the fight, (1920) 3 U. P. L. R. 11.
 9. There was a fight over cattle trespass and the party in whose field trespass was committed disposed of the party of the owner of the cattle as the supporters of the owners came one by one. When deceased came up accused caught his hands and was beaten with *lathis*. The desire was to chastise the owner of the cattle which caused damage. The deceased died of a blow on the temple. Held, that the accused were guilty under S. 323. 1925 O. 482=88 I. C. 520=26 Cr. L. J. 1160.
 10. If the custody of constable was unlawful he is guilty of wrongful confinement and the appellants had right of private defence. They are not guilty under S. 330. 1923 A. 34=85 I. C. 44=26 Cr. L. J. 428.

Hurt—(contd.)

13. Hair Pulling.

Pulling a woman by hair amounts to offence under S. 323. (1883) Weir (3rd Edition) 196.

14. Infirmary.

'Infirmary' has been defined as inability of an organ to perform its normal function which may either be temporary or permanent. 46 A. 77=1924 A. 215=21 A. L. J. 844.

15. Marks of injury. See Marks of Injury.

Absence of marks of injury of brick or *lathu* is immaterial if it struck on some elastic part. 2 P. 309=74 I. C. 705=1923 P. 413.

16. Negligible or Privileged assault. S. 95, I. P. C.

Parents possess the authority to chastise their children and it is impliedly delegated to school master who is entitled to give reasonable corporal punishment necessary for school discipline. 3 R. 661.

17. On provocation. S. 334, I. P. C.

Accused striking a blow on provocation is guilty. 94 I. C. 142=1926 L. 487=27 Cr. L. J. 574.

2. If the grave or sudden provocation had come to an end already, there is no provocation for subsequent assault. 1929 L. 739=11 L. L. J. 287=1929 Cr. C. 329.

18. Poisoning.

Accused, a boy of 16 years of age, being in love with a young girl intended to administer to her some love philtre. He induced another boy to give her sweetmeat. The girl and her family members partook of it and were seized with symptoms of *Dhatura* poisoning, though none of them died. There was no evidence that the accused knew that the sweetmeat contained *Dhatura*. Held, he was guilty under S. 323. 162 P. L. R. 1913=1 P. W. R. 1913 Cr.

19. Private Defence. See Right of Private defence.

In cases of hurt the question should be considered as to who was aggressor and whether offence was committed in the exercise of the right of private defence. (1865) 2 W. R. 59 Cr.

20. Procedure—

1. Separate sentences cannot be passed under Ss. 323 and 326 in the case of assault upon a single person. In such a case each accused should be convicted for the offence of which he is actually found to be guilty. 1927 O. 313=103 I. C. 198=28 Cr. L. J. 662.

2. Where different persons are injured, grievous, hurt being caused to some and simple to others, the Court can impose separate and cumulative punishment. 37 A. 623.

3. Separate sentence can be passed for rioting and causing hurt 1928 M. 18=105 I. C. 806=1927 M. W. N. 850=28 Cr. L. J. 982, 1926 A. 225=92 I. C. 463.

4. A person acquitted under S. 352, I. P. C., cannot be tried under S. 323 of the same matter. (1871) 16 W. R. 3 Cr.

5. Conviction under S. 323 on a charge under S. 148 or 147 is not illegal. 1923 L. 326=85 I. C. 822=26 Cr. L. J. 598.

6. A conviction under S. 160 on a prosecution initiated by Police is no bar to a subsequent trial under S. 323 on a complaint by the injured party. 47 A. 284=1925 A. 299=86 I. C. 64=26 Cr. L. J. 688

21. Sentence.

1. School Master inflicting corporal punishment to a child below 12 years for school discipline is protected under Ss. 79 and 89. 1926 R. 107=94 I. C. 412=3 R. 661=27 Cr. L. J. 636.

2. If a strong man beats his wife who was delivered off a child on a slight provocation and causes her death, he is guilty under S. 323. The sentence of three months'

Hurt—(concl'd.)

rigorous imprisonment is ridiculously low in such a case and should be enhanced. 1929 L. 531=114 I. C. 442=30 Cr. L. J. 300.

3. A person in a subordinate position being a superior official with an umbrella calls for something more than nominal sentence. 24 W. R. 67.
4. S. 71 of the Code may be invoked to relieve the offence under S. 323 if this is stated to be the common object of the assembly and is necessary ingredient constituting an offence under S. 147. 1921 P. 432=22 Cr. L. J. 449=2 P. L. T. 91, 16 C. 442.

22. Spleen-rupturing of—

1. When death is caused by simple injuries and where it is shown that accused had no knowledge of the diseased spleen of the deceased, he was guilty under S. 323. 1924 L. 218=72 I. C. 553=24 Cr. L. J. 421.
2. If death is caused on account of enlarged spleen, the accused is guilty under S. 323. 4 C. 764, 2 A. 522, 2 A. 766, 3 A. 597, 3 A. 776, 7 M. H. C. R. 119, 21 Cr. L. J. 666.
3. A woman died from a chance kick in the spleen, not known to be diseased, inflicted by her husband on provocation and the husband had no intention or knowledge that act was likely to cause hurt, he was guilty under S. 323. 24 Cr. L. J. 421.
4. Accused threw a piece of brick at a person, which struck him in the region of spleen which was diseased and he died, the accused was guilty under S. 323. 3 A. 597.

23. Stone throwing.

1. Accused who had a quarrel with his debtor over non-discharge of a loan, pelted brick-bats at his house knowing that there were occupants in it and hurt one of them who was under medical treatment for 10 days, the accused was guilty under S. 323. 17 Cr. L. J. 465=36 I. C. 145.
2. Accused threw a piece of brick at a person, which struck him in the region of spleen which was diseased and he died. The accused was guilty under S. 323, 3 A. 597.

24. To companions of deceased. See Murder—58.**25. To deter public servant from his duty. See Public Servant—9.****26. To extort confession. S. 33. Extorting confession.****27. To extort property. S. 327, I. P. C.****HURT BY DANGEROUS WEAPON. S. 324, I. P. C.****1. Applicability.**

If the injury is simple and caused with a cutting weapon it falls under S. 324 and not S. 326. 1930 L. 950=129 I. C. 483.

2. Branding—

Branding of a person to exercise the evil spirit from his body is punishable under S. 324. (1870) 13 W. R. 23 Cr.

3. Evidence.

1. In case of rioting the accused were proved to have inflicted certain blows on the other party and there was nothing to show that the injuries were not in self defence or justified by extreme provocation the accused were guilty. 1929 M. W. N. 583.
2. A hatchet or a adze is not an instrument for cutting though the former is used for chopping wood but they are both instruments for cutting within the meaning of S. 324. A small pen-knife is such an instrument. 16 Bom. 580.
3. Accused in order to constrain his wife to return to his house, caused hurt to her, he was guilty under S. 324. 11 M. 257, 5 L. L. J. 375.
4. Accused did not want his father to return two bulls which they thought of buying and his father refused. Accused hit him on the head with a crow bar and killed him. Held, that accused had no intention of killing him and was therefore guilty under S. 324. 1931 M. W. N. 765

HURT BY POISON. S. 323, I. P. C.**1. Arsenic. See Poison—2**

Accused gave arsenic person intending to cause death but through some cause or other,

Hurt by Poison—(concl'd.)

the person to whom it was administered recovered. Held, he was guilty under S. 307 and S. 328, I. P. C. 60 I. C. 50=22 Cr. L. J. 194.

2. Dhatura. See Poison—7.

1. Administering *Dhatura* to cause a young girl to fall in love with accused is an offence under S. 328 if delirium is caused, with the possible risk of falling into coma. 46 A. 77=1924 A. 215=21 A. L. J. 844.
2. Where for the purpose of facilitating robbery *Dhatura* was administered to certain travellers, one of whom died. Held, that the offence with regard to the person who died fell under S. 325 and with regard to other under S. 328, I. P. C. 30 A. 568, 28 P. R. 1881 Cr.
3. Where accused administered *Dhatura* to a person to facilitate robbery and he died, the accused was guilty under S. 302. 31 A. 148, 40 A. 360, 45 A. 557, 28 Bom. L. R. 1003, 19 P. R. 1916 Cr. See 19 P. R. 1919 Cr.
4. Accused boy of 16 years fell in love with a girl of 13 years of age persuaded another young boy to give her sweetmeat to eat, which he believed to act as a love philtre. There was no intention to cause hurt to any person. The persons who partook of the sweets showed symptoms of *Dhatura* poisoning. Held, he was guilty under S. 323, I. P. C. 46 A. 77=26 Cr. L. J. 413.

3. Essentials and Evidence.

1. One B was found by Police wandering about in a peculiar condition with C and R. He had some money and went to sleep. The money was missing. He showed signs of *Dhatura* poisoning and some money was found with R. R gave some drugged *pais* to other companions. Held, that on this circumstantial evidence R could not be convicted of administering *Dhatura* 1923 L. 687=77 I. C. 981=25 Cr. L. J. 517.
2. Accused mixed milk bush juice in his toddy pots, knowing that if drunk by a person it would cause injury, with the intention of detecting an unknown thief who always stole his toddy. The toddy was drunk by some soldiers who purchased it, from some unknown soldiers. Held, he was guilty under S. 328. 5 B. H. C. (Cr. C.) 59.
3. Accused a youth of 21 years administered poison to his brother and his family, under the instigation of a person who absconded. They were all saved. The High Court considering the possibility that accused may after discipline become a fit to be a safe member of the society convicted him under S. 328. 1931 P. 346=134 I. C. 639=32 Cr. L. J. 1228.

HUSBAND AND WIFE.**1. As witnesses against each other. S. 120, Evidence Act.**

1. In proceedings under S. 488, Cr. P. C., person sought to be charged is a competent witness on his own behalf. 16 C. 781, 18 B. 468, 78 P. L. R. 1916.
2. Both parties to a divorce are competent to prove non-access and consequent illegitimacy of a child. 38 M. 466.

2. Agreement between—as to Maintenance. See Maintenance—2—9.**3. Communication during marriage—privilege. S. 122, Evidence Act.**

1. Confession by wife to her husband, of his son by former wife is inadmissible under S. 122. 10 P. R. 1914 Cr.
2. Wife is not a competent witness against the husband without his express consent. 27 P. R. 1913 Cr., 34 P. R. 1914 Cr.
3. Communication by husband to wife without consent to disclosure is inadmissible. 218 P. L. R. 1913, 27 P. R. 1913 Cr., 34 P. R. 1914 Cr.
4. Offence against a person does not include offence against son. 10 P. R. 1914 Cr.
5. No statement of an incriminating nature made by an accused as to her guilt under S. 302, I. P. C. to her husband could be received in evidence. 1923 L. 40=81 I. C. 271=25 Cr. L. J. 783, 10 P. R. 1914 Foll.

6. The communication made by an arbitrator to his wife shortly before his death admitting that he had accepted bribe from a party can be permitted to be disclosed in evidence only if the requirements of S. 122 have been fulfilled. 1930 L. 280=120 I. C. 494.
7. Restriction in S. 122 is not one that can be waived or that a Court can relax; so that disclosure by a widow of certain communications made to her by her husband immediately before his death, cannot be permitted at all. 40 C. 891.
8. Before admitting evidence under S. 122 the Court should ask the party against whom the evidence is to be given whether he or she would consent to the evidence being given. The consent must be expressed. 27 P. R. 1913 Cr.
9. Statements alleged by the wife an accused person to have been made to her in respect of the offence with which he is charged, without the consent of the accused or his representative in interest are inadmissible under S. 122. 24 P. W. R. 1913 Cr.=218 P. L. R. 1913=14 Cr. L. J. 273.
4. **Complaint by husband.** See Enticing away married woman.—4. Bigamy—8. Defamation.
5. **Compromise by husband.** See Compounding (aggrieved party).
6. **Custody of wife.**
 1. Making over enticed woman to the complainant without Civil redress is irregular. 7 P. R. 1866 Cr.
 2. There is no justification for removing the wife forcibly. 47 I. C. 807.
 3. Although husband is the guardian of his minor wife, he should not be given the custody as Child Marriage Restraint Act provides that such marriages should not take place. 1935 A. 916.
7. **Death caused by excessive sexual intercourse.** See Death by Negligence—5.
8. **Defamation of wife—.** See Defamation.
9. **Marriage.** See Enticing away married woman,—13 Bigamy—13-14.
10. **Possession of—.** S. 27, I. P. C. See Possession of wife, etc.
11. **Receiving stolen property by—.** See Receiving stolen property—7.
12. **Taking by force by husband.**

Husband cannot use force to compel his wife to leave her parent's house and join him. 1936 A. 360=163 I. C. 301.

13. **Theft by—.** See Theft—8.

HYDRO-CHLORIC ACID. See Poison—9.

HYMUN—RAPTURE OF. See Rape—25, Virginity.

HYPOTHETICAL FACTS.

Court should not base its judgment on hypothetical state of facts which were not put forward by the prosecution and were never suggested to accused to meet them. 11 Cr. L. J. 245, 27 Cr. L. J. 1346=98 I. C. 466.

HYPNOTISM

1. Human personality divides itself into two spheres, viz., "the waking state" (the superior consciousness) and the "dream state" (the inferior consciousness). The latter state exists whenever we dream or when in a fit of sleep walking or distraction, we act without knowing what we are doing. It is in the sphere of this inferior consciousness that all the acts of a person under the influence of hypnotism are placed, and by arranging these phenomena in a category of known facts we attempt to form a clear idea of that state. *Criminal Investigation*, by Dr. Hans Gross, Ed. 1934, P. 120.
2. Hypnotism has most resemblance to sleep. But we may distinguish sleep from hypnotism by designating the latter by the phrase "state of suggestibility." To "suggest" is to produce a dynamic change in the nervous system of a person under the influence of another person. *Ibid.*
3. In the hypnotic state three stages may be distinguished.

Hypnotism—(concl'd.)

- (a) *Somnolence*,—state in which the subject can still open the eyes.
- (b) *Light sleep*,—(hypotaxia-dream)—state in which he partly submits to the influence of suggestion.
- (c) *Deep sleep*,—somnambulism with amnesia (forgetfulness) after waking. *Ibid.* p. 121.

4. The effect of hypnotism has been established scientifically.

- (a) It may affect the property or moral character of the person hypnotised.
- (b) Every kind of extortion may be committed with its assistance.
- (c) It may suggest crimes to be committed
- (d) It may suggest illness, etc.
- (e) The courage necessary for the performance of crime may be suggested with its help.
- (f) Persons who have committed no crime may be unjustly accused by a person under its influence
- (g) On the other hand a person who has knowingly committed a crime may plead suggestion by another.
- (h) Traces of wounds and strangulations may be produced by suggestion and subsequently serve as proofs.
- (i) Abortion may be brought about by suggestion.
- (j) All kinds of illness—especially of the nerves, and convulsions may be the consequence of illicit or awkward hypnotising.
- (k) Involuntary suggestion may be practised by the investigating officer himself or other persons to be questioned.

We may say that the danger of hypnotism are not so very great and are better known than formerly. *Criminal Investigation by Dr. Hans Gross, 1934, Ed., Pp. 121-125*

IDDAT. See Maintenance—14, Bigamy—14.

Maintenance is allowed to a divorced Muhammadan wife during the period of *iddat*. 5 P. R. 1905 Cr., 10 Cr. L. J. 502.

IDENTIFICATION

1. Application for—.

1. An application for varying the order in which the accused should stand is reasonable, if some particulars are furnished that by disturbing the order, the witness would not be able to identify the accused. 9 Mys L. J. 335.
2. If accused contests identity parade must be held. 1934 C. 169.

2. As basis for conviction

1. Identification of the accused by the principal witnesses supported by the identification by other witnesses is insufficient, if knowing the identity and names of the accused, *did not mention it to the Police*. 1929 P. 517=122 I. C. 541=31 Cr. L. J. 421.
2. Identification test is not quite sufficient to form the basis of conviction, though it may perhaps add some weight to other evidence against the accused. 1929 S. 149=115 I. C. 328=30 Cr. L. J. 456. 1924 O. 295=81 I. C. 949.
3. Delay is seriously prejudicial to the course of justice where identification is a material issue. 1928 P. 39=104 I. C. 705=28 Cr. L. J. 865=9 P. L. T. 217.
4. A mistake due to confusion of ideas is quite possible identification. 1924 O. 295=81 I. C. 949=25 Cr. L. J. 1125.
5. If the case entirely depends on identification conviction should not be had on evidence of difficult or unsatisfactory nature. 27 P. R. 1858 Cr.

3. By aged and old persons.

Memory of aged persons in respect of recent events is notoriously fallible. "An old man who combines a venerable appearance with a failing memory is the witness most to be feared by either side." *Moore on Facts*, Vol. II, 1908, P. 1372. *Art of Cross-Examination* by P. R. Aiyar 1920, P. 543.

4. By Beard.

1. The identification made of a man who is said to have been wearing a beard at the time, and whose beard is concealed or absent at the time of identification, is by no means convincing, and when it stands alone, must be regarded as an unstable piece of evidence. Magistrate must hold two identification parades in such cases. 86 I. C. 817 (820)=1925 A. 405.
2. Beards differ like noses or the mouths which they cover and the accused should be put up with others of similar appearance, in the identification parade. 86 I. C. 817 (819-820)=1925 A. 405.

5. By clothes.

It is not safe to rely upon the article of clothing when the body cannot be identified on account of advanced decomposition. 15 P.W. R. 1915 Cr. See 1923 L. 40=25 Cr. L. J. 783=81 I. C. 271.

6. By co-accused.

Identification by co-accused while on trial is not admissible. 45 A. 300=1923 A. 352.

7. By dying person.

It is, in general, an injudicious proceedings to take a suspected person before one who is dying, in order that he may be identified; inasmuch as at that time the victim may be semi-delirious—a state of mind which is not easily recognised by non-professional persons—and confessions or statements then made should, when they implicate other persons and are not strongly corroborated by circumstances, be regarded with great suspicion. A fatal mistake in London was made by a woman who identified a wrong person, who was executed. *Taylor's Med. Jur., Ed. 1928*, P. 50.

8. By flash of fire arm.

1. On a dark night and away from every source of light, the person who fired the gun might be identified within a moderate distance. If the flash were very strong and smoke very dense, and the distance great the person firing the piece could not be identified. *Taylor's Med. Jur., Ed. 1928*, P. 543.
2. There is comparatively little flash with nitro-powder, and consequently little chance of identification of a person by the light produced by the discharge. *Ibid.*
3. Hill made a series of experiments and the conclusion he drew was "that all stories of recognition from the flash of gun or pistol must be founded upon fallacy." *Will's Circumstantial Evidence*, 6th Ed., P. 183.
4. In *Rex v. Brookes*, 31 *State Trials* 1124, 1135, 1137 experiments were made from which it appeared that recognition by flash of firearm was impossible. *Ibid.*
5. The flash caused by the discharge of pistol or gun provided the circumstances are favourable affords sufficient light for recognition and identification. The favouring circumstances are close proximity to the discharge on one side of the line of fire, absence of other lights and not much smoke from the powder. *Lyon's Med. Jur., Ed. 1904*, P. 55.
6. Identification by the light of firearm or other flashes is impossible. 4 P. L. R. 1915. *Will's Circumstantial Evidence*, Pp. 43—182.

9. By flash of lightning.

A flash of lightning undoubtedly affords sufficient light to discern the features, etc., of another, as to be able to identify him. *Lyon's Med. Jur., Ed. 1935*, P. 105. *Circumstantial Evidence*, Pp. 43—182, 183.

— — — Distinction

Identification—(contd.)

10. By finger prints.

1. Identification by means of finger-prints has long since established its claim to trustworthiness, and is a most important branch of criminal investigation both for the detection of crime and the identification of the criminal. *Lyon's Med. Jur., 1935, P. 95.*
2. Prints left on weapons or other objects at the site of the crime have been found to correspond exactly with those obtained from the fingers of a suspected person, and have then formed convincing proof of guilt. *Ibid, Pp. 95-96.*
3. Justices Blair and Burkitt of the Allahabad High Court in the case of Man Singh, accused, as the thumb impression exactly with the thumb impression photographed also *Pioneer, June 7, 1901.*

11. By gait.

We are constantly in the habit of recognizing friends and acquaintances by the character of their gait, but it is less reliable than the voice as the sole evidence of identity. *Taylor's Med. Jur., Ed. 1928, P. 116.*

12. By Hair.

1. The value of the hair in identification is tolerably obvious under ordinary circumstances. The colour, character and length of the hair should be considered. *Taylor's Med. Jur., 1928, Pp. 151-152.*
2. Tidy is of opinion that both hair and nail may grow for a time after death. But it is accepted as a fact that growth of hair after death does not take place. The skin shrinks after death, and hence a man who had been shaved just previous to death might in twenty-four hours appear not to have been shaved. *Ibid, P. 153.*
3. The hair of animals is distinguishable from those of human beings. They are, generally speaking, coarser, thicker and less transparent than those of human being. The hair of some animals may be at once distinguished by the eye or by the pocket lens, as that of the cow, the horse, the deer; but the hairs of some dogs, such as skye, terrier and spaniel, being long and silky, closely resemble that of man. *Ibid, P. 156.*
4. To find out from what part of body the hair comes, comparison with hairs of known situation is absolutely essential. The hair of the eye brow and eye lash is stouter than that of the head, and of the pubes and axillae is stouter than rest of the body. It is necessary to find out by means of microscope whether they have been indented, cut or bruised at either or both ends. A spermatozoon or other body might possibly be found adhering to a hair. All these matters may help in deciding where a hair came from; the seat of blow might for instance, be known and a hair on a blunt weapon when compared with another from the same seat of injury may show similarity or not. *Ibid, P. 157.*
4. There are many characters of hair which may serve as corroborative points in identity either of a person or of a given individual hair, but they are mainly those denoting the race from which the person came. The curly short crisp hair of a negro, is differentiated from the hair of any European race; the straight lank hair of most aborigines is much coarser than hair of similar straightness occurring in more civilised races. *Ibid, P. 152.*
5. Colour in its natural state offers but little means of positive identification beyond the fact that the hair on the dead body is of the same colour as that of the missing person. The colour may be artificially altered by means of dyes, or the presence of the colour may be concealed by applying lamp black to obtain a black colour and flour, chalk, etc., mixed with some greasy substance to obtain a white colour. But these are easily detected by washing it in water. In the case of dyes it will be seen that bases of hair will show a short length of natural colour, the hair on pubes are not dyed, the skin of the scalp or face may show the application of such a dye as walnut juice. *Ibid, Pp. 151-152.*
6. The colour of the hair may be darkened by the use of metallic dyes, chiefly lead or silver compounds; or rendered lighter by chlorine or hydrogen dioxide solution. *Lyon's Med. Jur. Ed. 1935, P. 148.*

Identification—(contd.)

7. For the detection of lead or silver compound, the hair may be digested in dilute nitric acid, the acid liquid evaporated to dryness, and the usual chemical test applied to a solution of the residue; or the hair may be incinerated and the metal sought for in the ash. *Ibid*, footnote.
 8. Examination of hair is necessary when we may establish thereby the identity of a corpse or the age, constitution, etc. of a dead person, which information owing to advanced decomposition would not otherwise be obtainable. *Criminal Investigation by Dr. Hans Gross, Ed. 1931, P. 131.*
 9. The hair mixed with substances in putrefaction, changes colour to no considerable extent; at the most it will become a little lighter or a little darker. *Ibid*, P. 136.
 10. Almost every man has on his head a few of the other essentially different hairs, for instance, blonde persons have almost always a few dark thick hairs. A lady had a rich wavy soft hair, but on one place, on account of a scar caused by a wound received early in life, the hair is straight, rough to the feel, and noticeably lighter in shade. No one would believe that a hair from the scarred place and one from another portion of the head belonged to the same person. *Criminal Investigation by Dr. Hans Gross, Ed. 1934, P. 137.*
 11. When proof of the "identity" of hairs is to be considered, the matters with which they are artificially coloured must not be forgotten; the colouring matter may be got rid of in various ways, e.g., washing in water, dilute hydrochloric acid, nitric acid, or chlorine water. *Ibid*.
- ### 13. By Photograph.
1. In comparing photographs for the purpose of identification following cases may occur :—(a) *Comparison of one portrait with another.*—If the portraits are of different sizes, they must be enlarged to make them of the same size. Then measurements must be taken with compass, (b) *Comparison of a portrait with an accused.*—The precaution of clothing and dressing the hair of the accused as he is with photograph must be taken. (c) *Comparison of portrait with a person at liberty.*—All the features of the photograph must be carried in the memory. (d) *Comparison of a portrait with our recollection.*—Supposing the witness has seen the accused only once, when he cheated, robbed and wounded him, the witness's opinion will be of little value. His recognition will inspire more confidence if when he is able to pick out the person from a number of similar photographs, and does not recognize him simply because he had a moustache and there is in the collection only one photograph of a person with a moustache. *Criminal Investigation by Dr. Hans Gross, Ed. 1934, P. 184*
 2. Enormous difficulty is always experienced in recognizing persons from photographs, especially when the person recognizing is a simple-minded fellow who has rarely seen photographs and has never before tried to find resemblances. *Ibid*.
- ### 14. By Scar. See Wound—35.
1. If the witnesses as to identification were only able to pick out the appellant after their attention has been drawn to the scar marks on their faces, their evidence is worthless. 1925 L. 19 (21)=5 L. 396=27 Cr. L. J. 170=93 I. C. 884.
 2. Scars or cicatrices have frequently proved their value as means of identification. *Lyon's Med. Jur., 1935, P. 101.*
 3. As to the age, formation and disappearance of scar, see Wound—35.
- ### 15. By Tatoo Marks.
1. Tatooing which exist or which have existed on the bodies of living or dead person may be very important in determining identity. *"Criminal Investigation" by Dr. Hans Gross, Ed. 1934, P. 111. Lyon's Med. Jur., 1935, P. 101.*
 2. Tattoos can be made to disappear artificially by submitting them to the corrosive action of an acid, especially indigo extract (indigotin Disulphoric acid). The application of a paste containing salicylic acid and glycerine for about a week will make the tatoo disappear. A strong solution of tannin and of silver nitrate will have the same result. *Ibid*.
 3. When a scar is thus artificially removed, a scar is always left behind. *Ibid*.

Identification—(contd.)

4. About the age of tatoo mark in general not much can be said. A fresh tatoo with little pigment and an old tatoo with much pigment look nearly alike. *Ibid*, P. 112.

16. By Teeth.

Identity of a person can be established with the help of experienced dentists when any traces caused by teeth are discovered, e.g., wounds caused by biting, forgotten or discarded smoking materials (cigar ends, pipes, cigar or cigarette-holders, etc.), marks on pens or pencil, etc. "*Criminal Investigation*" by Dr. Hans Gross, Ed, 1934, P. 126.

17. By Voice.

1. To recognize a person by the voice alone would be a risky proceeding in a Criminal charge, though it is often enough accepted upon less important occasions. *Taylor's Med. Jur.*, 1928, P. 116.
2. Stammering, stuttering and lisping are the most obvious peculiarities, and may under certain circumstances, as when people are held quarrelling or in excited conversation, become of importance in identification. *Ibid*.
3. False teeth may alter a voice. *Ibid*.
4. It is very difficult to identify a person in a pitch dark night merely by the modulation of his voice and it is risky to convict a person merely on such identification. 1928 L. 925=29 Cr. L. J. 758=110 I. C. 790.
5. Testimony of a witness that he recognized the voice of a person with whom he conversed over a telephone is sufficient evidence of identity. *Lord Electric Co. v. Morrill* 178 Mass 304; 59 N. E. Rep. 807. quoted in *Art of Cross-examination* by P. R. Aiyar, Ed. 1920, P. 524.
6. Some persons have such peculiar voices, they can be identified by acquaintances who hear them talk, without seeing them. It is possible for persons to identify a dog by merely hearing it bark, without seeing it. *Wilbur v. Hubbard* 35 Barb (N. Y.) 304 quoted in *ibid*.
7. The impression taken once or twice of a person's voice, gait or carriage is of little value for the purpose of identifying him. The voice may not have been in its proper, usual or natural tone due to anger, cold, etc. *Ram on Facts*, P. 63 quoted in *ibid*.
8. Animals and things may be identified by those familiar with them, by the noises they make. *Art of Cross-examination* by P. R. Aiyar, Ed. 1920, P. 546.
9. A waggon maker can be a reliable witness to the identification of a buggy which passed in the night by a peculiar "rattle" of the wheels. *Ibid*, *Moore on Facts*, Vol. II, 1903. P. 1373.

18. Change in dress or appearance.

The combination of arrangement of human features and lineaments are ordinarily so unique in each person and the peculiarities of individual expression, tone of voice, gesture and carriage, so marked and striking that a friend or acquaintance has a little chance of mistaking personal identity. But material changes in dress or personal appearance may seriously weaken a supposed identification. *Cunningham v. Burdell*, 4 Brad. (N. Y.) 343, 473, 474. See *Art of Cross-examination* by P. R. Aiyar, 1920, P. 522.

19. Colour blindness.

1. Colour blindness is of importance in cases of colour signals on Railways, ships or in mines, or when there is a question of the colour of a garment. "*Criminal Investigation*" by Dr. Hans Gross, Ed. 1934, P. 126.
2. A colour-blind man can see blood only on a green background (as for instance on the grass or on green or yellow clothes) and that with difficulty. *Criminal Investigation* by Dr. Hans Gross, Ed. 1934, P. 126.

20. Circumstances aiding or retarding.

1. *Peculiarities of features*.—Stature, feature, some defect, deformity, blemish or other thing natural or accidental sometimes attract particular notice which make

Identification—(contd.)

such an impression upon a person that will enable him long after to remember it. It is by the face that persons are chiefly known; and no two faces are perfectly alike. We have a perfect impression and remembrance of the countenance of a friend—though not of features—although we may not be able to describe it. *Ram on Facts*, P. 5 and wearing or loss of moustaches, wigs, accidents to face, long absence in foreign countries and frequency of observation should also be considered. *Art of Cross-examination* by P. R. Aiyar, Ed. 1920, P. 533—537.

2. Want of correct observation due to (a) want of sufficient time to observe; (b) want of sufficient light, (c) want of sufficient opportunity; (d) great distance; (e) observer's defective eyesight; (f) or his intoxication; (g) or terror; (h) dress, which is sometimes more noticed than the person wearing it. *Ibid*, Pp. 538-539.

21. Dark night.

1. Identification in dark night of accused not previously known has no value. 93 I. C. 892=27 Cr. L. J. 492, 1930 O. 60=31 Cr. L. J. 689=124 I. C. 444.
2. When complainant followed the accused on a dark night, their identification is doubtful. 1923 L. 161=5 L. L. J. 82.
3. Identification made at night during dacoity when blows are struck and people are terrorized, is generally of little value. 104 I. C. 714=1927 C. 820=28 Cr. L. J. 874=1933 L. 299, 27 Cr. L. J. 492.
4. If the night was dark, it is difficult to believe that witness can identify accused after two or three months. 1925 L. 426=26 Cr. L. J. 693, 1935 L. 146.

22. Delay in—

- ✓ 1. Delay in identification is seriously prejudicial to the course of justice if it is material issue. 28 Cr. L. J. 865=1925 P. 59=104 I. C. 705.
2. In dacoity cases no Court will convict the accused unless identified in Jail soon after his arrest. 1924 A. 645=85 I. C. 245=26 Cr. L. J. 501.
3. When there was delay in identification after the arrest of accused but there was no opportunity for witnesses to see the accused, the evidence should not be discarded. 1932 L. 488=34 Cr. L. J. 379. See 1932 S. 55=33 Cr. L. J. 641 and 1924 A. 645.
- ✓ 4. Identification parade must be held at the earliest opportunity and all available witnesses must attend at the first parade. 1934 L. 641.

23. Description of accused before—

If the witness gave no description of accused previous to the identification of accused his evidence is unreliable. 1925 L. 426=86 I. C. 69=26 Cr. L. J. 693.

24. Distance at which a person can be recognized.**A. In day light.**

Presuming the eye sight to be normal and the light good, one is able in broad day light to recognize :—

- (a) Persons whom one knows very well, at a distance of from 50 to 90 yards; when there are particular and characteristic signs, 110 yards; in exceptional cases up to 165 yards.
- (b) Persons one does not know very well and has not often seen from 28 to 33 yards. *Criminal Investigation* by Dr. Hans Gross, 1934, P. 185.

B. In moon light.—

1. By moonlight one can recognize, when the moon is at the quarter, persons at a distance of from 21 feet, in bright moonlight at from 23 to 33 feet; and at the very brightest period of the full moon, at a distance of from 33 to 36 feet. In tropical countries the distances for moonlight, may be increased. *Criminal Investigation* by Dr. Hans Gross, Ed. 1934, P. 185.

2. These are only approximate indications; in practice they are of but slight value. Firstly the statement concerning good normal eye-sight and good light is vague and there are other supplement circumstances to influence it. *Ibid*.

Identification—(contd.)

3. The gaseous air of the town compared with the limpid atmosphere of the mountain diminishes the range of vision by at least 10 per cent; the position of the sun, the back ground, the wind, and the temperature, also combine to affect it to perhaps the same extent (10 per cent). *Ibid.*

C. One possession of witness as to personal identity:—

One faculty of combination, which unconsciously comes into play, may corroborate our preception so that we may be completely led into error. If a person at a distance of say 220 yards sees a man first come out and then go into the house of A and knows that A lives alone in the house, he will suppose, if the man resembles A in his exterior aspect that the man is indeed A and will maintain the fact, as if he had seen him distinctly. In such cases verification must always be made at the spot. *Criminal Investigation by Dr. Hans Gross, Ed. 1931, P. 185.*

25. Distinguishing marks—

Merely because some persons identified had distinguishing marks is not sufficient to conclude that the parade was held improperly. But where grave suspicion has been thrown on the prosecution, the identification may be open to grave suspicion. 1935 A. 592=157 I. C. 545.

25.A. Evidence of—

1. Witness picked out accused in the identification parade held by Magistrate but stated at the trial that they were shown to him before. Held, that though the value of such identification is little, the fact that he had said, he had identified them is admissible. 1928 L. 546=108 I. C. 265=29 Cr. L. J. 366.
2. If the witness fails to recognize the accused in Court, the evidence of identification in Jail is weakened, although he stated there that accused had taken part in dacoity. The latter statement is admissible in evidence, 1927 O. 369=106 I. C. 721=29 Cr. L. J. 129, 7 L. 91, 1925 A. 223, 1930 O. 455. See 1927 O. 598, 1921 A. 215.
3. Identification in Jail is no substantive evidence. It is to be used as corroboration of identification made at the trial. 1925 O. 726=88 I. C. 852=26 Cr. L. J. 1236.
4. Note of identification must contain full particulars and must be proved by the Magistrate. 1925 P. 158=81 I. C. 45=25 Cr. L. J. 557.
5. Identification by co-accused is not admissible and secondary evidence of identification by him is clearly inadmissible. 45 A. 300=24 Cr. L. J. 526.
6. Statement made by witness at an identification parade might be used to corroborate his evidence in Court. 5 L. 396=1925 L. 19=27 Cr. L. J. 170.
7. Evidence of officer conducting identification parade is only admissible, if the identifying witness is called to support his identification on oath. 45 A. 300=1923 A. 352.
- ✓ 8. Identification in Court is valueless unless accused was identified by the same witness in the Jail identification parade. 1925 L. 137=82 I. C. 230=25 Cr. L. J. 1272.
9. If the witness gave no description previous to identification, his evidence is unreliable. 1925 L. 426=86 I. C. 69=26 P. L. R. 40=26 Cr. L. J. 693.
10. Witness not seeing the accused for six years, his failure to identify is no ground for discrediting his evidence. 1926 L. 392=95 I. C. 593=27 Cr. L. J. 817=27 P. L. R. 743.
11. Power to identify varies according to the power of observation. An illiterate villager is frequently more observant than an educated man. 1928 O. 430=112 I. C. 337=29 Cr. L. J. 1009, 1930 O. 455.
12. Mere picking out in the identification parade is not enough. The witness must give particulars in Court as to how he identified him and the details of the part which accused took in the crime. 5 L. 396=1925 L. 19=90 I. C. 954=27 Cr. L. J. 170.
13. If there is a possibility of the witness having seen the features of the accused before the parade, the evidence of identification is worthless. 21 P. W. R. 1917 Cr.=41 I. C. 820.
14. Ability to identify in reply to a question by Court is useless, 1923 L. 662=5 L. L. J. 477, 1923 L. 161=5 L. J. 82.

Identification—(contd.)

15. Identification by the flash of fire arm is impossible. 5 P. L. R. 1915, 27 P. R. 1868.
 16. Failure of some witnesses to identify the accused does not render identification by other witness valueless. 1931 L. 178=131 I. C. 277=32 Cr. L. J. 684.
 17. Evidence of identification should be carefully scrutinized. Previous acquaintance with accused, time and opportunities for observation must be noted. 1929 A. 928=121 I. C. 103=31 Cr. L. J. 206.
 18. In case of gravest doubt as to whether the two prisoners were in fact identified, the benefit of doubt must be given to both. 5 L. L. J. 317.
 19. If the Committing Magistrate himself conducts the identification parade and then gives evidence before himself by going into the witness box the trial is not vitiated. 29 Cr. L. J. 129=1927 O. 369=106 I. C. 721, 27 A. 33.
 20. No reliance can be placed on a witness who identified the accused but according to the story of the prosecution, is not a reliable witness. 1932 S. 55.
 21. Evidence of identity should be considered with caution. 137 I. C. 79=1932 O. 99=9 O. W. N. 32=33 Cr. L. J. 381.
 22. It is sufficient if accused is identified by witnesses. It is not necessary that official witnesses and the record should be produced, especially where the identification of accused was never in issue. 1930 M. W. N. 1138.
 23. A witness who knows the accused previously and who had ample opportunity of observing him at the dacoity and who immediately named him to the villagers and the Police is credible. 8 I. C. 317=11 Cr. L. J. 623.
 24. Each case is to be judged on its own merits. 1932 L. 488.
 25. The number of wrong identifying and consistency of identifications made at different times must be considered. 1932 O. 287=141 I. C. 511=9 O. W. N. 765.
 26. Prosecution witnesses identified accused in diffused light from electric torches. Jury was allowed to experiment it in the absence of accused. Held, that the procedure was irregular. 1934 C. 744.
 27. Evidence of test identification is admissible under Ss. 155 and 157, Evidence Act, and otherwise also. 1935 C. 311=39 C. W. N. 488, 1921 A. 215=95 I. C. 477=27 Cr. L. J. 813 Diss from.
 28. Identification parade was held after five years and witnesses stated that six persons took part but identified two persons, only three persons were mentioned in the F. I. R. Held, that accused were entitled to benefit of doubt. 1935 L. 146=1935 Cr. C. 237.
 29. In case of identification of ornaments of small value the opinion of the Assessors is of great weight, as they are well acquainted with the ways of ordinary men. 1925 O. 452=89 I. C. 155.
 30. Evidence identification must not be too readily accepted. 1932 O. 317, 39 I. C. 295.
- 26. How to be carried.**
1. The accused was in the custody of Jail officials and not Police officers, and was mixed with persons of same class or position, dressed in the same manner who were allowed to change their clothes from time to time and alter their appearances by shaving or cutting their hair. The accused was allowed to communicate with each other after the identification parade. The result in the notes prepared by him was that the identification proceedings were absolutely honest and careful. 1917 O. 369=106 I. C. 721=29 Cr. L. J. 129.
 2. Identification parades do require most careful scrutiny. 1924 M. 232=76 I. C. 289=25 Cr. L. J. 145=1923 M. W. N. 695=45 M. L. J. 406.
 3. Identification must be made immediately after the arrest. In dacoity cases, no Court would convict the accused, who was not identified in the Jail soon after his arrest. 1924 A. 645=85 I. C. 245=26 Cr. L. J. 501=22 A. L. J. 501.
 4. Court should vary the order in which the accused should stand at the time of identification, if asked to do so by the accused. 9 Mys. L. J. 385.

Identification—(contd.)

5. Presence of Police Constable in the room where identification is held is objectionable. 1914 L. 692.

27. In reply to question in Court.

Ability to identify in reply to question in Court is useless. 1923 L. 662, 1923 L. 161.

28. In Moon lit night. See—24-B.

1. Chances of error in identification become greatly increased when the identification is based upon a momentary glimpse in the confusion and excitement of the moment at a moon lit night. 1932 O. 99=9 O. W. N. 32=137 I. C. 79=33 Cr. L. J. 381.
2. A man can be recognized in moon lit night. 1936 R. 60.

29. Means for—

The means available for identification are—1. Mental Power. 2. Memory. 3. Education. 4. Speech. 5. Gait. 6. Handwriting. 7. Complexion. 8. Likeness of features. 9. Occupation marks. 10. Clothes, jewellery and articles in pockets. 11. Race. 12. Deformities, birth marks, peculiarities of nails, etc. 13. Injuries leaving permanent results. 14. Anthropometry. 15. Dactylography (the finger print system of identification). 16. Stature, weight. 17. Teeth. 18. Scars and Tatoo marks. 19. Sex. 20. Hair. 21. Age. *Taylor's Med. Jur.*, 1928, P. 115.

30. Mistakes in—

1. "A person may be mistaken, and sometimes is, as to the identity of his best known friend," said Judge Tuck of New Burnswick in *Palmer v. Baird* 29. N. Bruns 42-45. See *Art of Cross-examination* by P. R. Aiyar, 1920, P. 525.
2. "Most people cannot easily remember faces" says Professor Colegrove. *Moore on Facts*. Vol. II, 1903, P. 1367. See *Art of Cross-examination* by P. R. Aiyar, 1920, P. 525.
3. A large proportion of mankind, never see faces accurately at all. See *Ibid*.
4. So many mistaken identifications are made that "the jury must receive and consider evidence of personal identity which is inconsistent with other evidence in the case, with scrupulous care and caution." See *Ibid*.
5. As to illustrations of mistaken identity see *ibid* and *Will's Circumstantial Evidence*, Pp. 182—184.
6. Value of identification depends on two factors (1) Identifying persons must not have been seen accused after crime; (2) no mistakes must be made by identifying witnesses or they must be negligible. 1936 A. 373.

31. Objections by accused to—

When the accused protests that the identifying witness knows him before, much value should not be attached to identification. 1925 O. 226=35 Cr. L.J. 889, 148 I. C. 1192.

32. Object of—Parade.

Ident	defence Advocate material to the bona fides of prosecu
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33. Of animals. See Identification of animals.

34. Of dead body. See Identification of dead body.

1. Although the body is decomposed, it can be identified by means of clothes, age, height, etc. 81 I. C. 271=1923 L. 40=25 Cr. L. J. 783. See 15 P. W. R. 1915 Cr.
2. Where the head is cut off and the rest is swollen, identification by looking at the photograph is not reliable. 9 Mays. L. J. 142.

35. Of stolen property. See Receiving stolen property—8.

36. Of thing. See Identification of things.

37. Parade. See—26.

1. The Magistrate should make a list of outsiders mixed with the accused for the purpose of identification with their names and addresses. (b) The Magistrate should note in what connection the witness identifies him. (c) If a wrong person

Identification—(contd.)

is identified it should be noted. (d) It is the duty of the Magistrate to record any complaint or objection made by accused, at the time of identification parade, and if the complaint is absolutely futile, he may note it as such. 1935 L. 230=157 I. C. 1056=35 Cr. L. J. 1180.

2. Identification parade must be held at the earliest opportunity and all available witnesses should be required to attend at the very first parade. 1934 L. 641=1934 Cr. C. 973.
3. The question whether a witness has or has not identified a man during investigation is not one which is in itself relevant at the trial. The actual evidence is that given by witnesses in Court. Its value is not strengthened by the recognition of witness at the parade, although, on the other hand, its value will be destroyed if it is shown that they have failed to identify accused prior to trial. 1936 Pesh. 166.

38. Parade held by Police.

1. Statements made by witnesses to Police during the investigation are not admissible to corroborate the evidence given at the trial. 6 L. 171=1925 L. 399=27 Cr. L. J. 438, 1926 P. 232=27 Cr. L. J. 484.
2. Where identification proceedings held by the Police are not supervised by the Magistrate, the proceedings under S. 162, Cr. P. C., will be inadmissible under S. 157, Ev. Act, to corroborate their testimony given in Court. 1935 C. 311=158 I. C. 843. *Contra* 1929 N. 36=29 Cr. L. J. 963, unless the parade is held in the town of Calcutta or Bombay. 54 B. 52, 53 C. 650, 1932 B. 196.
3. Evidence of Police Officer regarding the identification of accused by the prosecution witnesses in the parade is admissible, being a simple exposition of fact or circumstance witnessed by him, and S. 162 is no bar as it does not relate to any statement made to the Police. 1929 N. 36 (38)=29 Cr. L. J. 953=112 I. C. 51.
4. Identification parade held by Police requires most careful scrutiny, for if a person has seen the accused before the parade, he will identify him. 1924 M. 232=25 Cr. L. J. 145=76 I. C. 289, 1924 O. 295=25 Cr. L. J. 1125.
5. A girl was robbed and she identified the accused in a test identification held by Police. Held, her statement was inadmissible. 1935 C. 311=39 C. W. N. 488, 27 Cr. L. J. 813, 1925 C. 161 and 1926 C. 320 Ref., 1921 A. 215, *Contra* 1929 N. 36, 1920 P. 334.

39. Proportion of persons mixed with accused.

1. The proportion of five other persons to one accused person for identification is the standard for the purpose of satisfying the Court that identification is correct. If this standard is not fully satisfied, the identification should not be rejected but should be subjected to rigid scrutiny. 1935 A. 652=157 I. C. 146=1935 Cr. C. 652. Cr. Appeal No. 248 of 1927 decided by Allahabad High Court on 15th May 1928 Rel. on.
2. Each suspect must be mixed with at least ten under-trials. 1936 A. 373.

40. Precautions about—Parade.

Presumption of precaution having been taken in identification parade is hardly sufficient to render it truly valuable. 1922 L. 31=23 Cr. L. J. 449.

41. Record of—

It is not correct procedure to have the Magistrate who conducted the identification parade simply depose to a memo which he prepared at the time. He must first give oral evidence of the same. 93 I. C. 1051=1926 L. 378=27 Cr. L. J. 555.

42. Statements of witnesses as to—at parade.

1. When a person who picked out accused at the identification parade, is called as witness, his statement at the time of identification becomes admissible to corroborate or contradict him. 27 Cr. L. J. 813=95 Cr. L. J. 1358, 1925 O. 726=26 Cr. L. J. 1236, 5 L. 396=1925 L. 19=27 Cr. L. J. 170=91 I. C. 954.
2. Where a witness states in Court that he cannot identify any one, his statement at the time of identification parade is not admissible. 95 I. C. 477=27 Cr. L. J. 813=1921 A. 215. *See* 1926 O. 36 *Contra* 1928 L. 546=29 Cr. L. J. 366.

Identification—(contd.)

3. If a person at the parade says "I saw this man who is now before me taking part in the offence," this statement can be proved by the Magistrate, although the witness does not remember whom he identified there. 1926 O. 36=26 Cr. L. J. 1564=90 I. C. 444, 5 L. 396.
4. The evidence of a Magistrate that in his presence a witness identified certain accused is hearsay evidence. The statement is not made on oath and it is not in Courts. Such statements can only be used to corroborate or contradict the evidence which he gives in Court. 27 Cr. L. J. 813=95 I. C. 477, 5 L. 396=1925 L. 19, 1926 O. 36=26 Cr. L. J. 1564.
5. If the witness is unable to recognize the accused in Court, his statement can be brought on the record under S. 288, Cr. P. C., if he was able to pick out accused in the Court of Committing Magistrate. 47 A. 39=1925 A. 223=27 Cr. L. J. 836, 27 Cr. L. J. 813.
6. If the witness states that he identified certain persons in Jail but cannot do it at the trial, the identity of the accused can be established under S. 9, by the evidence of the officer conducting parade. 47 A. 39, 1926 O. 36=26 Cr. L. J. 1564.
7. Statements at identification parade are not admissible as substantive evidence. If some persons are not identified in Court, statements in identification parade are not admissible. 1934 L. 641, 1927 A. 163, 1921 A. 215=27 Cr. L. J. 813, 1925 L. 19=5 L. 396, 1925 L. 137 Rel. on. 1925 A. 223=47 A. 39 Dist.
8. Accused pointed out to a Magistrate at an identification parade another person as being one of the dacoits, who took part with him in the dacoity. It amounts to confession and is admissible against other co-accused though not recorded. 1936 R. 350, 1934 R. 78, 1932 M. 431=55 M. 711, 1922 M. 40, 45 M. 230, 1933 L. 716=14 L. 290, 55 B. 463=1933 A. 440 and 37 C. 467 Ref.

43. Value of—Parade.

1. Identification in Jail but not in Court has little value. 1930 A. 746=128 I. C. 593=1930 A. L. J. 1105=32 Cr. L. J. 152.
2. Identification of accused not previously known on a dark night has no value. 93 I. C. 892=27 Cr. L. J. 492, 6 O. W. N. 1056=31 Cr. L. J. 689=1930 O. 60.
3. Where the number of accused differs in F. I. R. and the complaint, the identification is untrustworthy, when the F. I. R. was given after long delay. 62 I. C. 209 7 L. L. J. 96=27 Cr. L. J. 225.
4. Identifications made at night during a dacoity where blows are struck and people are terrorized are generally of very little value. 1927 C. 820=104 I. C. 714=28 Cr. L. J. 874=46 Cr. L. J. 241, 1933 L. 299, 27 Cr. L. J. 492=93 I. C. 892. See 1932 L. 488.
5. When the identification marks are told by the Police to the witness before identification, it is of no value. 1928 L. 724=110 I. C. 329=29 Cr. L. J. 697.
6. The fact that a witness makes mistake in identification is no reason for discrediting his evidence in other matters. 45 A. 300=1923 A. 352=24 Cr. L. J. 526.
7. Sometimes the identification of the particular accused by witnesses to whom they were strangers is useful. 19 P. W. R. 1916 Cr.=33 I. C. 636=17 Cr. L. J. 156.
8. When the complainant made no mention of the offender in F. I. R. the subsequent statement that he identified him at the time of attack is unreliable. 91 P. L. R. 1915=10 P. W. R. 1915 Cr.=27 I. C. 346=16 Cr. L. J. 222.
9. The power of observation and memory of different persons varies and the fact that the witness fails to identify a culprit does not render the identification by other witnesses valueless. 1931 L. 178=131 I. C. 277=32 Cr. L. J. 684.
10. The test for finding if the identification of accused by the deceased could be relied on would be, whether deceased mentioned the assailants' name soon after the occurrence, when he had no opportunity of consultation with others. 1931 M. W. N. 731.
11. Where in the first information report only two dacoits are alleged to have been recognized at the time of commission of dacoity, subsequent evidence that they

Identification—(contd.)

were all identified cannot be relied upon. 93 P. L. R. 1915=8 P. W. R. 1915 Cr. =16 Cr. L. J. 204.

12. When witness was shown the accused before hand and he identified the accused at parade but not in Court. Held, his evidence was of no value, when he did not state that he had forgotten the face owing to lapse of time. 1925 L. 230=150 I. C. 1056=35 Cr. L. J. 1180.
13. If the identification of accused by witness is not satisfactory, it is not sufficient corroboration of approver's story. 1935 A. 162=135 Cr. C. 214.
14. When the trial of accused turns upon question of wrong identity, test identification must be held. 1934 C. 169=35 Cr. L. J. 601.
15. The Magistrate conducting the parade must take intelligent interest, as life and liberty of accused person may depend on his vigilance and caution. 1933 L. 946=146 I. C. 364.
16. Where the identification is based upon a momentary glimpse in the confusion and excitement of the moment at night, though it was moonlit night, chances of error become greatly increased. 1932 O. 99=33 Cr. L. J. 381=137 I. C. 79.
17. In determining what weight should be given to the identification test, (i) the number of 'wrong persons' picked out, (ii) consistency of identifications made at different times, (iii) large number of men paraded along with the suspects, (iv) picking out of many persons at random should be considered. 1932 O. 287=34 Cr. L. J. 197=141 I. C. 511.
18. If the witness identified three suspects as against four "wrong men" the identification test should not carry much value. 1933 O. 49=34 Cr. L. J. 382=142 I. C. 831.
19. It must be determined whether all the persons identified were previously known to the witnesses or were perfect strangers to them, the time of occurrence, the state of light and the opportunities which the witnesses had of identifying them. 1929 A. 928=31 Cr. L. J. 206=121 I. C. 103.
20. Use of policemen in identification parade is not objectionable if proper precautions are adopted. 1936 L. 409=162 I. C. 969.
21. The power to identify varies according to the power of observation, which the witness may not be able to describe. Exact amount cannot be laid down. 1930 O. 455=32 Cr. L. J. 162=128 I. C. 739, 1931 L. 178=32 Cr. L. J. 684.
22. Witnesses may identify persons they may not have seen for years. 1928 C. 430=29 Cr. L. J. 1009=112 I. C. 337.
23. Identification tests, as a rule, cannot form a sufficient basis for conviction, though they may perhaps add some weight to the other evidence against the accused. 1929 S. 149=30 Cr. L. J. 456, 1924 O. 295=25 Cr. L. J. 1125.
24. Evidence of a witness given in Court should be accepted only if he identifies the accused whom he previously identified in Jail. 1925 L. 137=25 Cr. L. J. 1272=82 I. C. 280.
25. As a general rule, failure of the witness to identify the accused in Court, whom he identified in Jail, weakens his evidence. 1930 O. 455=32 Cr. L. J. 162, 23 Cr. L. J. 850, 1927 O. 369=29 Cr. L. J. 129, 1928 L. 546=29 Cr. L. J. 366.
26. Where persons between 18 and 26 were paraded with the accused of 16 years and they were made to sit outside the Thana before the persons were called in for identification, the identification is unfair. 1933 L. 308=34 Cr. L. J. 714.
27. Value of identification depends on two factors :—The identifying persons must not have seen accused after crime and there were no mistakes or negligible ones. 1936 A. 373.
28. Court should not accept blindly identification evidence to outweigh the evidence of respectable eye witnesses. 1927 C. 820, 1932 O. 287, 1933 L. 299, 1928 L. 724, 1923 L. 662, 1934 L. 641, 1927 O. 196, 1932 S. 55, 1929 S. 149, 1925 L. 137, 1929 A. 128, 1930 A. 746, 5 L. 396, 27 Cr. L. J. 946.

44. Wrong persons identified.

1. Accused was mixed up with five others. He was identified by three persons out of

Identification—(concl.)

- 9 identifying witnesses. Held, it was sufficient identification. 1935 A. 477=154 I. C. 812=1935 A. L. J. 479.
2. Wrong identification of persons by witnesses was considered immaterial, when the identification was conducted in jail and four groups of men mixed with suspects were made. 1935 C. 512 (522)=36 Cr. L. J. 1115.
3. If a person identified three suspects as four "wrong men" identification is not entitled to weight. 1933 O. 49.

IDENTIFICATION OF ANIMALS.

1. By hoofs or foot mark.

As a rule the fore hoof of a horse is rounder and more confined, whilst the rear-hoof is more elongated and more open. The size and shape of the shoes, the number of the nails and the distance from one another, etc., are often so characteristic that their impressions may very well serve to establish identification. *Criminal Investigation* by Dr. Hans Gross, Ed. 1934. See 5 L. 396=1925 L. 19=27 Cr. L. J. 170.

2. By skin.

Identification of animal by freshly flayed skin is suspicious. 29 I. C. 72=16 Cr. L. J. 440.

3. Peculiarities of animals.

There are peculiarities in animals from which one can recognise them. 25 P. R. 1883 Cr.

IDENTIFICATION OF DEAD BODY. See Identification—34.

1. To determine sex.

When the entire body is available there is no difficulty in determining the sex. When mutilated fragments of a body or only bones are available for examination, the following are the more important sexual characteristics of the skeleton in the female —

1. The bones are smaller, thinner and lighter and muscular attachments less prominent than in the male.
2. The pelvis is shallower, wider, ilia more expanded, sacrum more concave than the male (where it is straighter), the symphysis shorter, pubic arch wider, with edges more diverted, foramina more triangular and outlets larger than in the male.
3. The ribs have a greater curvature than in the male. *Lyon's Med. Jur., Ed. 1904, P. 32.*

2. Value of—

1. Although the body is decomposed it can be identified by means of clothes, age, height etc. 1923 L. 40=25 Cr. L. J. 783, 15 P. W. R. 1915 Cr.
2. Where the head is cut off and the rest is swollen, identification by looking at the photograph is not reliable. 9 Mys. L. J. 142

IDENTIFICATION OF THINGS. See Receiving stolen property—8.

1. Cereal and grain.

1. Cereals cannot be identified. 57 I. C. 913.
2. Grain is not capable of identification. 1 Weir 429.

2. Cloth

1. Identification of ordinary cloth-s is impossible. 1922 A. 24.
2. The fact that cloth found in the house of accused answers to the general description of the stolen clothes as given by the complainant is not sufficient proof of identity, that the cloth found had a particular stamp on it is not a sufficient proof. 1 L. 102=57 I. C. 167.

3. Coins and cash.

1. Cash or coins is not property except in so far it can be identified in specie. 1926 S. 17=89 I. C. 259=26 Cr. L. J. 1315.
2. If a thief is found in possession of stolen coins, it is always safer to inflict fine on him and realize those coins. The rule of *carrot and stick* does not apply to currency coins. 1926 S. 17=25 Cr. L. J. 1315.

Identification of things—(concl'd.)

3. Coins found on the thief must be proved to be the actual coins before they can be treated to be stolen property. 1925 S. 17=26 Cr. L. J. 1315.
4. Evidence of—
 1. Evidence of identity is easily procurable. 25 P. R. 1883 Cr.
 2. If the identity of stolen goods is doubtful conviction can be set aside even in revision. 194 P. L. R. 1912.
 3. It is wholly insufficient to prove that property stolen was very much like that produced. 29 I. C. 72.
 4. The distinctive names of stolen goods must be given in the list of stolen articles. 1921 P. 499.
 5. The evidence of a witness that complainant or some body else identified the recovered stolen property is inadmissible as hearsay. 1924 L. 727.
 6. If the case entirely depends on evidence of identity, it is generally of difficult and unsatisfactory nature. 17 P. R. 1868.
5. Goods of common pattern or ordinary make.
 1. If goods of common pattern are found with the accused, he cannot be convicted. 1923 L. 36=81 I. C. 48, 22 P. W. R. 1912 Cr.
 2. A thing is sometimes singular or rare, as either in size, shape or colour, or as the production of a foreign country which may make deep impression to make recognition easy. *Ram on Facts*, P. 87, *Art of Cross-examination by P. R. Aiyar*, 1920, P. 544
 3. Manufactured goods of particular trade as of clothing, household furniture, tools of trade or husbandry or things of other kind cannot be recognized unless there is some striking difference, distinguishing it from others of its kind or species, e.g., accidental stamp or stain or something wanting or superfluous in it. *Ibid*, P. 544.
 4. By constant use a thing can be recognized. A carpenter, a mason or a workman by remembrance of their general appearance can recognize his tools and most people their dress and other things by frequently seeing, handling or using them. *Ibid*, P. 545.
 5. Where stolen article is of ordinary make and there is nothing peculiar in it, the evidence of a complainant—a person of ordinary position, as to its identification is not sufficient. 22 P. W. R. 1912 Cr.=13 Cr. L. J. 555, 81 I. C. 48.

6. Ornaments.

Indian women can identify their jewellery even of common pattern. 1925 L. 132=26 Cr. L. J. 1361=89 I. C. 449.

7. Shoes.

A village shoe-maker who makes one pair of shoes every week for villagers cannot identify it from another as belonging to a particular person. 1935 L. 805 (806).

8. Sugar and sweets.

1. Sugar is not capable of identification but the find of large quantity of sugar with the accused may be corroboration of prosecution story. 9 P. 606=1930 P. 513.
2. Sweets cannot be identified. 35 P. W. R. 1912 Cr.=94 P. L. R. 1912.

IGNORANCE OF LAW.

1. Ignorance of law is no defence, but it is a matter to be taken into consideration in mitigation of punishment. 29 Cr. L. J. 506=1928 N. 188, 1933 C. 332.
2. Ignorance of law cannot be pleaded as defence. In a prosecution under S. 19, Arms Act, accused were not defended by counsel and they did not plead exception under S. 2 (7) (a), though the circumstances showed it could have been pleaded. Held, that the Magistrate ought to have questioned them regarding the possible defence. 1930 R. 349=1930 Cr. C. 1177=128 I. C. 845.
3. If any individual should infringe the statute law of the country through ignorance or carelessness, he must abide by the consequence of his error. He cannot plead ignorance of law. 14 M. 342=354, 1936 S. 153.

Ignorance of Law—(concl'd.)

4. Ignorance of law is a good evidence of mental condition. 1 Weir 74.
5. Plea of ignorance of law is a good defence to a charge under S. 497, I. P. C., the language of which leaves room for such admission. 1 B. 347, 1 B. 97 (116), 6 B. 126.
6. Ignorance of law is no defence to a charge of bigamy. 1 B. 347, 6 B. 126.
7. The maxim that every one is presumed to know the law is limited to the determination of the civil or criminal liability of the person whose knowledge is in question. It cannot be made use of when parties are entirely different and distinct from him. 26 C. 465, 28 C. 401 (P. C.)

ILLEGAL. S. 43, I. P. C.

1. The word illegal has an extensive meaning including anything and everything which is prohibited by law, which constitute an offence or which furnishes the basis for a civil suit ending in damages. 120 I. C. 205=1929 A. 935=31 Cr. L. J. 12.
2. The accused submitted to his official superior a false 'nil' return of lands in his enjoyment and also made a false statement in the revenue inquiry. Held, that no offence was committed as the act of accused was not illegal. 14 M. 484, 4 M. 144 Diss. from.
3. Threatening to ask complainant in a criminal trial scandalous and indecent questions unless he paid the Pleader certain money is an offence under S. 385. 1930 P. 593 =128 I. C. 141=32 Cr. L. J. 87=9 P. 725.
4. Illegal and unlawful have the same meaning. 27 Cr. L. J. 689=1926 B. 122.
5. Distributing a defamatory pamphlet causing provocation is illegal and constitutes an offence under S. 153, I. P. C. 62 I. C. 401.
6. Throwing brick at a temple or mosque is not illegal. 1928 A. 745.

ILLEGAL CONSTRUCTION OF DAM. See Unlawful assembly—9.**ILLEGAL GRATIFICATION. See Bribe, Harboursing offender.****ILLEGAL OMISSION. See Omission Ss. 32-33, I. P. C.****1. Abetment by— See Abetment—13.****2. What is—**

1. When the law imposes a duty to act on a person, his illegal omission to act renders him liable to punishment. 20 B. 394.
2. The omission or neglect must have an active effect conducing to the result, as a link in the chain of facts from which an intention to bring about the result may be inferred. (1886) 1 Weir 495.
3. The amount of negligence that would make a man criminally responsible is a question of fact in each case. 92 I. C. 433=1925 S. 233=18 S. L. R. 199.
4. An omission to interfere in order to prevent a murder being done before one's very eye is a "criminal act." 95 I. C. 603=27 Cr. L. J. 827.
5. An act may constitute an offence under two or more enactments. 33 M. L. T. 263.
6. If a Police man tortures a person for extorting confession, another Police man who is present there is guilty of illegal omission and is guilty of abetment. 20 B. 394.
7. If the offence is committed in the presence of village Chawkidar, he is not guilty of abetment, if he does not prevent it. 8 C. 728.

ILLEGAL SEIZURE. See Unlawful assembly—10.**ILLEGALITIES. See Irregularities.****ILLICIT INTERCOURSE. See Abduction—13.**

Illicit intercourse means the sexual intercourse between a man and a woman who are not husband and wife. 4 A. L. J. 482=6 Cr. L. J. 9=1907 A. W. N. 199, 1932 L. 555=138 I. C. 597=33 P. L. R. 727=33 Cr. L. J. 673.

ILLUSTRATIONS.

1. The illustrations in a Code or Act are not exhaustive. They are merely expository. 18 P. W. R. 1918 Cr.

Illustrations—(concl'd.)

2. If the illustrations are inconsistent with the section, it is the section that has to be followed and they may be ignored. 15 B. 491 (196), 28 M. 57, 7 C. 132 (135), 16 I. C. 753, 1924 A. 748, 1933 B. 313, 1 B. 147, 17 P. R. 1915.
3. Illustrations ought never to be allowed to control the plain meaning of the section itself, and certainly they ought not to do so, where the effect would be to curtail a right which the section in its ordinary sense would confer. 7 C. 132 (135), 19 Bom. L. R. 157 (P. C.), 1925 A. 220, 29 M. 481, 45 B. 834, 28 M. 57, 52 B. 257, 7 A. 132.
4. Illustrations although attached to, do not in legal strictness form part of the Acts and are not absolutely binding on Court. 1 A. 487 (495), 1 A. 34.
5. The illustrations are only intended to assist in construing the language of the Act. 1 B. 147, 6 C. 171, 23 W. R. 311, 3 A. 573, 46 B. 843, 1925 O. 24, 55 C. 154.
6. The illustrations ought not to be construed as limiting the right given by the section. 28 M. 57.
7. Illustrations cannot control the general words of the section. 30 Bom. L. R. 315—382=1928 B. 78=108 I. C. 30=29 Cr. L. J. 320.
8. The Privy Council has laid down that illustrations to an Indian Statute are to be taken as part of the statute. 21 Bom. L. R. 558, 1918 P. C. 249=48 I. C. 1, 1 A. 34, 1923 O. 15.
9. Illustrations can be used to construe the section if the meaning is doubtful. 80 I. C. 896, 46 I. C. 497.

IMPEACHING CREDIT OF WITNESS. Ss. 155—146—153, Evidence Act.**1. By previous statement.**

1. A report of an offence not made at or about the time of the occurrence to an officer, who has no power to investigate the matter, can be used to impeach the credit of a witness, but cannot be used to corroborate him under S. 157, Evidence Act. 55 C. 879=1928 C. 732=29 Cr. L. J. 823=111 I. C. 37.
2. Statements made by witnesses to Police cannot be used by Court for contradicting them. 1925 C. 147=92 I. C. 453=42 C. L. J. 528=27 Cr. L. J. 277.
3. Statements made by a witness signed before the Magistrate can be used to contradict the statement made on oath at the trial. 1922 M. 303=23 Cr. L. J. 262.
4. Where in the Sessions Court witnesses retracted their statements before the Committing Magistrate, the statements made to the Police and the Committing Magistrate are relevant to contradict their evidence before the Sessions Court given in place of their retracted statements. 46 B. 97=1922 B. 108=22 Cr. L. J. 636.
5. First information report can be used to contradict the witness making it. Court cannot rely on the report and discard the evidence given on oath. 1924 A. 164=74 I. C. 716=24 Cr. L. J. 812.
6. In rape cases the general immoral character of the woman is relevant evidence. 1925 C. 320=92 I. C. 439=27 Cr. L. J. 263.
7. A witness cannot be contradicted under S. 155 by previous statement made by him unless his attention is drawn to it as laid down in S. 145, Evidence Act. 9 P. W. R. 1914=127 P. L. R. 1914=22 I. C. 861.
8. Evidence of a witness hostile to the Crown may be impeached by reference to the Police diary. 45 I. C. 272=19 Cr. L. J. 512=5 P. L. J. 568.
9. Where a previous deposition of a witness is relied upon to impeach his credit under S. 155 (3), Evidence Act, the contradictory statements alone can be admitted in evidence. 15 Cr. L. J. 621=13 I. C. 678.
10. The credit of a witness can be impeached by his statement to Police, though no person is bound to state truth before the Police. The statement to Police is not evidence like a statement made on oath before a competent authority. 41 I. C. 668=18 Cr. L. J. 844.
11. When a witness is cross-examined with regard to his previous statement before the Police, the Police Officer who recorded or heard his statement can be examined to prove the statement under S. 155, Evidence Act. 34 C. 129.

Impeaching Credit of Witness—(concl'd.)

12. A statement by J to H was reported at the *thana* by the latter and there recorded. Held, that though the evidence of J could be contradicted, by the evidence of H, it could not be contradicted by what Police recorded as first information report. 8 C. W. N. 218 (221).
 13. The previous contradictory statement is not admissible as proof of facts therein asserted. It can be only admitted to impeach the credit of a witness and for the purpose of neutralizing or raising doubt or suspicion as to those parts of witness's testimony with which the contrary statement is at variance. 1905 A. W. N. 64, 26 M. 191.
 14. Judgment in another case in which witness was disbelieved is inadmissible under S. 155 (1), Evidence Act, to impeach his veracity. 1927 P. 61=5 P. 777, 4 C. W. N. 684.
 15. Evidence may be given that the witness brought some cases that were dismissed or decreed against him, or that the witness made false charges, etc. 4 C. W. N. 684.
 16. A conviction 30 years old must not be allowed to be put to witness. 26 A. 371.
 17. If the good faith of a witness is not questioned, evidence of previous statement is inadmissible without previous cross-examination of the witness. 1936 P. C. 289.
2. **By a defence witness.**

The statement of a witness for the defence, that a witness for the prosecution was at a particular place at a particular time is admissible, though the P. W. was not cross-examined on the point. 11 B. H. C. R. 166.

3. **Contradicting replies concerning—** S. 153, Ev. Act.

1. Replies to questions asked with a view to impeach the credit of a witness by injuring his character cannot be contradicted. 6 B. H. C. 93, 1928 P. C. 54=103 I. C. 1.
2. If a witness has offered to sell his evidence to a party which is refused, the fact, if denied by the witness may be proved. 1928 P. C. 54=103 I. C. 1.

IMPLICATING INNOCENT PERSONS. See Evidence—3, Motive—9.

In a murder case while witnesses implicate the accused when they are faced with the necessity of exculpating themselves, their evidence is open to grave suspicion. 1930 P. 338=129 I. C. 666, 1934 R. 98.

IMPLIED CONSENT. See Consent—5.

IMPORTING PERSONAL KNOWLEDGE BY JUDGE. See Judicial notice—15.

IMPOTENCY.

1. **Causes of—**

- (a) **Age.**—In females, there can be no limit to the oldest age, she can be potent to allow the act. In males, a man of eighty is capable of becoming a father. As to the age at which a well formed male child is capable of getting an erection nothing need be said, it is a function inherent in the structure of a healthy penis. The legal presumption is that the generative faculty does not disappear through age.
- (b) **Illness.**—As a general rule, diseases which do not affect the brain nor spinal cord, and which are not attended with great debility do not prevent intercourse. Blows on the head or spine by affecting the brain and spinal marrow may produce impotency.
- (c) **Emotion.**—Emotion is an exceedingly common cause of temporary impotence, and in a few exceptional cases it is reported to have caused permanent impotency as regards one particular female. Tact and possibly a slight exhibition of drugs will usually overcome this form of impotency.
- (d) **Deformities or defect.**—In some instances there is an arrest of development in the external organ. Even the presence of two or three penis, is no bar to exercise of sexual power.
- (e) **Disease or drugs.**—Temporary impotency may be caused by acute disease of the penis, e.g., the chordee of gonorrhœa, sores on the glandular fore skin, etc. Complete destruction or removal of testicles does not at once destroy the power of connection. If the testicles are removed after puberty, the power of erection remains for a long

Impotency—(concl'd.)

period. Impotency from personal abuse is very doubtful, and depends more on mental emotion (shame) than anything else. *Taylor's Med. Jur.*, 1928, Pp. 3—8, 11. *Lyon's Med. Jur.*, 1904, P. 232, *Lyon's Med. Jur.*, 1935, P. 342.

2. Definition of—.

Impotency may be defined as "the incapability of either sex to allow or grant to the other the legitimate gratification of the sexual desire." *Taylor's Med. Jur.*, 1928, P. 3.

3. Loss of Testicles. See Testicles.**4. Plea of in rape case. See Rape—15.****IMPRISONMENT. See Sentence.****1. In default of security. See S. 110, Cr. P. C.****2. In lieu of fine. S. 64, I. P. C. See Fine—7.****3. Nature of—. S. 66, I. P. C. See Fine—11.****4. Period of—in default. S. 65, I. P. C. See Fine—9.****5. Till rising of Court. See Sentence—27.****IMPROPER ADMISSION OR REJECTION OF EVIDENCE. S. 167, Evidence Act.**

1. S. 167, Evidence Act, applies to civil as well as criminal cases. 1 C. 207, 2 B. 61, 9 A. 609, 25 M. 61, 5 Bom. L. R. 434, 28 B. 129.
2. The wrongful reception or rejection of evidence is an error of law. 11 G. W. N. 1028.
3. Evidence should not be rejected without giving sufficient reasons. 11 C. W. N. 380.
4. An accused in a trial by jury is entitled to the verdict of jury on question of fact, and where verdict is vitiated by the improper admission or rejection of evidence, the conviction should be set aside and accused retried. 21 C. 955, 4 C. W. N. 576, 30 C. 822, 4 C. W. N. 196.
5. According to Bombay High Court, if part of the evidence is irrelevant or inadmissible, High Court can uphold the verdict on remaining evidence or may direct retrial. 19 B. 749 (761), 27 B. 626, 39 M. 449.
6. In case of appeal against acquittal, High Court will not order retrial if the evidence could not support a conviction. 26 M. 1.
7. High Court has power under S. 26 of the Letters Patent to review the whole case and to determine whether admission of rejected evidence would have affected the result of retrial. 17 C. 642, 2 B. 61.
8. Where inadmissible evidence is admitted, there are two points for consideration, firstly whether the reception of the inadmissible evidence has in fact occasioned failure of justice, and secondly whether if it is excluded, there was sufficient evidence to justify the verdict of jury. 1925 C. 161=26 Cr. L. J. 307.
9. A Magistrate cannot import his personal opinion, about the personal character in the decision of the case, nor he can refuse to believe evidence in accused's favour on that account. 50 I. C. 171=20 Cr. L. J. 283.
10. Where the evidence improperly admitted is very trivial and cannot have occasioned a failure of justice. High Court should not order a retrial but make an enquiry under S. 167, Evidence Act. 14 C. W. N. 493=11 Cr. L. J. 196=11 C. L. J. 301.
11. Privy Council set aside conviction for abetment of murder, which was mainly based on inadmissible evidence, and when that evidence was excluded, there did not exist any reliable evidence on which a capital conviction could safely be based. 36 M. 501, 6 B. L. R. 495.
12. Misreception of a piece of evidence, which is inadmissible, but which has very little weight, does not vitiate the trial. 1930 P. 247=31 Cr. L. J. 721.
13. The mere fact that an inadmissible piece of evidence is on the record through a technical error, should not stand in the way of conviction. 1923 P. 119.
14. Order excluding evidence can legitimately be attacked in an appeal against the order of acquittal. 1927 S. 23=27 Cr. L. J. 1217=97 I. C. 1041.

Improper Admission or Rejection of Evidence—(concl'd.)

15. Though this section implies that improper reception of evidence is not to be made a ground for the reversal of judgment, unless it was objected to by the party, yet S. 256 of Cr. P. C. (of the old Act) lays down that Judge can prevent the production of inadmissible evidence whether it is objected to by the parties or not. 11 B. H. C. R. (Cr. C) 44.
16. It is incumbent on the Court to investigate whether independently of the evidence improperly admitted there is sufficient evidence to justify conviction. 47 C. 671 = 1920 C. 500 = 58 I. C. 929, 1935 M. 528 (540) = 68 M. L. J. 73.
17. The object of trial in every case is to ascertain the truth. It is necessary that Courts should be in a position to estimate at its true worth the evidence given by witnesses. And nothing that is calculated to assist it in doing so ought to be excluded, unless for reasons of public policy the law requires its exclusion. 11 Bom. H. C. R. 120, 1935 S. 145 (171).
18. Sessions Judge upheld the conviction after excluding wrongly admitted evidence, but the trial took a different course, the case was sent back for retrial. 1933 C. 136 = 34 Cr. L. J. 294.
19. A finding will not be disturbed if after throwing aside the evidence which ought not to have been admitted, that still remains sufficient evidence to support the finding. 1932 S. 201, 1926 L. 20, 1926 P. 211, 1924 B. 480, 1925 M. 245, 9 A. 609, 11 Bom. H. C. 90.
20. Where an objection with regard to the admissibility of evidence is taken before Court, the Court should ignore the evidence wrongly admitted. If it is not done, High Court usually remands the case for a finding with reference to admissible evidence. 1925 M. 245 = 25 Cr. L. J. 1275.
21. Conviction will be set aside if evidence of bad character is admitted. 1931 P. 345 = 32 Cr. L. J. 1025 = 133 I. C. 449.
22. S. 167 in applicable whether the objection is taken in appeal or revision, though such an objection standing alone is hardly sufficient for revision. 23 B. 177.

IMPROPER PROCEDURE. See Transfer (Grounds)—50.

IMPUTATIONS. See Defamations—20 to 27.

INCISED WOUND. See Wound—14.

INCLUDES.

1. The word "includes" is a phrase of extension and enlarges the meaning of the words occurring in a statute. 30 B. 558.
2. When the word "includes" is used, it does not exclude other persons or things. 22 B. 235, 4 C. 483.

INCOMPLETE CHALAN. See Examinations of accused—14. Confession (recording of).

INCONSISTENT PLEAS See Defence—6.

INCRIMINATING CIRCUMSTANCE.

1. Admissibility of—. See Admissibility—v.
2. Explanation of—. See Mark of injury—2 Explanation by accused.

INCRIMINATING QUESTIONS. S. 132, Ev. Act.

1. Compulsion—omission to object—

1. Compulsion may be implied or explicit and in every case it is a question of fact whether there was or was not compulsion. A witness who answers questions put to him without seeking the protection of S. 132 by objecting to the question put or requesting to be excused, is not entitled to the protection. 52 M. 432, 40 A. 271, 16 A. 88, 3 M. 271, 1926 M. 906 and 1924 A. 381 Foll. 42 A. 257 and 1921 A. 362 Not foll.; 1927 M. 379 and 1925 R. 345 Dist., 59 I. C. 324 = 22 Cr. L. J. 68, 15 M. 63, 12 B. 440, 21 C. 392, 32 C. 756, 31 C. 715, 1933 O. 370, 43 A. 92, 50 B. 162.
2. Mere record of a deposition is not by itself sufficient evidence of compulsory or voluntary nature of the statement of a witness. 1928 N. 55 = 105 I. C. 820 = 23 Cr. L. J. 996.

Incriminating Questions—(concl'd.)

3. A witness giving out in examination-of-chief that a woman had miscarriage without any knowledge whether she was married or not and when her character was not in issue, is not protected unless the Judge himself asked the question. 1930 A. 493=129 I. C. 707=1930 A. L. J. 1121=1930 Cr. C. 737.
4. Relevant statements made by a witness on oath in a Judicial proceedings are not protected when he has not objected to answering the questions put to him. 50 B. 162=1926 B. 141=93 I. C. 151=27 Cr. L. J. 423=28 Bom. L. R. 1.
5. A voluntary statement by a witness may stand on a totally different footing to an answer given by him to a question put by Court or Counsel on either side on a point which is relevant to the case. In the latter case he is protected under S. 132, although he may not have objected to the question being put to him. 43 A. 92=1921 A. 362=3 M. 271, 16 A. 88, 40 A. 271 and 42 A. 257 Diss. from.
6. Protest by a witness is not necessary for the benefit of privilege under S. 132, when he answers a question put by Court or Counsel on a relevant point. 58 I. C. 825=18 A. L. J. 940=1921 A. 362.
7. When the incriminating questions were objected to by Pleader and the objection was overruled. Held, that the accused was compelled to answer within the meaning of S. 132 and the answers could not be proved against him. 37 C. 878.
8. S. 148 gives the Magistrate power to compel or excuse an answer so far as it affects the credit of the witness, though not a question relevant to the matter in issue. 3 M. 271.
9. The objection may come from the Pleader representing the witness. 37 C. 878.
10. Where a witness answers a question put by Court, he must be deemed to have been compelled to answer, and is entitled to privilege although he did not object. 1934 O. 386, 43 A. 92, 42 A. 257, 37 C. 878 Foll. 1933 O. 370=31 Cr. L. J. 71 Dist.
11. If a person was compelled to answer a question he cannot be prosecuted for defamation. 40 A. 271, 50 B. 162, 52 M. 432.

2. Privilege—motive.

1. A witness actuated by malicious motives, making voluntary and irrelevant statement not elicited by questions put to him, is guilty of defamation. He cannot claim privilege. 1928 N. 58=105 I. C. 320=28 Cr. L. J. 996.
2. A person making a defamatory statement as a party or witness is liable under S. 500. Penal Code, irrespective of the liability for perjury. He can be protected if succeeds in applying any of the exceptions mentioned in S. 499. 7 P. W. R. 1911 Cr.=12 Cr. L. J. 193=10 I. C. 682.
3. The Judge should advise the witness of his right to claim privilege. 10 B. 185.

3. Party-fight.

In affray or party fight, members of one faction can give evidence against the other, but they cannot be compelled on the ground that the answers will incriminate them. 1 N. W. P. 293.

4. Prosecution for perjury for—

If an incriminating question is put to the witness and he makes a false answer, he is guilty under S. 193, I. P. C. 2 C. L. R. 181.

5. Question.

1. Taking a thumb impression is not equivalent to asking a question and may be proved against the person. Proviso to S. 132 does not apply where no objection to thumb impression was taken. 39 C. 348.
2. The proviso applies only to a particular question. It does not confer general immunity on a person who is examined after the protest. 1926 L. 385=98 I. C. 599=27 Cr. L. J. 1383.

INCRIMINATING STATEMENTS. See Admission, Confession.

If a person voluntarily puts on record a statement of his criminal activities and thereafter does not repudiate it, he has no grievance if the Court regards it as conclusive against him. 1934 C. 221=147 I. C. 32.

*Indecent Questions.***INDECENT QUESTIONS.** *See* Scandalous questions—7.**INDIAN PENAL CODE.** *See* Index.**INDUCEMENT.** *See* Confession by inducement.**INFECTION (SPREADING OF).** *See* Public Nuisance—38.**INFLUENCE.**1. **Local** *See* Transfer (Grounds)—57.2. **Of superior officer.** *See* Transfer (Grounds)—51.**INFORMATION.** *See* False information, Illegal omission.**INFORMER.** *See* Spy—Accomplice—2.

An informer's statement to the Police that he purchased opium from the accused is inadmissible unless made in the presence of accused but finding of opium on informer and marked coins on accused is a circumstance from which it can be inferred that accused sold opium. 12 Cr. L. J. 479.

INHERENT POWERS OF HIGH COURT. S. 561-A. Cr. P. C.1. **Attachment of property before judgment.**

Orders in the nature of attachment before judgment are not altogether consistent with the spirit of criminal proceedings. 58 B. 152=1934 B. 74.

2. **Bail.**

1. Where an application for special leave to appeal to the Privy Council has been lodged but not heard, High Court can grant bail. 49 A. 247, 24 M. 161, 15 P. R. 1908 Not foll. *Contra* 1936 C. 809.

2. Under S. 561-A the High Court is at liberty to interfere with an order granting bail passed by a Sessions Judge. 1925 N. 228=82 I. C. 755.

3. High Court can re-arrest a person released by it. 1932 A. 534.

3. **Cognizance of offence.**

1. Jurisdiction to take cognizance of offence must be expressly conferred on the Lahore High Court in order to enable it to punish the offenders and the inherent powers of the Court cannot be invoked for that purpose. 1929 L. 217=115 I. C. 428=30 Cr. L. J. 460.

2. A complaint outside the provisions of S. 476, Cr. P. C., cannot be filed by any Court excepting High Court. 1931 A. 443=134 I. C. 225=32 Cr. L. J. 1105.

4. **Exemption of juror.**

High Court has inherent power to exempt any juror on good cause shown. 1927 N. 117=99 I. C. 849=28 Cr. L. J. 177.

5. **Expunging objectionable remarks.** *See* Expunging remarks.6. **Exercise of—**

1. High Court has power to revise proceedings of a Magistrate regarding enquiries into death under S. 176, Cr. P. C., either under S. 439, Cr. P. C., or its inherent powers. 1928 B. 390=112 I. C. 567=29 Cr. L. J. 103=30 Bom. L. R. 1050.

2. The words "or otherwise to secure the ends of justice" can only mean that such other inherent power as the Court possesses is likewise preserved. Inherent powers of the High Court are as much controlled by principle and precedent as are its express powers by statute. 10 L. 1=1928 L. 462.

3. The inherent jurisdiction of the Court under S. 561-A cannot be invoked for the purpose of doing an act which would conflict with any of the provisions of law or general principles of criminal jurisprudence. 11 L. 220=32 Cr. L. J. 551=1931 P. 81.

4. High Court will set aside an order if it amounts to abuse of process of Court. 1928 O. 104=196 I. C. 694=29 Cr. L. J. 102

5. "Process" of Court is a general word, meaning in fact any thing done by the Court. 50 B. 741, 130 I. C. 538.

6. Inherent powers do not extend the statutory powers given to the Court. 1926 M. 139=91 I. C. 702=27 Cr. L. J. 125, 1924 B. 485=82 I. C. 365.
 7. Execution by the District Magistrate of a warrant under S. 7, Extradition Act, is not an Executive Act. The order of the Magistrate cannot be interfered with under S. 561-A or under the revisional powers. 53 B. 149, 30 Cr. L. J. 272=1929 B. 81, 42 C. 793 explained.
 8. Sessions Judge recommended that proceedings under S. 415, I. P. C., be quashed but the High Court ordered it to continue. Subsequently accused applied under S. 561-A for quashing the proceedings. Held, that previous decision of the Judge does not constitute estoppel. 1928 O. 292=110 I. C. 209=29 Cr. L. J. 657.
 9. When an appellate or revisional Court has considered the case fully including the sentence, the sentence cannot be revised under the inherent powers. 1931 N. 169=134 I. C. 6-6, *Contra* 1927 L. 139=28 Cr. L. J. 239.
 10. Even Lower Courts have inherent powers. 32 Cr. L. J. 551=1931 P. 81
 11. Use of extraordinary power under S. 561-A should not be invoked when another remedy is available. 58 B. 152=1934 B. 74.
 12. High Court can correct an illegal order, although appeal is dismissed. 1934 P. 551.
 13. If the High Court Bench acted without jurisdiction, the only remedy is to move the Local Government to exercise the Royal Prerogative. 1933 C. 870.
 14. Inherent powers do not include power to review order made in criminal appellate jurisdiction. 1933 C. 870, 1928 L. 462=10 L. 1.
- 7. Interview of co-accused with counsel.** See Interview with counsel.
- 8. Quashing charge.**
1. If a charge is framed where none should have been framed, the proceedings of the Magistrate are irregular and the High Court has powers under Ss. 435 and 561-A to prevent abuse of the process of Court and to secure the ends of justice. 1925 A. 311=86 I. C. 284=26 Cr. L. J. 784
 2. In a suit on promote, plaintiff was prosecuted under S. 471, I. P. C. Subsequently he obtained a decree. The charge must be quashed. 1934 O. 114=35 Cr. L. J. 576.
 3. It would be a sheer waste of public time to allow two parallel proceedings to go on simultaneously in civil and criminal Court. When a receiver is appointed by civil Court, proceedings under S. 145 should be quashed. 1935 O. 255=154 I. C. 121.
- 9. Restoration of property.**
1. High Court can direct a party to redeliver goods to the proper person who is wrongly ordered to deliver them to another under S. 144, Cr. P. C. 50 A. 414.
 2. High Court cannot make an order which would conflict with the provisions of S. 89, Cr. P. C., in the exercise of the inherent powers, when the application has not been made within two years from the date of the attachment. The Court has no jurisdiction to make restoration. The proper remedy is to apply to the Government at whose disposal the property is according to law. 1924 B. 485=82 I. C. 365=25 Cr. L. J. 1293=26 B. L. R. 719.
 3. Where land has been attached under S. 88 without a warrant the High Court would interfere under inherent powers to set right the irregularity though not under S. 89. 1926 L. 662=96 I. C. 977=27 Cr. L. J. 1025
- 10. Review of its own judgment.** See Review—5.
- 11. Revision petition not against proper order—**
- On application for revision against order of Assistant Collector instead of against that of Collector who was responsible for that of the Assistant Collector, High Court's inherent powers could be exercised under S. 461-A. 46 A. 879.
- 12. Search of house.**
- In whatever capacity an officer of the Crown in certain actions taken by him, orders search of the house of a public servant or of a subject of Crown, the High Court would have jurisdiction independent of the Cr. P. C., to interfere with the case. 51 A. 377=1928 A. 756=30 Cr. L. J. 62.

Under the provisions of S. 561 A an appellate Court has got no power to entertain an appeal beyond the time allowed by the Limitation Act. 122 I. C. 257=31 Cr. L. J. 381=1931 N. 101, 1925 M. 709, 1924 B. 485=25 Cr. L. J. 1293.

15. Time-barred application.

An application under S. 89, Cr. P. C., for the restoration of property cannot be entertained after the prescribed period of two years. 1924 B. 485.

16. Under-trial prisoners—ill-treatment in jail—. See Under-trial prisoners.

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1. After a trial is over a Sessions Judge has no inherent powers to pass orders regarding the custody of minor girl. 1934 C. 756.
2. Inherent powers under the Cr. P. Code can be exercised by the High Court and not by the inferior Courts. 1935 S. 84=1935 Cr. C. 370.

INJURY. S. 44, I. P. C.

1. Death of husband whether—

A Magistrate imposed a fine in addition to a sentence of imprisonment on a conviction under S. 304-A and gave compensation to the widow of the deceased out of fine. Held, that compensation could not be given as she did not suffer an injury as defined in S. 44. 12 M. 352, 21 M. 74 *Contra* 17 P. R. 1898 Cr.

2. False charge whether—

A false charge laid before the Police and never intended to be prosecuted in a Court may subject the accused to very substantial injury as defined by S. 44. 5 C. 281, 6 C. 582, 7 M. 292, 10 M. 232.

3. What is—

1. Injury is an act contrary to law. (1864) 2 M. H. C. R. 158.
2. Threat of decree which can never be given effect to is a threat of harm. 1923 C. 590=72 I. C. 508=24 Cr. L. J. 396.
3. Accused took away the complainant's cattle or declined to release them till he was paid a sum of money and on receipt of that sum he released them. Held, he caused injury to the complainant. 1924 A. 197=25 Cr. L. J. 961.
4. The word "property" in S. 44 means something in existence. Reasonable expectation of pecuniary benefit for the loss of which an action is maintainable by the representatives of deceased is not property. 21 M. 74.

INUNDATION OF PUBLIC DRAINAGE. S. 432, I. P. C. See Mischief—7.

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INNOCENT PERSONS IMPLICATING OF—. See Evidence—3, Motive—9.

INQUEST. Ss. 174, 175, 176, Cr. P. C.

1. By coroner. See Coroner's Act.

2. By Magistrate. Ss. 174 (5) and 176, Cr. P. C.

1. Proceedings of Magistrate under S. 176 are an inquiry and a judicial proceedings. 112 I. C. 567=1928 B. 390=29 Cr. L. J. 1063.
2. High Court can revise proceedings of a Magistrate under S. 176 either under S. 435 or S. 439 or under S. 561-A. 1928 B. 390 *Contra* 3 C. 742.
3. The object of holding inquiry into a suspicious death is to check the opinion of Police by an independent inquiry. 112 I. C. 567=1929 B. 390.
4. The Presidency Magistrate is not ousted, of his jurisdiction to hold a preliminary inquiry into a charge of murder, because the coroner has held an inquiry into the cause of death and has committed the accused to the High Court. 16 B. 159, 31 C. 1.

Inherent Powers of High Court—(contd.)

6. Inherent powers do not extend the statutory powers given to the Court. 1926 M. 139=91 I. C. 702=27 Cr. L. J. 125, 1924 B. 485=82 I. C. 365.
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13. Stay of proceedings. See Stay of proceedings, Adjournment—10.

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Inquest—(concl'd.)

5. An inquest report by Magistrate cannot be taken into consideration under S. 302, Cr. P. C., by another Magistrate. 1932 C. 121=33 Cr. L. J. 218.
 6. A report or finding under S. 176 is not necessary. And if there is one it does not form part of the proceedings. 3 C. 742.
 7. Accused is entitled to get copies of inquest report and statement of witnesses at the inquest. 1925 M. 424, 1933 C. 861.
- 3. By Police.** S. 174, Cr. P. C.
1. A man who comes forward without being summoned and volunteers information at a Police enquiry under S. 174 is not bound to give true answers. 1922 L. 133=65 I. C. 434=23 Cr. L. J. 82=6 P. W. R. 1922 Cr.
 2. Proceedings under S. 174, Cr. P. C., should be kept quite distinct from the proceedings taken on complaint regarding the same death. 1927 L. 30=99 I. C. 55=3 L. L. J. 521=28 Cr. L. J. 26=27 P. L. R. 779.
 3. When the body cannot be found or has been buried, there can be no investigation under S. 174. 27 P. R. 1908 Cr=9 Cr. L. J. 105.
 4. Refusal to answer questions when summoned under S. 175 (1), Cr. P. C., during the course of investigation under S. 174 is an offence. 27 P. R. 1908 Cr.
 5. A verbatim report of the statements of witnesses examined at the inquest may be of great use to the Court in testing the value of evidence subsequently given. 12 Cr. L. J. 124=9 M. L. T. 321.
 6. False statement by witness at the inquest is not punishable under S. 211 or 193. 1932 M. 24, 1922 L. 133.
 7. But when he makes two contradictory statements before Police and Magistrate in the same inquiry he is guilty under S. 193. 9 Cr. L. J. 304.
- 4. Confession of accused.**

The confession under S. 25 need not be a confession of the crime which the Police Officer is at the moment investigating. If A says to Police Officer during investigation under S. 174 "I noticed B murdering, while I was murdering Z" his confession that he murdered Z cannot be proved. 1932 M. 24=1931 M. W. N. 1138=61 M. L. J. 860=33 Cr. L. J. 173=135 I. C. 590.

5. Post-mortem examination. See *Post-mortem*.

6. Report.

1. Considering the important nature of the evidence supplied by the result of *post-mortem* examination, it is necessary that in such cases the result of the observations external and internal should be fully recorded. 12 Cr. L. J. 124.
2. Inquest report must be written and completed on the spot where the inquest over the corpse is being held,—Madras Police Manual, Vol. I, P. 85.
3. The report does not prove itself and is inadmissible. 3 Cr. L. J. 41, 6 Bom. H. C. 75.
4. Inquest report mentioned that none of the people examined could give any clue as to who committed murder. Some of those witnesses deposed about the alleged confession of accused. Held, accused was entitled to get copy of inquest and cross-examine those witnesses and that the inquest report did not come under S. 161, Cr. P. C. 1933 C. 861=147 I. C. 1007.

7. Summoning of witnesses at— S. 175, Cr. P. C.

1. A person examined by Police Officer under S. 175 is bound to answer truly the question put to him. 1922 L. 133, 25 P. R. 1909.
2. A person who comes forward without being summoned and volunteers information is not bound to give true answer to questions. 1922 L. 133.

INQUIRY. See Preliminary enquiry, Further enquiry.

The enquiry of a case is not deferred till such time as the Magistrate begins to record evidence but commences—not with the lodging of complaint or even with the issue of process—but with the appearance of accused on such process before the Magistrate to answer the charge. 32 Cr. L. J. 1161=134 I. C. 361=1931 B. 411.

INSANE PERSON—TRIAL OF. Ss. 458—473, Cr. P. C.

Proceedings are revived against the accused if certificate is issued under S. 473. But if certificate is not proved, the trial is not illegal. 1934 L. 1934 L. 123, 2 C. 356.

INSANITY. S. 84, Penal Code.

1. Applicability of S. 84.

Where the accused was of unsound mind at the time of committing the murder but he knew perfectly well that he is doing a wrong thing. S. 84 does not apply. 46 A. 243=1924 A. 413=81 I. C. 171=25 Cr. L. J. 683.

2. Burden of proof and Court's duty.

1. The *onus* of proof when the plea of insanity is taken by the accused lies on him and it must be affirmatively proved that he was insane at the time of the commission of an offence. 1929 C. 1=30 Cr. L. J. 494, 21 Cr. L. J. 317.
2. Where the evidence as to insanity of accused is conflicting, the accused should be convicted as on him lies the burden of proving insanity. 1924 A. 186=77 I. C. 236=25 Cr. L. J. 348=21 A. L. J. 776.
3. The plea of insanity is a defence to criminal responsibility. It must, therefore, be established by defence either from the prosecution evidence or independently by the defence. 22 C. 817, 50 I. C. 991, 55 I. C. 477, 21 A. L. J. 776.
4. That the plea must be taken and proved by defence is scarcely a rule which the Court will observe in every case. 27 C. W. N. 290=1923 C. 460.
5. If the Court entertains doubts about the sanity of prisoner, he should try the fact of such unsoundness of mind by medical examination. Merely putting questions to him is insufficient. 1 B. H. C. R. 33.

3. Degree of insanity

1. Medical and legal standard of insanity are not identical. From the medical point of view, it is probably correct to say that every man at the time of committing murder is insane and is not in sound, healthy and normal condition but from the legal point of view he is sane so long as he can distinguish between right or wrong or there is a guilty mind. 1923 L. 508=25 Cr. L. J. 395.
2. The mere presence of five circumstances, viz., (1) absence of any motive, (2) absence of secrecy, (3) multiple murders, (4) want of pre-arrangement, and (5) want of accomplices does not fulfil the requirements of S. 84. A man may be suffering from insanity in the sense the word is used by an alienist but may not be suffering from unsoundness of mind as defined in S. 84. 8 L. 114=1927 L. 52=99 I. C. 323=27 P. L. R. 823=28 Cr. L. J. 120.

4. Delusions.

1. Existence of delusions which indicate a defect of sanity and uncontrollable impulse is not sufficient. 1929 C. 1=33 C. W. N. 136=30 Cr. L. J. 494.
2. Accused had a delusion that the deceased had connection with his girl wife and killed him, although no such thing happened at all. He was convicted of murder. 28 C. 613, 41 I. C. 142, 43 I. C. 423=19 Cr. L. J. 135.
3. If a person breaks some body's head and due to insane delusion thinks he is breaking a jar, or kills a child thinking that he is saving him from sin and sending him to Heaven, he is incapable of knowing the nature of his act. 23 C. 604, 30 P. R. 1918 Cr.=20 Cr. L. J. 1=48 I. C. 492.
4. Accused was suffering from fever and being annoyed with cries of the children, cut their throats and went to sleep. The Court held the accused guilty as there was no evidence of delirium and commended him to the mercy of Government. 14 B. 512.
5. Accused in paroxysm of fever believing that he was surrounded by objects intending to harm him took a sword and killed goat and a girl. Held, he was guilty. 12 M. 459.
6. Accused killed his wife. He was under a delusion that armed men would come to his house and take away his wife. It was shown that accused ceased attending to

Inquest—(concl'd.)

5. An inquest report by Magistrate cannot be taken into consideration under S. 202, Cr. P. C., by another Magistrate. 1932 C. 121=33 Cr. L. J. 218.
6. A report or finding under S. 176 is not necessary. And if there is one it does not form part of the proceedings. 3 C. 742.
7. Accused is entitled to get copies of inquest report and statement of witnesses at the inquest. 1925 M. 424, 1933 C. 861.

3. By Police. S. 174, Cr. P. C.

1. A man who comes forward without being summoned and volunteers information at a Police enquiry under S. 174 is not bound to give true answers. 1922 L. 133=65 I. C. 434=23 Cr. L. J. 82=6 P. W. R. 1922 Cr.
2. Proceedings under S. 174, Cr. P. C., should be kept quite distinct from the proceedings taken on complaint regarding the same death. 1927 L. 30=99 I. C. 55=5 L. L. J. 524=28 Cr. L. J. 26=27 P. L. R. 779.
3. When the body cannot be found or has been buried, there can be no investigation under S. 174. 27 P. R. 1908 Cr=9 Cr. L. J. 105.
4. Refusal to answer questions when summoned under S. 175 (1), Cr. P. C., during the course of investigation under S. 174 is an offence. 27 P. R. 1908 Cr.
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7. But when he makes two contradictory statements before Police and Magistrate in the same inquiry he is guilty under S. 193. 9 Cr. L. J. 304.

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The confession under S. 25 need not be a confession of the crime which the Police Officer is at the moment investigating. If A says to Police Officer during investigation under S. 174 "I noticed B murdering, while I was murdering Z" his confession that he murdered Z cannot be proved. 1932 M. 24=1931 M. W. N. 1138=61 M. L. J. 860=33 Cr. L. J. 173=135 I. C. 590.

5. Post-mortem examination. See Post-mortem.**6. Report.**

1. Considering the important nature of the evidence supplied by the result of *post-mortem* examination, it is necessary that in such cases the result of the observations external and internal should be fully recorded. 12 Cr. L. J. 124.
2. Inquest report must be written and completed on the spot where the inquest over the corpse is being held,—Madras Police Manual, Vol. I, P. 85.
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*Insane Person—Trial of.***INSANE PERSON—TRIAL OF.** Ss. 458—473, Cr. P. C.

Proceedings are revived against the accused if certificate is issued under S. 473. But if certificate is not proved, the trial is not illegal. 1934 L. 1934 L. 123, 2 C. 356.

INSANITY. S. 84, Penal Code.**1. Applicability of S. 84.**

Where the accused was of unsound mind at the time of committing the murder but he knew perfectly well that he is doing a wrong thing. S. 84 does not apply. 46 A. 243=1924 A. 413=81 I. C. 171=25 Cr. L. J. 683.

2. Burden of proof and Court's duty.

1. The *onus* of proof when the plea of insanity is taken by the accused lies on him and it must be affirmatively proved that he was insane at the time of the commission of an offence. 1929 C. 1=30 Cr. L. J. 494, 21 Cr. L. J. 317.
2. Where the evidence as to insanity of accused is conflicting, the accused should be convicted as on him lies the burden of proving insanity. 1924 A. 186=77 I. C. 236=25 Cr. L. J. 348=21 A. L. J. 776.
3. The plea of insanity is a defence to criminal responsibility. It must, therefore, be established by defence either from the prosecution evidence or independently by the defence. 22 C. 817, 50 I. C. 991, 55 I. C. 477, 21 A. L. J. 776.
4. That the plea must be taken and proved by defence is scarcely a rule which the Court will observe in every case. 27 C. W. N. 290=1923 C. 460.
5. If the Court entertains doubts about the sanity of prisoner, he should try the fact of such unsoundness of mind by medical examination. Merely putting questions to him is insufficient. 1 B. H. C. R. 33.

3. Degree of insanity

1. Medical and legal standard of insanity are not identical. From the medical point of view, it is probably correct to say that every man at the time of committing murder is insane and is not in sound, healthy and normal condition but from the legal point of view he is sane so long as he can distinguish between right or wrong or there is a guilty mind. 1923 L. 508=25 Cr. L. J. 395.
2. The mere presence of five circumstances, *viz.*, (1) absence of any motive, (2) absence of secrecy, (3) multiple murders, (4) want of pre-arrangement, and (5) want of accomplices does not fulfil the requirements of S. 84. A man may be suffering from insanity in the sense the word is used by an alienist but may not be suffering from unsoundness of mind as defined in S. 84. 8 L. 114=1927 L. 52=99 I. C. 323=27 P. L. R. 823=28 Cr. L. J. 120.

4. Delusions.

1. Existence of delusions which indicate a defect of sanity and uncontrollable impulse is not sufficient. 1929 C. 1=33 C. W. N. 136=30 Cr. L. J. 494.
2. Accused had a delusion that the deceased had connection with his girl wife and killed him, although no such thing happened at all. He was convicted of murder. 28 C. 613, 41 I. C. 142, 43 I. C. 423=19 Cr. L. J. 135.
3. If a person breaks some body's head and due to insane delusion thinks he is breaking a jar, or kills a child thinking that he is saving him from sin and sending him to Heaven, he is incapable of knowing the nature of his act. 23 C. 604, 30 P. R. 1918 Cr.=20 Cr. L. J. 1=48 I. C. 492.
4. Accused was suffering from fever and being annoyed with cries of the children, cut their throats and went to sleep. The Court held the accused guilty as there was no evidence of delirium and commended him to the mercy of Government. 14 B. 512.
5. Accused in paroxysm of fever believing that he was surrounded by objects intending to harm him took a sword and killed goat and a girl. Held, he was guilty. 12 M. 459.
6. Accused killed his wife. He was under a delusion that armed men would come to his house and take away his wife. It was shown that accused ceased attending to

Insanity—(contd.)

his crops, saying that paddy would grow by itself, chased and abused people and climbed up a tree saying that his pillow was there. He was given the benefit of S. 84. 34 C. 686, 13 I. C. 385.

7. If a person under insane delusions takes revenge, he is guilty. 43 I. C. 423.
8. Killing a child to appease Goddess in inspired moments is not protected. 1931 M. W. N. 718.

5. Dipsomania or drunkenness.

1. Though mental incapacity produced by voluntary drunkenness is no defence under S. 85, Penal Code, still if it causes a disease which produces such incapacity, then S. 84 applies although the disease may be of temporary character. 29 C. 493.
2. Accused who was addicted to intemperate habits by excessive use of opium, etc., killed a boy without any motive and exhibited signs of insanity seven days previously is not guilty. 29 C. 493.
3. The loss of self control due to alcohol is not sufficient. 14 Cr. L. J. 427.

6. Essentials and Evidence—Proof—

1. To establish insanity it must be proved that accused was labouring under such a defect of reason from disease of the mind that he did not know the nature and quality of the act he was doing or if he did know it, he did not know that it was wrong. 1929 C. 1=115 I. C. 561=30 Cr. L. J. 494, 1932 A. 233, 32 I. C. 671, 94 P. L. R. 1909, 30 P. R. 1918 Cr.
2. Accused's disease of mind must have been formed before the act was done. 115 I. C. 561=1929 C. 1.
3. That the accused was in a bewildered state of mind a day or two before the occurrence is not sufficient. 1928 P. 363=108 I. C. 424=29 Cr. L. J. 393.
4. Antecedent and subsequent mental condition is not *per se* sufficient. At the time of the act accused must be unable to know its nature. 8 L. 684.
5. Absence of motive is no ground for inferring insanity. 112 I. C. 222=29 Cr. L. J. 1006, 40 P. R. 1905 Cr., 1927 L. 52, 1929 C. 1=115 I. C. 561, 23 C. W. N. 621, 9 L. 371=1928 L. 796, 1925 M. 1238=91 I. C. 78.
6. The fact that an accused is a person of weak inhibition does not make him insane. Frantic humour or something unaccountable in a man's action is insufficient. He should be totally deprived of his understanding and memory and does not know what he is doing. 111 I. C. 331=29 Cr. L. J. 827, 8 L. 684, 109 I. C. 364.
7. If the accused charged for murder was conceited, odd and irascible and his brain was not alright, it is not sufficient. 1927 L. 567=103 I. C. 59=28 Cr. L. J. 635.
8. A man cannot be exempted under S. 84 because he is ailing for some time before the crime, that he does not take food and there is no apparent motive for committing the offence. 1930 N. 63=120 I. C. 733=31 Cr. L. J. 164, 50 I. C. 991.
9. Mere eccentricity or singularity of manner is insufficient. 1929 C. 1=115 I. C. 561.
10. Evidence of pre-meditation and design or resistance of arrest negatives plea of insanity. 1929 C. 1=115 I. C. 561=30 Cr. L. J. 494.
11. Accused, a Ganja smoker, set fire to a building and ran away. It was shown that he used to threaten his parents and beat his wife and used to throw away his food. Insanity is not proved. 1928 M. 196=106 I. C. 559=29 Cr. L. J. 63, 13 I. C. 916.
12. Accused was charged with murder. There was no motive for the crime and he did not disappear and said "Arrest me, I have shed blood". He took no interest in inquiry. Four months before murder he showed symptoms of insanity which continued for a year. Held, that the accused was insane. 1924 O. 190=24 Cr. L. J. 741.
13. Prior to murder, accused used to go out of her wits and been on the day of murder she showed the same signs and there was no motive. Held, she is not guilty. 45 A. 329=71 I. C. 689=1923 A. 327=24 Cr. L. J. 225.

sanity—(contd.)

14. It is not necessary that insanity should be proved by scientific evidence. 1929 C. 1 =115 I. C. 561=30 Cr. L. J. 494.
15. To ascertain whether a person is incapable of knowing the nature of his act the test is to ask, in the circumstances, whether the man would have committed the act if a Police man would have been at his elbow. 1928 C. 233=114 I. C. 159.
16. Mental derangement falling short of unsoundness of mind is sufficient. 26 I. C. 1007.
17. Want of speech and hearing do not necessarily imply mental deficiency. 12 Cr. L. 1. 386=11 I. C. 250.
18. Accused was proved to be insane before murdering his wife. He was held guilty as it was not proved that at that time his mind was so affected that he did not know the nature of the act. 53 I. C. 828=20 Cr. L. J. 828=1919 M. W. N. 793.
19. Insanity at the time of the offence should be proved. 36 M. 550.
20. Proof of unbalanced state of mind is not sufficient. 1932 O. 190=9 O. W. N. 355=137 I. C. 800=33 Cr. L. J. 542
21. Opinion of a layman on the question of insanity is not of much value. 18 I. C. 641.
22. If a lunatic has lucid intervals the law presumes the offence of such person to have been committed in a lucid interval, unless it appears to have been committed during derangement. 2 A. W. N. 1904, 20 W. R. 70, 2 W. R. 33, 1923 L. 619.
23. The absence of all motive for a crime corroborated by independent evidence of previous insanity is not without weight. 34 C. 686.
24. A man may be suffering from insanity as is expressed by a medical man and yet he may not be of unsound mind according to law. 131 I. C. 746.
25. Accused made murderous assault on other strangers and there was no motive. There was no accomplice and he tried to kill two more persons. The expert opinion was that he was suffering from Hebeephrenia and was insane. Held, was not guilty. 1935 O. 143. *Modi's Medical Jurisprudence and Toxicology* (Ed. 4, 1932, P. 529 and the following). *Taylor's Principles and Practices of Medical Jurisprudence* (Ed 8, Vol. I, 1928, P 792). 45 A. 329, 1924 O. 190=24 Cr. L. J. 741, 1928 C. 238=30 Cr. L. J. 247, 1931 O. 77=32 Cr. L. J. 327, 1932 O. 150=137 I. C. 800=33 Cr. L. J. 542 Ref.
26. If a father kills children without motive, mental derangement should be inferred. 1933 N. 307=34 Cr. L. J. 1168. See 1931 O. 77.

7. Expert Opinion

The opinion of expert on lunacy cannot be brushed aside upon the strength of the lay opinion of the trial Judge. 1935 O. 143.

8. Hallucination.

Accused assaulted a man believing him to be ghost and assault proved fatal. Held, he was not guilty under Ss. 302—304 or 304-A. 1926 L. 554=99 I. C. 71.

9. Homicidal Mania.

1. Accused was insane for five years before killing his uncle. He brandished his sword and shouted "Victory to Kali" and attempted to strike other persons including his own father. Held, he was suffering from melancholic homicidal mania and was not guilty. 10 C. W. N. 725.
2. Homicidal maniacs need not have a motive to perpetrate a crime, in fact the act itself is the chief evidence of insanity. 20 I. C. 721=14 Cr. L. J. 465.

10. Judgment of acquittal on the ground of— Ss. 470, 477, Cr. P. C.

1. If the Court finds that accused is sane at the time of trial, but was suffering from temporary insanity while he committed the offence, he should be acquitted. 2 Weir 582, 17 C. P. L. R. 113.
2. The Government has power, in spite of S. 471, Cr. P. C., to decide the future fate of the lunatic. 25 Bom. L. R. 286=1923 B. 261.
3. S. 471 applies not only to insane persons but those who labour under defects which render their trial impossible and can be detained during King's pleasure. 37 P. R.

Insult to Provoke Breach of Peace—(contd.)

Pleader used abusive language. Held, that the Pleader is protected by S. 95, I. P. C., taking into account his subsequent apology. 22 I. C. 158=15 Cr. L. J. 14.

4. Unless particular abuses are mentioned no conviction on the fact that accused uttered abusive language can lie. 1925 L. 151=26 Cr. L. J. 417=85 I. C. 33.
5. Accused entered a mosque for prayer and when asked why he had on former occasion abused the Maulvi, began to abuse all and sundry using obscene language and uttering threats. Held, he is guilty under S. 504 and not under S. 297. 1 R. 690=1924 R. 106=81 I. C. 41=25 Cr. L. J. 553.
6. Prosecution should not be lodged in case of exchanging abuses in public street. 1926 L. 412=94 I. C. 888=27 P. L. R. 176=27 Cr. L. J. 696.
7. A Constable asked the complainant not to create disturbance on public road, and demanded his name. On his declining the Constable called him *soor* and dragged him to a police station. Held, that he was guilty under S. 504. 5 Bom. L. R. 597.
8. Where the accused used the expression *pahlo munh se bako* to a Police Officer who had been ordered by District authorities to serve notice on the shopkeeper. He was held guilty under S. 504. 28 Cr. L. J. 821=1927 L. 702=104 I. C. 437.
9. To use the word 'go to hell' to a person after an altercation with him is an offence under S. 504. Criminal Revision (Bom.) No. 344 of 1927 decided by Fawcett and Mirza JJ., on 16th December 1927.
10. Calling an *Arora* a *kirar* on provocation is no offence under S. 504. 23 Cr. L. J. 171=1922 L. 455=65 I. C. 635.
11. Calling a man *baiman* and *badmash* constitutes an offence under S. 504. 4 L. L. J. 480=51 P. L. R. 1922=1922 L. 459.
12. Accused deliberately set themselves to prevent the complainant from irrigating his land and when remonstrated with, offered abuse and threatened to strike. Held, that although words of the abuse were not mentioned, the accused were guilty. 1 P. L. W. 536.
13. At a meeting of the shareholders of a Company, a shareholder was expelled. While going out he was heard muttering "Not even the Governor-General could expel members, you damn bloody bastard and cads." Held, it was a mere breach of good manners. 56 B. 196=1932 B. 193=34 B. L. R. 282=33 Cr. L. J. 463.
14. Accused using the word "*Behoda*" to a President of the meeting, *e.g.*, Municipal Committee, is guilty under S. 504. 1934 N. 239=151 I. C. 777, 1932 B. 193=56 B. 196 Dist.
15. Accused saying to Assistant Sub-Inspector "you are a tyrant, justice cannot be expected from you." Held, he was not guilty under S. 504. 1935 Pesh. 122=36 Cr. L. J. 1210=157 I. C. 753.

2. Bad manner and discourtesy.

1. Bad manner and discourtesy do not amount to an offence under S. 504. 56 I. C. 435=21 Cr. L. J. 451=18 A. L. J. 515.
2. A shareholder was expelled from the meeting of a company. He said that even Governor-General could not expel him and muttered, "You damn bloody bastards and cads." Held, it was a mere breach of good manners. 56 B. 196=1932 B. 193.
3. Using the word '*Behoda*' to a President of meeting is punishable under S. 504. 1934 N. 239.
4. To constitute an offence under S. 504 insult must be caused intentionally with intent to provoke breach of peace. 56 I. C. 435=18 A. L. J. 515, 24 A. 155, 39 M. 561.
5. A person came to a shop and became engaged in dispute with the owner, as a result of which he was asked to leave the shop. Held, it did not justify a conviction under S. 504. 1935 S. 107 (1).

3. Charge.

If ... is aware of the words complained of but the Magistrate does not specify being misled by the technical 1927 L. 702=104 I. C. 437=

Insult to Provoke Breach of Peace—(contd.)

4. Contemptuous name.

Calling an Arora a *kirar* is no offence under S. 504. 1922 L. 455=65 I. C. 635.

5. Essentials and Evidence.

1. An insult is no less intentional because it is incidental to another insult or even to another statement or proceeding which is not insulting. To insult another intentionally is not an offence under S. 504, unless the intention is present. 1924 N. 121=81 I. C. 903=25 Cr. L. J. 1079=7 N. L. J. 124.
2. In dealing with S. 504 the Court is not to judge the temperament or the idiosyncrasies of the individual concerned. It should find out what in the ordinary circumstances would have been the effect of abusive language used. 127 I. C. 860=32 Cr. L. J. 61=1930 L. 344, 10 M. 353.
3. An offence of calling a man *baiman* and *badmash* would fall under S. 504 and not under S. 500. 1922 L. 459=51 P. L. R. 1922=4 L. L. J. 480.
4. Offence under S. 504 does not necessarily involve a breach of the peace. 8 O. W. N. 1286.
5. It is not necessary that the insult should be by spoken words only. It may be by words written in a letter. 1930 Bom. 120=32 Bom. L. R. 103.
6. Pulling a Mohammadan by beard in public is an offence under S. 504 whatever the previous provocation may be. 1925 A. 318=86 I. C. 79=26 Cr. L. J. 203=23 A. L. J. 73.
7. The insult may be of such a character that a person of ordinary temperament would not complain of it and the abuse might come under S. 95, I.P.C. 32 Bom. L.R. 103.
8. Accused without any justification used the offensive expression (*phale munh se bako*) to a Police Officer, who came to serve a notice on him is guilty under S. 504. 1927 L. 701=104 I. C. 437=28 Cr. L. J. 821.
9. The word *kirar* has a somewhat contemptuous significance. Calling an Arora a *kirar* is no offence under S. 504. 1922 L. 455=65 I. C. 635=23 Cr. L. J. 171.
10. Accused is not protected from the consequences of his act, because the person insulted became so terrified that he did not cause breach of the peace. 1932 L. 480=138 I. C. 120=33 Cr. L. J. 548, 10 M. 353 Foll.
11. When the abusive language used might ordinarily have resulted in broking limbs or at least in an affray, an offence under S. 504 is committed. 127 I. C. 860=32 Cr. L. J. 61=1930 L. 344, 10 M. 353.
12. If the provocation offered to a person is of such a nature as to cause him to commit any other offence besides committing breach of peace, the accused is liable under S. 504. 1930 Bom. 120=125 I. C. 434=31 Cr. L. J. 846, 1927 L. 129.
13. Insult under S. 504 may be inferred from the manner and tone of spoken words, it is not necessary that the person insulted should actually commit breach of peace. 37 I. C. 849=18 Cr. L. J. 17=21 C. W. N. 95.
14. The tender of an apology should not be treated as offence of the accused being proved. 36 I. C. 142=17 Cr. L. J. 462.
15. It is insulting to make faces at another or to make bad and indecent gestures in the presence of a female. 1 Weir 622.
16. Where the accused wrote an insulting letter to the complainant, who was away in a distant town, the offence is complete. It is not necessary that the letter should be actually delivered to the complainant. 25 Cr. L. J. 1079=104 I. C. 903=25 Cr. L. J. 1079=7 N. L. J. 124.
17. Ridiculing a person in a coarse caricature and in fact in any of the ways in which human feelings are moved and hurt falls under S. 504. 31 C. W. N. 95=37 I. C. 849.
18. Accused excluded the complainant from the use of their wells on the ground of their being of a low caste. Held, that it is not an insult under S. 504. 3 P. R. 1883 Cr.
19. Mere rudeness is not insult. A lady came to a furniture dealer and asked him to deliver the furniture which was ordered by her husband on a previous day. The

Insult to Provoke Breach of Peace—(concl'd.)

dealer did not get up from his seat and refused to give her furniture. Held, that no offence is committed. 56 I. C. 435=21 Cr. L. J. 451=18 A. L. J. 515.

20. It is sufficient if the insult is of a kind calculated to cause the other party to lose his temper and say or do something violent. The public peace can be broken by deed or words. 5 Bom. L. R. 78.
 21. The offence depends on the knowledge or intention of offender and not on sensitive feelings of the offended. Such an intention may be inferred from the circumstances attending the insult. 1935 C. 736.
6. **Pulling beard.**

Pulling a man by beard in a public place is an offence under S. 504, whatever the previous provocation may be. 1925 A. 318=86 I. C. 79=26 Cr. L. J. 703.

7. **Sentence.**

This is a petty offence and should be atoned for by an apology or a small fine. 21 P. W. R. 1911 Cr.=12 Cr. L. J. 435.

8. **Through letter.**

1. It is not necessary that the insult should be by spoken words only. It may be by words written in a letter. 1930 B. 120=32 Bom. L. R. 103=31 Cr. L. J. 846.
2. Accused wrote an insulting letter to the complainant who was away in another town, it was held that he was not guilty under S. 504, as it was highly improbable that he would travel such a journey to create a breach of peace. 25 Cr. L. J. 1079.

INSULTING THE MODESTY OF A WOMAN BY GESTURE ETC. S. 509, I. P. C.1. **By letter.**

Accused sent by post to a lady a letter containing indecent overtures and suggesting that she should take certain action to show whether she accepted his terms. Held, he was guilty. 1926 B. 159=50 B. 246=27 Cr. L. J. 455.

2. **Essentials and Evidence.**

1. In order to constitute an offence under S. 509 there must be some individual woman or women whose modesty has been outraged though it is not necessary that individual woman should herself make a complaint. Insulting the modesty of any class or order or section of women however small is not within the section. 1925 S. 271=86 I. C. 968=26 Cr. L. J. 904=19 S. L. R. 87.
2. Intrusion upon privacy of a woman with intent to insult her modesty falls under S. 509. 6 P. R. 1882 Cr., 22 C. 391, 22 C. 994.
3. Entry into complainant's house for sexual intercourse with a widow by her consent is not punishable under S. 509. 12 P. R. 1898 Cr.
4. This section does not apply to a person peeping into private apartment of ladies. 6 P. R. 1892 Cr.
5. Accused followed the unmarried daughter of a person at various places and laughed and grinned and stared at her while passing and repassing in his carriage and stood up and shouted her name. Held, he was guilty under S. 509. (1911) Criminal appeal No. 454, of 1910 decided on 18-1-1911 per Chandavarkar and Heaton JJ. 27 Cr. L. J. 455=93 I. C. 247=1926 B. 159.
6. The mere fact that accused entered the sleeping apartment of a woman in the middle of night and called her by name and asked her to get up would not constitute this offence, because she was in the habit of speaking to the strangers at that hour and to entertain them to "Pan Sfar". 5 Bom. L. R. 502.

3. **Exhibits any object.**

1. A thing can be exhibited or exposed to a person, although at first it may be wrapped in something. 28 Bom. L. R. 99.
2. Sending a letter by post containing indecent overtures to a woman comes within the words "Exhibits any object". 50 B. 246=1926 B. 159.

*Insulting the Modesty of a Woman by Gesture—(concl'd.)***4. Intrusion upon privacy or peeping.**

1. Intrusion upon privacy of a woman with intent to insult her modesty falls under S. 509. 6 P. R. 1882 Cr. Sec 6 P. R. 1892 Cr.
2. Peeping into the apartment of a stranger lady who is a woman of respectability would constitute an offence under S. 509. 22 C. 391, 22 C. 994.

5. Peeping. Sec—4.**INSURANCE AGENT. See Cheating—5.****INTENTION. See Dishonesty—3—4.**

1. The law looks as regards intention to the natural result of a man's act and not to the condition of his mind. From a legal point of view a person intends whatever he gives others reasonable grounds for supposing that he did intend. 9 O. W. N. 350.
2. Intention may be proved like any other fact and may of course be deduced from the conduct of parties. 27 P. L. R. 867=99 I. C. 121=28 Cr. L. J. 89.
3. Intention can be proved by a declaration contemporaneous or subsequent of the party, where such declaration amounts to an admission against the party. 22 C. 164, 1928 C. 438=111 I. C. 396.
4. The best circumstantial proof of the intention of a person is the nature of act his conduct and circumstances surrounding the act. 22 C. 164, 1922 C. 539=24 Cr. L. J. 104, 1925 N. 82, 22 C. 391, 23 A. 124.
5. The subsequent conduct and surrounding circumstances may be looked at to ascertain intention. 1931 P. 52=32 Cr. L. J. 478, 1922 A. 244=69 I. C. 159.
6. A man is presumed to intend the natural consequences of his act. 35 M. 186, 1928 C. 430=109 I. C. 482.
7. If a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him. 22 C. 164. S. 106 ill. (a), Ev. Act.
8. Secrecy or silence where the circumstances cast upon accused duty to speak, may be circumstantial evidence of fraudulent intention. 22 C. 185, 1 A. 303.

INTERESTED EVIDENCE. Witness—61**INTERFERENCE BY THIRD PARTY. See Right of private defence—33.****INTERLOCUTORY PETITIONS AND ORDERS.**

1. It is a mischievous habit of the trial Courts to pass interlocutory orders unwarranted by law. 32 Cr. L. J. 1035=133 I. C. 383=1931 M. 769.
2. The accused ought not to file revision against orders passed before he is charged. 54 M. 251=1931 M. 240=1931 M. W. N. 766=131 I. C. 624=32 Cr. L. J. 779.

INTERPRETATION OF STATUTE**1. Amendments**

1. Where provisions of old statute are not referred to in the amending statute, they must be considered irrespective of the amendment. 1924 C. 881.
2. Where no provisions are substituted for old ones, the former alone should be looked to for construing the matter. 54 A. 416, 1924 C. 881.

2. By-laws and Rules.

1. A by-law must conform with the provisions of the enactment under which it is made. A by-law which differs materially from the Act should not be enforced. 2 L. 239=64 I. C. 19=22 Cr. L. J. 737.
2. By-laws framed by Municipal Boards in India in exercise of their statutory powers are legal. 64 I. C. 129=1921 L. 134.
3. Courts are slow to condemn Municipal by-laws as invalid on the ground of unreasonableness and support them, if possible, by benevolent interpretation. 59 I. C. 545=22 Cr. L. J. 113=13 Bur. L. T. 107.

Interpretation of Statute—(contd.)

4. Rules are not *ultra vires* where rule-making authority is not shown to have no authority not only under the Act but under any law whatever. 88 I. C. 23=1925 N. 293 35 Cr. L. 7. 1084, 45 M. L.J. 156 Foll.
5. Rules framed under the section of an Act are not law unless Act itself says so. 2 P. 134=1923 P. 1=23 Cr. L. J. 625.
6. Where there is a doubt as to the interpretation of a rule, the benefit of doubt should be given to accused. 1935 A. 121=154 I. C. 1059.
7. Rules and by-laws framed under an Act are part of it. 33 M. 511, 1923 P. 1=2 P. 34, 1925 N. 393.
8. If the rules are in excess of power, unreasonable or repugnant, they are *ultra vires* 12 L. 635=1931 L. 476, 40 C. 41, 54 A. 1, 1932 A. 70, 54 A. 611, 2 L. 239.
9. Rules and by-laws must be strictly construed. 58 C. 510, 1933 R. 68.

3. Codification.

Where a statute is expressly said to codify the law, it is not permissible to go outside the Code so created, because before the existence of that Code another law prevailed. 46 M. 605=1923 M. 523=73 I. C. 343=24 Cr. L. J. 599.

4. Construction of—

1. A penal statute should, when its meaning is doubtful, be construed in the manner most favourable to the liberties of the subject, especially so when it is of an exceptional nature. 1 B. 308, 46 M. 605, 45 B. 2.0, 8 L. 320, 51 A. 508.
2. Where the language of an enactment is ambiguous and two constructions are possible, the most beneficial to the subject must be preferred. 1930 L. 781, 126 I. C. 177.
3. If matter is doubtful, the interpretation preventing abuse of process of law should be put. 123 I. C. 673=1930 A. 265=31 Cr. L. J. 546.
4. When there are two constructions, it is the duty of the Court to use the common sense construction. 51 A. 99=1929 A. 752.
5. The language of the statute and its natural meaning must be first examined and un-influenced by the previous law on the point. 48 C. 388, 8 C. 214, 52 C. 197, 50 A. 625=1928 A. 207=29 Cr. L. J. 353.
6. Full and accurate effect should be given to every word. 13 A. 364.
7. The essence of the Penal Code is to be exhaustive on the matter in respect of which it declares the law. 29 C. 707.
8. Matters outside the statute cannot be invoked, not by way of construing the provisions, but of adding something to it, which is not to be found within it. 1926 M. 90=96 I. C. 978=27 Cr. L. J. 1026.
9. Clear words of an act of Parliament conveying a definite meaning in the ordinary sense of the word used, cannot be cut down, or added to as to alter that meaning. 7 L. 348=1926 L. 357=27 Cr. L. J. 913.
10. The language of every enactment must be so construed as to be consistent with every enactment, which it does not in express terms modify or repeal. 53 B. 627=1929 B. 274=31 Cr. L. J. 103.
11. A Penal Act like Excise Act or Arms Act should generally be construed in favour of the subjects. 51 A. 506, 109 I. C. 511.
12. "Strict construction" means that benefit of doubt, if any, should be given to the party to be charged. 105 I. C. 433=1928 S. 1=28 Cr. L. J. 913.
13. Plain and common sense meaning should be taken of the section. 50 B. 34=1926 B. 57, 9 L. 689, 50 A. 569=1928 A. 241.
14. A contemporaneous interpretation is the best and strongest in law. 1929 C. 617.
15. Phrases and sentences should be considered according to the rules of grammar. 11 L. 55=1929 L. 641=30 Cr. L. J. 1019=119 I. C. 265.
16. Criminal law should not be interpreted with canons of civil law. 1932 A. 441.
17. Intention of an enactment should be gathered from the language employed by it. 1928

Interpretation of Statute—(contd.)

P. C. 24=7 P. 221, 1920 P. C. 181, 5 L. 147, 47 C. 633, 16 B. 580, 1927 B. 483=51 B. 826, 13 A. 17

18. A penal statute should be construed strictly. 1932 P. C. 13 Cr. L. J. 853, 23 P. R. 1915.

19. No liability should be held to attach nor any penalty imposed. 2 A. 301, 28 C. 504, 14 A. 38, 10 A. 150.

20. Rules of construction apply to all Penal statutes. 1 B. 52, 27 A. 17

5. Ejusdem-generes.

Where general words follow particular and specific words, they refer to things of the same kind as those specified. 53 B. 627, 82 I. C. 517

6. English law or Decisions.

1. Courts are not bound to look to the English Law. 84 I. C. 56, 45 C. 51 C. 62, 5 L. 147=1924, L. 513, 51 C. 304 (P. C.), 1927 A. 244, 50 A. 17

2. When words clearly express intention of legislature, the definition from English law should not be accepted. 1930 M. 441=31 Cr. L. J. 625, 85 I. C. 509.

3. Decisions of English law are not safeguards when circumstances are different. 17 P. R. 1879 Cr.

4. Where Indian Statutes have been passed on the same lines and in the same terms as those of English statutes, English decisions may be considered. 7 A. 44, 54 I. C. 1915, 1933 P. 196=12 P. 216, 20 B. 617, 16 B. 269, 1928 L. 609, 23 C. 211, 23 C. 512, 38 M. 797, 1925 C. 613, 39 M. 250.

5. Single Judge must follow Division Bench. 1933 P. 38.

6. English authorities can be referred to as illustration but are not binding. 10 C. 302.

7. Where Colonial statute is based on Imperial statute, the Colonial Courts are, in practice, if not in theory bound by this construction. 18 I. C. 997, 45 C. 111.

8. Evidence Act is an attempt to reduce the English law of evidence with some modifications rendered necessary by the peculiar circumstances of India. 17 B. 129 (141) 6 C. 171 (188).

9. Where the point is novel one and there is no precedent in India, English decisions may be referred to. 1933 A. 70=54 A. 1041.

7. Exceptions.

Exceptions must be applied to those cases to which they are confined by legislature. 62 I. C. 188.

8. General and Special Acts.

1. A general later law does not abrogate a special one by mere implication. 114 I. C. 273=1929 N. 17=30 Cr. L. J. 258, 7 L. 84.

2. A subsequent general Act may not repeal a prior special Act but when the subsequent Act makes no reference to earlier Act, the two should be construed together. 54 C. 863=1927 C. 432=102 I. C. 845=31 C. W. N. 765.

3. Where there is an inconsistency between a general and Special Act, the provisions of the latter must override the former. 101 I. C. 396=1927 M. 522.

4. A general Act is to be construed as not repealing a particular one, that is, one directed to a special object or special class of objects. 7 L. 84, 45 M. 31.

5. [A particular provision may control or limit a general provision but the intention to limit the general provision must be clear. 45 B. 672.

9. Headings.

1. Headings cannot militate against clear language of section. 48 M. 395.

2. A heading preceding any section is no doubt meant to express the intention of the legislature though it is open to question whether the words themselves have any operative effect. 92 I. C. 995=1926 A. 312=24 A. L. J. 337.

3. In case of ambiguity heading may be referred to. 1933 B. 417, 45 C. 343, 44 C. 267, 5 B. 338, 57 B. 346, 34 I. C. 450, 49 A. 903, 42 I. C. 177.

*Interpretation of Statute—(contd.)***10. History of Legislature.**

1. To understand meaning of a section, history thereof should be considered. 51 A. 469=116 I. C. 804=1928 A. 682=30 Cr. L. J. 694.
2. Historical survey is permissible only if there is doubt. 81 I. C. 353.

11. Illustrations. See Illustration.**12. Intention of Legislature.**

1. Intention of Legislature should be ascertained from the words used in the enactment. 51 B. 896=1927 B. 483=28 Cr. L. J. 705.
2. In construing a statute, the paramount object is to ascertain legislative intent. 105 I. C. 433=28 Cr. L. J. 913=1928 S. 1.
3. The intention to take away a vested right without compensation or any saving is not to be imputed to the Legislature unless it be expressed clearly. 71 I. C. 957, 41 C. 1125.

13. Marginal Notes.

1. Marginal notes to sections of an Act cannot be referred to for the purpose of construing the Act. 26 A. 393, 11 Bom. L. R. 516, 50 M. 733=1927 M. 156.
2. A marginal note is merely an abstract of the clause intended to catch the eye. 103 I. C. 225=1927 B. 424.
3. Marginal notes are no part of the Act. 23 C. 55, 96 I. C. 121, 1926 B. 382, 25 C. 858, 50 M. 733, 1927 B. 424, 57 B. 699.
4. Marginal notes when inserted by or under the authority of legislature can be referred to for exposition of the meaning of a section. 1935 C. 287=39 C. W. N. 57, 51 A. 411=1929 A. 53 and 49 M. 716 Rel. on. 23 C. 55, 25 C. 858, 28 B. 143, 42 M. 451 and 50 M. 733. Ref 1935 O. 337=36 Cr. L. J. 720.

14. Power of Court—conflict.

If there is a rule of practice or prudence in conflict with the law, the Judge is bound to follow law. 1929 C. 822, 41 C. 446.

15. Preamble.

1. Preamble indicates in general terms the object and intention of the legislature in passing the Act. 26 B. 759, 9 B. 333, 18 B. 636, 2 A. 218, 57 B. 346, 1932 O. 152, 7 M. 197.
2. It cannot restrict or widen the import of the express terms of a section, when such terms are clear and unambiguous. 11 A. 262, 14 A. 145, 55 C. 67, 1931 M. 629, 1931 L. 706.
3. When the language of a section is ambiguous or doubtful, Preamble may be taken into consideration. 1932 A. 617, 9 L. 260, 54 M. 845, 10 B. 274.
4. Where there is nothing in the express provisions of the Act to the contrary, the Preamble may be taken into consideration. 12 A. 409 (417).

16. Precedents. See Precedents.

1. Although Indian Penal Code is meant to be a codifying statute and is complete in itself, yet reference to earlier case law is permissible. 49 M. 728.
2. Earlier case law may throw light but cannot add to it. 49 M. 728.
3. Previous decisions in criminal cases, proceeding as they do on their own set of facts, seldom afford any very great assistance in deciding the nature of an offence. 3 P. R. 1919 Cr.
4. Courts should follow existing rulings, so as not to disturb existing and settled practice. 31 C. 511, 18 B. 136, 1927 L. 635, 30 C. 999, 18 A. 403, 44 C. 759, 23 A. 62, 36 A. 469, 48 C. 191, 48 C. 184, 46 A. 95 (P. C.).
5. There can be no precedent on questions of fact and matters of discretion. 1925 R. 107=4 R. 13, 1923 O. 430, 7 P. 273=1923 P. 316.
6. All Courts in India are bound by the decisions of Privy Council. 47 A. 833=1925 P. C. 272, 51 B. 231, 52 B. 335 *Contra* 1927 M. 251.

Interpretation of statute—(contd.)

7. A single Judge of High Court is bound by the decision of Division Bench. 1925 M. 441, 14 M. 185, 51 C. 588, 1933 P. 38=11 P. 697.
8. Subordinate Courts are bound to follow the rulings of the High Court to which they are subordinate. 28 A. 62 (71).
9. In the absence of the ruling of their own High Court, the subordinate Courts should follow the rulings of other High Courts. 37 A. 359 (P. C.), 15 B. 419, 17 B. 555, 25 C. 488, 10 C. 82, 1926 A. 346, 1925 M. 251=48 M. 695, 1923 A. 231, 28 I. C. 982.
10. The opinion of the Full Bench and not the Dissenting Judge is to be followed. 30 I. C. 927=1916 M. 747.

17. Proceedings in Legislative Council.

1. Reference to Proceedings in Legislative Council is not permissible. 22 C. 788, 22 B. 112 (126), 22 C. 1017, 1924 N. 162, 1924 L. 374 (376).
2. It is doubtful if the Courts can refer to report of Select Committee sitting to amend the statute, while interpreting the same. 11 L. 55, 103 I. C. 853, 22 C. 788.
3. Court cannot seek the assistance of debates in the Legislative Council or the report of Select Committee. 9 L. 689, 53 C. 929, 72 I. C. 433=1924 L. 374.

18. Proviso

1. In construing a section full and natural meaning should be given to a proviso if any. 8 C. 637.
2. A proviso to a section should not by mere implication withdraw any part of what the main provision has given. 123 I. C. 801=1930 M. 124=1930 M. W. N. 20.
3. Proviso governs the main proposition of law which immediately precedes it, unless the language of the section shows a different intention. 6 A. 509, 12 C. W. N. 140 (144), 37 C. 697, 6 I. C. 410.
4. A proviso is subordinate to the main enactment. 37 I. C. 525, 39 M. 1085.

19. Punctuation marks

1. Commas are no part of statute. 8 P. 516=1929 P. C. 69.
2. Where the statute has been punctuated, the punctuation marks are part of the statute. 79 I. C. 608=1924 M. 455. *Cont.* 1929 P. C. 69.
3. It is not always safe to rely on punctuation as a deciding factor in construction. 1 R. 225=1923 R. 185=76 I. C. 479, 14 C. 365

20. Repeal

1. An earlier statute will be considered to have been repealed by a later one only if there are express words to that effect. 48 M. 331=1925 M. 355, 53 A. 24, 42 M. 540.
2. Repeal by implication cannot be assumed even where the earlier Act was a special one and the latter a general Act. 48 M. 331, 1931 P. C. 149, 26 M. 394, 1933 A. 669, 1933 C. 280.
3. A proceeding taken against a person under a temporary Act, like an Ordinance, will *ipso facto* terminate on the expiry of the Act. 1933 A. 669
4. Penalties incurred while a statute is in force, are not affected by the mere fact that the statute has ceased to be in force. 1933 C. 280.

21. Report of Indian Law Commissioners.

It is permissible to refer to the report of the Indian Law Commissioners. 7 A. 44, 17 C. 852

22. Report of Select Committee. See—16.**23. Retrospective effect.**

A penal provision does not have retrospective effect. 120 I. C. 692, 1933 C. 732, 1928 L. 627, 32 A. 499, 1922 N. 227, 2 B. 148.

*Interpretation of statute—(concl'd.)***24. Rules framed under sections. See—2.****25. Statement of objects and reasons.**

It is not open to Courts to consider the statement of objects and reasons as the form part of the statute. 1930 A. 225, 14 A. 145, 53 B. 617. See 1933 C. 301.

26. Typographical Mistakes in the Act.

If there is a conflict between the Act printed in the Gazette and other copies printed by the Superintendent, Government Printing, preference should be given to that in the Gazette. 48 M. 821=1926 M. 55, 1935 S. 90=1935 Cr. C. 376.

INTERPRETER. S. 513, Cr. P. C.**1. Oath to—**

1. It is not necessary to administer oath to an interpreter. 16 W. R. 61.
2. The omission to administer oath to an interpreter does not make the deposition inadmissible in evidence. 36 C. 808.

2. Who can be—

A witness taking active part during proceedings previous to the trial and even ready to depose in the Sessions Court as Prosecution witness should not be chosen to be interpreter. 1925 C. 922=53 C. 659=95 I. C. 469=27 Cr. L. J. 805.

INTERPRETATION OF EVIDENCE TO ACCUSED. S. 361, Cr. P. C.

1. If the accused appears by a Pleader who understands the language in which the evidence is given by the witness, the omission to interpret it to the accused is not a material defect. 24 W. R. 50, (1870) 13 W. R. 25.
2. An accused is often in a much better position than his Pleader to follow the drift of the evidence and it is obvious that he ought to be kept informed of what is being said. If certain witnesses give evidence in English, it should be translated to the accused, for the first two paragraphs of S. 361 are not mutually exclusive. 1930 M. 186=125 I. C. 253=31 Cr. L. J. 827, 1928 C. 27 Diss. from
3. When the accused does not understand either the language of the Court or of the witness, there is no provision for the deposition of a witness being interpreted to accused after it has been read over and interpreted to the witness. 1927 P. C. 44.

INTERVIEW OF ACCUSED WITH COUNSEL OR RELATIVES.

1. Under S. 561-A, Cr. P. C., the High Court has power to interfere and direct the Police to permit an interview of the accused with his legal advisers. 50 B. 741=1926 B. 551=97 I. C. 801=27 Cr. L. J. 1169.
2. The fact that accused had an interview with his relations is no ground for rejecting a later application by him to interview his counsel. 12 L. 435=1931 L. 99.
3. An accused has a right to have access to legal advice under reasonable restrictions even when he is in Police custody, during the course of investigation. 12 L. 211=133 I. C. 248=32 Cr. L. J. 1022=32 P. L. R. 935=1932 L. 13.
4. An interview with the legal adviser should not be refused to a prisoner, who is remanded to Police custody. 1931 L. 945=129 I. C. 481=31 P. L. R. 780.
5. The Police should not refuse to allow the legal adviser to interview or relatives to supply food and clothing to the accused. 1932 L. 13, 1930 L. 945.
6. Prisoners should be allowed to have free talk with their *Vakils* out of the hearing of the Police officers in charge of such prisoners. 8 Bom. H. C. (Cr. C.) 126, 1935 C. 101=154 I. C. 1006.
7. Under trial prisoners are entitled to have assistance of counsel and to communicate with friends and relations. These rights should not be evaded by removing prisoners to unknown places or by delaying applications for interview. 1935 L. 231=156 I. C. 1056=35 Cr. L. J. 1180.
8. If the confession is obtained without allowing counsel or relations to interview the accused, it should be looked upon with suspicion. 1935 L. 230=35 Cr. L. J. 1181=156 I. C. 1056.

*Intoxication***INTOXICATION.** *See* Drunkenness.

Intoxication may be taken into account in awarding punishment in a murder case. 28 P. R. 1917 Cr.

INTRICATE CASE. *See* Transfer (Grounds)—53.**INTRODUCING CHEAT.** *See* Cheating—23.**INTRUSION ON THE PRIVACY OF A WOMAN.** *See* Insulting the modesty of a woman—4.**INVESTIGATING OFFICER.** *See* Investigation—7.

1. Non-production of a material witness like the investigating officer is a serious omission which cannot but throw suspicion on the whole prosecution case. 11 P. 630=71 I. C. 219=1922 P. 582=24 Cr. L. J. 91.
2. An irregularity occasioned by a Sub-Inspector investigating into an offence, while investigation should have been made by an Inspector is curable under S. 537, Cr. P. C. 52 B. 238=1928 B. 162=29 Cr. L. J. 551=109 I. C. 487.

INVESTIGATION. *See* Examination of witnesses—6.**1. Delay in—**

1. Delay in investigation causes serious prejudice to an accused person. It gives time to witnesses to bring their evidence in harmony with that of others. 1932 L. 345=13 L. 573.
2. Court should inquire fully into the circumstances of the delay and consider its bearing upon the case. 2 Bom. L. R. 1042.

1-A. Forwarding accused to Magistrate. S. 170, Cr. P. C.

1. Accused must be forwarded to Magistrate who has jurisdiction. 29 C. 483.
2. It is for the Police Officer to decide whether there is sufficient evidence to justify forwarding accused. 1931 L. 99=12 L. 435 A subordinate officer has no power. 1918 C. 50, nor Superintendent of Police has power after it has been exercised. 18 Cr. L. J. 886
3. It is not the duty of the Police Officer to intimate to the accused the offence with which he is charged but is bound to intimate whether warrant is bailable or not. 1931 A. 263=53 A. 407

2. Into cognizable case. Ss. 156, 157, Cr. P. C.

1. S. 156 applies to the investigation of cases under S. 55, Cr. P. C. 1893 A. W. N. 124.
2. The mere fact that a private complaint is filed in a Court and the Magistrate takes cognizance of it cannot oust the power of Police to investigate or conduct prosecution. 1928 M. 1268=114 I. C. 365=30 Cr. L. J. 326. 54 M. 598.
3. If after the issue of process against accused the Magistrate orders the Police to make an enquiry under S. 156 (3), his order is illegal. But the mere fact that he issues process to complainant, witnesses and accused will not bar a Police enquiry. 1928 M. 1268=114 I. C. 365.
4. A Court of Sessions cannot direct investigation. 11 P. R. 190 Cr.=16 P. W. R. 1910=11 Cr. L. J. 350.
5. If there is delay in the investigation by the Police, it is the duty of the Committing Magistrate and failing him, of the Sessions Judge, to inquire fully into the circumstances of the delay and to consider its bearing on the prosecution story. 2 Bom. L. R. 1902.
6. During an investigation a Police Inspector sent Constables to lock the house of an accused situated outside his jurisdiction. Held, that he did not act *ultra vires*. 12 P. R. 1915 Cr.=16 Cr. L. J. 551.
7. An informal inquiry preliminary to a formal investigation is not an investigation under S. 175. 25 I. C. 630=15 Cr. L. J. 622=1914 M. W. N. 382.
8. An office of C. I. D. in the Presidency of Madras can investigate an offence under

Investigation—(contd.)

the Cr. P. C. 35 M. 247.

9. Failure to send a report to the Magistrate, as required by S. 157 (1) in a serious neglect of duty and likely to result in failure of justice leaving the Police open to suspicion of the concoction of false evidence. 11 Cr. L. J. 498=4 S. L. R. 38.
 10. When investigation is completed and accused is sent up for trial, Police cannot resume investigation. 1932 L. 611=140 L. C. 25, 4 P. R. 1908 Cr.
 11. A document formally proved by Police during investigation though formally proved is no legal evidence. 1927 L. 79=99 L. C. 240=21 Cr. L. J. 112.
3. Into non-cognizable cases. S. 155, Cr. P. C.

1. A Police Officer cannot investigate a non-cognizable case without the order of a Magistrate. If he receives such information, he should enter the substance of it in the diary and refer the informant to a Magistrate. 26 B. 156.
2. Application requiring the sanction of the Court under S. 155 (2) is not a complaint. 1930 B. 372=32 Bom. L. R. 782.
3. If a Police Officer of his own motion, makes a formal report or complaint in respect of a non-cognizable offence, it will amount to a complaint within the meaning of S. 4 (h). 26 B. 150.
4. It is incumbent on a Police Officer to keep a diary when investigating a non-cognizable case under the orders of a Magistrate. 16 P. R. 918 Cr.
5. A Magistrate can refer a matter to Police for investigation under S. 155 (2) even without a complaint or without examining the complaint. 8 Bom. L. R. 589=4 Cr. L. J. 183, 11 Cr. L. J. 156=6 M. L. T. 259
6. A Police Officer while he is holding investigation on a charge of house trespass, cannot enter the house of complainant's neighbour. 1928 A. 185=107 L. C. 688=26 A. L. J. 410.
7. A Magistrate who receives a Police report in a non-cognizable case but doubts its correctness can order an investigation under S. 155 but cannot examine the Police Officer as if he was complainant. 27 L. C. 145=16 Cr. L. J. 97=1914 U. B. R. 19.
8. Where Police was directed to investigate a non-cognizable case but the Police instituted proceedings against the informant under S. 211, I. P. C., and got him convicted. Held, that the conviction is bad. 17 Bom. L. R. 69=27 L. C. 545=16 Cr. L. J. 161.
9. Even if the Magistrate had not directed to make a report, a report must be made by the Police under S. 173 17 Bom. L. R. 69=27 L. C. 545.
10. Where immediately after non-cognizable offence was committed a Police Officer made a report to District Magistrate and asked for a warrant under S. 161, I. P. C., and on the same day the Magistrate ordered the case to be instituted under S. 161, the procedure was not illegal and the trial was not vitiated. 132 L. C. 234=32 Cr. L. J. 860=1931 O. 112.
11. Power to arrest without warrant is expressly taken away by S. 155 (3). (1883) 1 Weir 343.
12. It is doubtful whether Police Officer appointed to investigate under S. 155 can delegate his authority to another. (1889) Rat. P. 488.

4. Irregularities in or—improper.

1. Irregularities or failure to conduct an investigation properly cannot vitiate a trial, which was started on the final report, when there is no allegation of anything irregular or illegal in the conduct of trial. 1931 P. 150=131 L. C. 17=32 Cr. L. J. 638.
2. If on perusal of Police diary the Magistrate comes to the conclusion that Police have not properly investigated the case and a certain person should have been prosecuted, the proper course is to pass an order under S. 190 (1) (c) ordering his prosecution. 1931 A. 273=129 L. C. 267=32 Cr. L. J. 370.
3. If the investigation is conducted by an officer not authorized it is only a curable irregularity. 52 B. 238=1928 B. 162=29 Cr. L. J. 551=30 B. L. R. 392.

Investigation—(contd.)

4. If the statements of witnesses are not recorded for two months, although approver disclosed their names, their testimony stands discredited. 1934 L. 346.
 5. Investigating officer should act in a manner that should inspire confidence. 1934 L. 692.
 6. Investigating officer should not identify himself with a person who is suspected by the relatives of deceased as having hand in the crime. 1933 L. 871=35 Cr. L. J. 137.
 7. It is not good to abandon investigation and to resume it after long delay as it seriously prejudices accused. 13 L. 573=1932 L. 345.
 8. Two persons took part in a crime but by mistake of Investigating officer one of them was not prosecuted. Held, it is no reason for holding the other innocent. 1935 O. 110=153 I. C. 81.
- 5. Object of—**
Object of investigation is to search for truth and not to collect evidence to secure conviction 1933 A. 314, or to get confession. 6 A. 506.
- 6. Of serious crimes**
Crime of serious and brutal nature committed by large number of persons should be investigated by senior and experienced officer. 1933 L. 871=35 Cr. L. J. 137.
- 7. Officer conducting—Production of.** See Investigating Officer.
- 8. Police report in cognizable cases** S. 157 (1), Cr. P. C.
1. Failure to send a report to the Magistrate, as required by S. 157 (1) Cr. P. C., is a serious neglect of duty and likely to result in failure of justice, leaving the Police open to suspicion of the concoction of false evidence 11 Cr. L. J. 498, 1931 P. 150.
 2. The omission by the Police Officer to send a report to the Magistrate may be a breach of duty but there can be no prejudice to the accused. The report is not a public document and its object is to keep the Magistrate informed of the investigation. 131 I. C. 17=32 Cr. L. J. 638=1931 P. 150=12 P. L. T. 393.
 3. The report made by a Police Officer under S. 157 is not a public document within the meaning of S. 74, Evidence Act, and an accused is not entitled to a copy before trial. 20 M. 189.
 4. A report under S. 157 or 173 is not a complaint within the meaning of S. 195, Cr. P. C. 6 O. C. 1.
- 9. Refusal to answer question in—**
A refusal to answer questions put by a Police Officer during investigation under Chapter XVI, is not punishable under S. 179, I. P. C. 8 R. 511=1931 R. 26.
- 10. Release of accused if evidence insufficient.** S. 169, Cr. P. C.
1. S. 169 applies when the case is still under investigation and not when accused has appeared before a Magistrate. 1933 A. 582
 2. If evidence is insufficient, accused must be released. 43 A. 186.
 3. A bond taken for appearance before Police is void. 1925 L. 152.
 4. Where a person is arrested along with others and released, he should not be prosecuted on facts which he gives against the accused. 1933 A. 399
 5. Police Officer cannot take bond from surety without bond from the accused. 1928 L. 318.
 6. Police have no power to permit withdrawal of complaint. (1875) Rat. 91.
- 11. Report of—under S 157** Ss 158-159, Cr. P. C.
On receipt of report of a preliminary enquiry under S. 159, the Magistrate should proceed in the same way, as he would deal with a report received from a Police Officer 30 C. 923, 45 M. 230.
- 12. Report of—to superior Police Officer.** S. 168, Cr. P. C.
The report should be sent to the officer in charge Police Station. S. 168, Cr. P. C.

*Investigation—(concl'd.)***13. Right of Pleader in—.**

1. It is in the interest of justice that an accused person should have access to legal advice even while he is in Police custody during investigation. 1930 L. 945=31 P. L. R. 780=129 I. C. 481.
2. An interview with the legal adviser should not be refused to a prisoner who is remanded to Police custody under S. 167. 1930 L. 945=31 P. L. R. 780.
3. Accused is entitled to have access to legal advice even in Police investigation. 12 L. 211=1932 L. 13=133 I. C. 288=32 Cr. L. J. 1022.
4. An advice by a lawyer to accused in Police custody, not to make any statement at all is not proper. He can advise him to make a statement after consulting him. 1935 C. 101 (102)=154 I. C. 1006.

14. Series of—.

The number of investigations is not limited by law and where one has been completed another may be begun on fresh information received. 1932 L. 103=135 I. C. 209=33 Cr. L. J. 97, 47 I. C. 273=19 Cr. L. J. 901.

15. Who can direct ?

S. 156 only empowers the Magistrate to direct investigation. A Court of Sessions has no power to do so. 11 P. R. 1910 Cr.

16. Witnesses not to accompany Police Officer. S. 171, Cr. P. C.

No complainant or witness shall be required to accompany Police Officer on his way to Court. But a recusant one may be sent under custody. 4 C. W. N. 49.

IRON SHED STICK. See Culpable homicide—15.

IRREGULARITIES IN—. Ss. 529 to 537, Cr. P. C.**1. Arrest—.** See Arrest—12.**2. Assessor—.** See Assessors—4.**3. Burden of proof of—.**

When proceedings bristle with irregularities, it is for the prosecution to show that accused is not prejudiced thereby. 53 I. C. 150=20 Cr. L. J. 742.

5. Charge. S. 535, Cr. P. C. See Charge.

1. Where an accused is charged with and tried at one trial for four offences it is not merely an irregularity but illegality which vitiates the trial. 1930 M. 508=127 I. C. 295=1930 Cr. C. 560, 25 M. 61 (P. C.) Foll. 1927 P. C. 44 Dist.
2. An omission to frame a charge does not invalidate an order of acquittal and render it equivalent to an order of discharge. Such order is bar to a retrial for the same offence. 3 A. 129, 11 Cr. L. J. 217=5 I. C. 743.
3. Where a charge was framed under S. 147, I. P. C., but the accused was convicted under S. 323 the conviction is illegal on account of the absence of charge under S. 323 and S. 535, Cr. P. C., does not cure the defect. 40 C. 168.
4. Omission to frame a charge afresh after the sanction was received, is cured under S. 535. 4 L. B. R. 247=8 Cr. L. J. 65.
5. Omission to specify common object in the charge does not vitiate the trial unless the omission has prejudiced the accused or resulted in failure of justice. 1928 B. 286=115 I. C. 399=30 Cr. L. J. 467=30 Bom. L. R. 653, 21 C. 827, 18 Cr. L. J. 328.
6. An appellate Court can convict an accused under S. 323 when the charge was framed under S. 147, I. P. C. only. 1928 P. 359=108 I. C. 383=29 Cr. L. J. 374, 1925 C. 926=88 I. C. 1055=25 Cr. L. J. 1279.
7. S. 535, Cr. P. C., ought not to be applied to proceedings for contempt. 4 R. 257=1926 R. 188=93 I. C. 57=27 Cr. L. J. 1241.
8. Where a charge is defective under S. 234, Cr. P. C., having been presented out of time, the trial is vitiated. The irregularity is not cured by S. 537, Cr. P. C. 34 C. W. N. 959=1931 C. 357=128 I. C. 816.
9. The lumping of charge together in a manner which is contrary to the provisions of S. 233 is covered by S. 537. 1921 O. 49, 61 I. C. 163=22 Cr. L. J. 344.

Irregularities in—(contd.)

10. If two offences could not be joined together, their joinder would vitiate the whole trial, although the accused is not prejudiced. 1 L. 562=1921 L. 381=57 I. C. 450=7 P. L. R. 1921=21 Cr. L. J. 626.
 11. Where a Court of appeal is dealing with an appeal against acquittal, defect in the charge cannot be condoned. 1927 L. 109=99 I. C. 602=25 Cr. L. J. 170.
 12. The joinder of two offences in a single charge is an irregularity cured by S. 537. 1928 C. 700=117 I. C. 596=32 C. W. N. 839=30 Cr. L. J. 799, 40 C. 846 Diss. from, 1922 C. 573, 1927 C. 17 Dist.; 19 C. W. N. 972 Foll.
 13. A surplus in a charge under S. 417, I. P. C., that the complainant suffered a loss is an irregularity curable under S. 537. 1930 L. 407=32 Cr. L. J. 299=129 I. C. 298.
 14. It cannot be assumed that if a mandatory provision of the Code has been infringed in framing the charge the Court must of necessity be held to have failed in administering justice to the accused. 53 M. 937=1930 M. 857=127 I. C. 654.
 15. Failure to define accurately the common object in a charge under S. 147, I. P. C., is an irregularity curable under S. 537. 1930 M. 188=31 Cr. L. J. 347. See 33 C. 295.
 16. If the charge is vague or meaningless but the accused and his counsel know the nature of the offence and no failure of justice has resulted, the defect is cured under S. 537. 5 R. 25=1930 R. 201=125 I. C. 246, 1921 C. 18=82 I. C. 545.
 17. Omission to give the substance of the charge in an order under S. 112, Cr. P. C., is an illegality and not mere irregularity. 1930 M. 859=32 Cr. L. J. 27.
 18. Where the charge in cheating gives the month and not the date when offence was committed, the irregularity is curable under S. 537. 1926 P. 347=96 I. C. 221.
 19. A trial *de novo* must not be ordered when no charge is framed or a defective charge is framed. The fresh trial should be ordered from the stage at which irregularity occurred. 1925 N. 147=81 I. C. 976=25 Cr. L. J. 1152.
 20. An omission to set out the guilty intention of the accused in the charge will be cured by S. 537, unless it is shown that it has occasioned a failure of justice. 22 C. 391.
 21. Where the law and the section of the law were mentioned in the charge, the omission of the words "unlawfully and maliciously" in the charge was not so material as to prejudice the accused. 42 C. 957.
 22. The omission of the word "dishonestly" in a charge under S. 411, I. P. C., is not a ground of reversing conviction. 10 B. H. C. R. 373.
 23. A defect in charge is immaterial if the accused is not prejudiced. 20 P. W. R. 1914 Cr.=123 P. L. R. 1914, 32 M. 384, 32 M. 3.
 24. The addition of second charge by a Sessions Court in respect of a matter not covered by the indictment is an illegality not covered by S. 537. 20 P. W. R. 1909 Cr.
 25. Where the charge contained only one offence but from the facts proved, accused was guilty of two distinct offences, the defective form of charge did not invalidate trial. 131 I. C. 458=1931 M. 225=32 Cr. L. J. 753=1930 M. W. N. 1041.
5. **Charge to jury.** See Jury.
6. **Commitment.** S. 532, Cr. P. C.
1. If the defect in committal order arises from want of territorial jurisdiction, it is not curable under S. 532. 16 B. 200, 51 I. C. 176=20 Cr. L. J. 416.
 2. S. 532, Cr. P. C., applies only to a commitment to a Sessions Court. 12 Bom. L. R. 667=11 Cr. L. J. 543=7 I. C. 934.
 3. Commitment by a second class Magistrate, who was competent to deal with the offence is curable under S. 532. 16 B. 200, 16 P. R. 1890.
 4. If a Magistrate is disqualified under S. 556, Cr. P. C., the commitment is bad and is not curable under S. 532. 2 L. B. L. R. 209.
 5. S. 532 has no application to commitment made by Magistrate acting under S. 346, Cr. P. C. 12 C. W. N. 136=6 Cr. L. J. 429.
 6. The order of commitment for want of sanction under S. 196 or 197, Cr. P. C., is irregular and is curable under S. 532. 22 B. 112, 9 B. 288.

Irregularities in—(contd.)

7. If the Magistrate empowered to commit to Sessions has no territorial jurisdiction over the place of offence, commits a case, the commitment is valid under S. 531, Cr. P. C., and it cannot be set aside under S. 532, although objection was taken before commitment. 17 M. 402.
8. If objection to commitment for want of jurisdiction by Magistrate is not taken before the Magistrate, the High Court can accept the commitment under S. 532. 22 B. 112.
9. If a Magistrate commits an accused over whom he has no jurisdiction or commits him for an offence which is not triable by Court of Sessions or High Court, the defect is not curable under S. 532. 57 C. 1042=1929 C. 756=31 Cr. L. J. 506.
10. S. 532 is a curing or remedial section and must be strictly construed in the interest of accused. 57 C. 1042=31 Cr. L. J. 505=1929 C. 756.
7. **Consent to—** See Consent—10.
8. **Confession—** See Confession (recording of).
9. **Conviction by Bench of Magistrates.** See Bench of Magistrates.
10. **Distinction between illegality and—**

A mere error of procedure arising out of inadvertence will amount to no more than an irregularity. 135 I. C. 226.
11. **Examination of accused.** See Examination of accused.
12. **Examination of complainant.** See Examination of complainant.
13. **Examination of witnesses** See Examination of witnesses.
14. **Failure of justice.**
 1. The test in case of errors, omissions or irregularities is not whether the Court had acted illegally, for in one sense every error is irregularity in so far as it contravenes the provisions, but whether there had been a failure of justice. 27 C. 839.
 2. The test whether the error of irregularity has occasioned a failure of justice, can be properly applied only after the final result of the case is known, for during the trial the error can be corrected. 23 C. 983. See 12 Cr. L. J. 320.
 3. It is the duty of the Court to go into the merits before interfering in consequence of misdirection or other error. 26 M. 1.
 4. When proceedings bristle with irregularities, it is for the prosecution to show that the accused is not prejudiced thereby. 53 I. C. 150=20 Cr. L. J. 742.
 5. High Court will not interfere in case of irregularities unless there has been failure of justice. 1932 B. 473=139 I. C. 608. 1930 B. 163=31 Cr. L. J. 95 and 30 I. C. 548 Dist.
15. **Hearing arguments.** See Arguments.
16. **Illegality or—** See Distinction—28—25.
17. **Investigation.** See Investigation.
18. **Joint trial.** See Joint trial.
19. **Judgment.** See Judgment.
20. **Jurisdiction.** See Jurisdiction—14.
21. **Local Inspection.** See Local Inspection.
22. **Misdirection of Jury.** See Jury—17.
23. **Mode of trial.**
 1. The simultaneous trial of two separate cases is an illegality not curable under S. 537, Cr. P. C. 64 I. C. 833=23 Cr. L. J. 49.
 2. Joint trial of persons proceeded against under S. 110, Cr. P. C., is illegal and not irregular. 1921 C. 625=61 I. C. 233=22 Cr. L. J. 877.
 3. It is only a curable irregularity to consolidate more than one similar complaints and to record evidence by consent of the accused in one of them and to use it in the others. 50 Bom. 174=1926 B. 23=27 Cr. L. J. 1335.

Irregularities in—(contd.)

4. Where parties consented to treat the evidence in one case as evidence in the other, and no injustice followed from it, the trial is not bad. 50 A. 457=30 Cr. L. J. 337 114 I. C. 721=1928 A. 593.
5. Joint trial of persons for acts not committed in the course of the same transaction is not illegality vitiating trial. 1927 L. 274=23 Cr. L. J. 357.
6. Where in a summary trial a Magistrate followed the procedure prescribed for a warrant case in a summons case the trial is not vitiated. 1930 S. 53=120 I. C. 525=31 Cr. L. J. 123.
7. Where the case under Ss. 302 and 304, I. P. C., was tried with 7 jury men instead of 9, the trial is vitiated. 1930 C. 716=34 C. W. N. 735.

24. Non-compliance with provisions.

1. It is not every failure to comply with a mandatory provision of the law which renders the proceedings void. 1926 R. 193=98 I. C. 177=27 Cr. L. J. 1281, 1925 R. 258.
2. High Court will not interfere unless there is failure of justice. 1932 B. 473, 1930 B. 163 Dist.

25. Proceedings after—. See Examination of accused. Transfer.**26. Procedure.**

1. S. 205, Cr. P. C., does not apply to an accused arrested after the issue of the warrant. If the Magistrate exempts him from appearance at his request, the procedure is illegal. 2 P. 793=1924 P. 46=75 I. C. 72=24 Cr. L. J. 872.
2. Irregularities or illegalities in the search can neither vitiate the trial nor affect a conviction. 46 A. 86, 1929 A. 937=120 I. C. 266=31 Cr. L. J. 35.
3. Omission to post or serve a copy of the order under S. 145, Cr. P. C., is a mere irregularity. 3 R. 169=1925 R. 270=27 Cr. L. J. 660.
4. Trial on Sunday without the consent of accused and finishing it on the same day is void. 1930 N. 299=31 Cr. L. J. 705, 17 Bom. L. R. 918.
5. Remand of an appeal under S. 476 (B), Cr. P. C., for further enquiry is illegal but if it has not led to failure of justice, it is covered under S. 537. 1930 S. 315=1930 Cr. C. 1147.
6. If the investigation is conducted by Sub-Inspector where it should have been by an Inspector, the irregularity is curable under S. 537, 52 B. 238.
7. If the Committing Magistrate himself conducts identification parade and gives evidence before himself by going into the witness box, trial is not vitiated. 1927 O. 369=106 I. C. 721=29 Cr. L. J. 129, 27 A. 33.
8. Complaint by Court for perjury against a person to itself is mere irregular. The defect is curable under S. 532 (1). 53 C. 350=1926 C. 470=93 I. C. 33=30 C. W. N. 276=27 Cr. L. J. 382.
9. Where one of the accused is discharged or the other is subsequently acquitted, the complainant cannot be required to pay compensation to both under S. 250. The defect is incurable under S. 537. 1925 C. 264=25 Cr. L. J. 449.
10. The defect of not serving on the accused a copy of preliminary order is cured by S. 537. 1925 N. 33=81 I. C. 70, 3 R. 169=1925 R. 270.

27. Reading over statements See Reading over statements.**28. Recording evidence** See S. 356, Cr. P. C.

Where the evidence was recorded by Magistrate's reader and Magistrate did not make a memorandum of the statements but took great care in sifting evidence. Held, that the irregularity was curable under S. 537, Cr. P. C., as it did not occasion failure of justice. 1928 O. 112=106 I. C. 582=29 Cr. L. J. 970.

29. Recording reasons

1. The omission to record the reasons at a proper stage is a mere irregularity. 1927 R. 248=104 I. C. 637=28 Cr. L. J. 561, 25 M. 61, 1927 P. C. 44, 1924 L. 90=46 I. C. 398

Irregularities in—(contd.)

2. Omission to record reasons under S. 256, Cr. P. C., is only an irregularity. The trial is not illegal. 6 L. 551, 1930 N. 255=124 I. C. 459=31 Cr. L. J. 705.
3. Omission to record reasons for issuing warrant against the abducted woman under S. 498 in the first instance is mere an irregularity curable under S. 537. 59 I. C. 415=18 A. L. J. 1149=22 Cr. L. J. 111.
30. **Sanction.** See Sanction.
31. **Scope of S. 537, Cr. P. C.**
 1. S. 537 applies to mere error of procedure arising out of mere inadvertence and not to substantive errors of law. 8 B. 200, 11 B. H. C. R. 237, 12 W. R. 32, 25 Cr. L. J. 1132, 25 M. 61, 7 P. 61=1928 P. 1, 49 A. 32, 49 A. 270=28 Cr. L. J. 159, 81 I. C. 976.
 2. If in conducting a trial a Judge adopts a procedure which is unauthorised, it would amount to a violation of law, which cannot be cured under S. 537. 4 L. 376, 4 L. 382=1924 L. 17=25 Cr. L. J. 377.
 3. Where evidence in one case was treated as the evidence in the counter or cross case, the procedure is illegal and not curable under S. 537. 4 L. 376.
 4. The test to be applied in considering whether a particular infringement does or does not fall under S. 537, is whether the error goes to the root of the trial. 45 A. 124, 27 Cr. L. J. 669, 1925 R. 258=26 Cr. L. J. 1336.
 5. The Appellate Court ought not to order retrial in a case where provisions of S. 361, Cr. P. C., are overlooked. 1930 M. 186=125 I. C. 253, 25 M. 61.
 6. Disregard to the provisions of S. 233 is not irregularity covered by S. 537, Cr. P. C. 1930 S. 62=119 I. C. 532=30 Cr. L. J. 1073, 26 A. 195, 33 C. 295.
 7. Disposing of the cases of accused who could not be tried jointly, by one judgment is an illegality and not an irregularity. 109 I. C. 811=29 Cr. L. J. 619.
 8. The failure of the Magistrate to follow the procedure enjoined by S. 137 (1), Cr. P. C., vitiates his order. 1927 A. 350=28 Cr. L. J. 291, 49 A. 475.
 9. Order of forfeiture of land passed without notice to the party is illegal and not irregular. 1925 O. 51=77 I. C. 733=25 Cr. L. J. 445.
 10. Failure to comply with a mandatory provision of law is not necessarily illegality that vitiates the proceedings, the real question being whether the accused has been prejudiced. 1929 M. 544=116 I. C. 366=30 Cr. L. J. 613, 1925 C. 1246, 1926 B. 534, 57 C. 1228=1930 C. 212=34 C. W. N. 296.
 11. Infringement of the provisions of S. 162, Cr. P. C., is mere an irregularity. 1930 B. 595=32 Bom. L. R. 1279=129 I. C. 156.
 12. Misreception of a piece of evidence which is inadmissible but which has very little weight does not vitiate trial. 1930 P. 247=124 I. C. 836.
 13. In an excise case the Excise Analyst was not produced and the Sessions Judge wanted to call him under S. 428, Cr. P. C. The Pleader for the accused admitted that his certificate was correct and the packet contained cocaine. Held, that even if the admission could not be legally acted upon, the irregularity did not vitiate the trial. 52 B. 686=1928 B. 241=29 Cr. L. J. 990.
 14. Rushing through and completing the trial on Sunday without the consent of the accused is void. 1930 N. 255=14 I. C. 619=31 Cr. L. J. 705.
 15. The trial Magistrate is competent to record the evidence of a witness himself although the order of remand directed the examination by commission. 1929 L. 104.
 16. When the accused is prejudiced, the High Court should set aside the conviction and order retrial. 1935 S. 145 (179).
 17. Although a joint trial is illegal, yet it is curable under S. 537 if accused is not prejudiced. 1936 A. 337, 1933 A. 264 Foil. 25 M. 61 and 1927 P. C. 44 Expl.
32. **What is—and nullity.—**

The safest rule to determine what is irregularity and what is nullity is to see whe-

Irregularities in—(concl'd.)

ther the party can waive the objection. If he can waive it, it amounts to an irregularity, if he cannot, it is nulity. 35 C. 61, (1341) 9 Dowl 487, 1935 S. 145 (178).

ISSUE OF PROCESS. S. 204, Cr. P. C. *See* Complaint.

A verbal prayer for issue of process against accused is sufficient. 56 C. 1013.

J.**JAIL—TRIAL IN.** *See* Trial in jail.**JANDAR.**

Working of a *jandar* in a residential quarter if amounts to public nuisance. 2 P. R. 1904 Cr.

JHATKA MEAT.

1. Trade in *Jhatka* meat is no offence, 26 P. W. 1912 Cr.
2. Killing fowls by *Jhatka* near a mosque is no offence under S. 295, I. P. C. '0 P. R. 1918 Cr.

JIRGA. *See* Frontier Crimes Regulations.**JOINDER OF CHARGE.** *See* Charge—19.**JOINING CONGRESS PROCESSION.** *See* S. 103, Cr. P. C.**JOINING UNLAWFUL ASSEMBLY.** *See* Unlawful assembly.**JOINT ATTACK.** *See* Murder—65, Acts done in furtherance of common intention—8.**JOINT COMMITMENT.** *See* Commitment—16.**JOINT DISCOVERY.** *See* Discovery—13.**JOINT OWNER.** *See* Criminal misappropriation—6. Criminal trespass—9.**JOINT TRIAL.** Ss. 235—239, Cr. P. C.**1. Evidence of co accused.**

1. It is always desirable to pass a sentence before calling an accused pleading guilty in a joint trial to give evidence against co-accused, so that the witness may give evidence with a mind free of all corrupt influences. 58 C, 1214=35 C. W. N. 490.
2. The practice of not accepting plea of guilty in order to use his statement against co-accused is illegal and an abuse of the process of Court. 58 C. 1214.

2. Joint commitment. *See* Commitment—15.**3. Misjoinder of charges.** *See* Charge—19.**4. Misjoinder of parties.**

1. Two persons giving separate information on different dates ought not to be tried together for offences under S. 211. I. P. C. 61 I. C. 61=22 Cr. L. J. 333.
2. Four persons were convicted in a joint trial. Accused I of three offences under S. 381, I. P. C., for properties stolen on three different dates, Accused II under S. 379, accused III under S. 411 and the fourth under S. 414, I. P. C. Held, that the trial was illegal for misjoinder of charges and persons. 1927 L. 737=101 I. C. 491=9 L. L. J. 100=28 Cr. L. J. 459.
3. Joint trial of two accused, allegations against whom are mutually exclusive is bad. 1923 R. 67=74 I. C. 78=24 Cr. L. J. 750=1 Bur. L. J. 69.
4. A thief and a receiver of stolen property cannot be tried jointly. 38 A. 311, 44 A. 276, 28 C. 10, 29 B. 449 (465—467).
5. An author of defamatory article cannot be tried jointly with the printer. 50 C. 159=1923 C. 11=71 I. C. 670=24 Cr. L. J. 206.
6. Joint trial of four accused for riot, theft and murder is illegal as some of them did not take part in the riot. 66 I. C. 332=23 Cr. L. J. 268.
7. Joint trial of several persons for an offence under S. 193, Penal Code, is illegal.

Joint Trial—(contd.)

1923 L. 89=67 I. C. 615=23 Cr. L. J. 439, 39 P. R. 1888 Cr., 6 M. 252, 5 A. 17.

5. Of abettor and principal.

1. The joint trial of two persons in three separate cases when they are charged in the alternative with embezzlement thereof is illegal, as they have to meet six distinct sets of circumstances. 51 A. 544=1929 A. 202=30 Cr. L. J. 687.
2. A person who had a license for the sale of opium allowed another who had no such license to sell it, they could be jointly tried, the former offence being abetment of the latter. 113 P. L. R. 1906=4 Cr. L. J. 178.
3. Where a master is punishable for the act of his servants, he is an abettor and both can be tried together. 15 C. L. J. 692=13 Cr. L. J. 255.
4. But if the abetment took place outside the jurisdiction of the Magistrate, joint trial of the principal and abettor is illegal. 52 M. 971=19.9 M. 839.
5. A person charged with kidnapping can be tried jointly with three others who abetted the offence at different places, at a place where principal offence was committed. 18 A. 350.
6. If A induces B to cheat and B attempts to cheat in consequence, A and B may be tried together for abetment of and attempt at cheating. 38 C. 453.
7. Abettor was tried jointly with four others but was discharged. The case proceeded against four and then further enquiry was directed against the abettor. Held, that though abettor should ordinarily be tried with the principal but not in this particular case. 1930 M. 102=31 Cr. L. J. 457=122 I. C. 786.
8. Principal and abettor can be jointly tried. 32 P. R. 1882 Cr., 39 P. R. 1885 Cr.
9. A person charged under S. 379 can be convicted of abetment without a specific charge. 1932 C. 455=36 C. W. N. 595=33 Cr. L. J. 7.0.

6. Of distinct offences. See Distinct offences.**7. Of jury case and assessor case. S. 269, Cr. P. C.**

1. Accused may be tried simultaneously at one trial by the Jury for offences triable by Jury and the Judge with the aid of same Jurors as assessors for offences triable with assessors. 6 Cr. L. J. 236, 9 Bom. L. R. 1057, 22 M. 15, 2 L. W. 933.
2. Where the Judge after taking the verdict of the Jurors took only the opinion of two of them in the assessor case, the procedure is illegal. 25 M. 598, 21 M. L. J. 520.
3. If in a case jointly triable by assessors and Jury, a retrial is ordered, it is the assessors case which should be retried from the stage where the irregularity occurred in that case. 6 P. 208=97 I. C. 364=1927 P. 13=27 Cr. L. J. 1100.

8. Of offences committed in the same transaction Ss. 233, 235.

1. Where a person commits forgery and another abets it and uses the forged document as genuine, the offences are part of the same transaction and both of them can be tried together. 52 M. 532.
2. Proximity of time and place, continuity of action and community of purpose or decision are the circumstances justifying joint trial. 1922 C. 76=69 I. C. 269, 42 C. 957=1927 S. 39=27 Cr. L. J. 1233, 53 B. 479=1929 B. 296.
3. Common purpose must be seen. Unity of time and place are not always safe guides for the validity of joint trial. 1927 L. 274, 50 Cr. 1001, 1921 L. 381.
4. Three witnesses giving evidence on the same point in the same case can be jointly tried. 48 A. 325=1924 A. 334=27 Cr. L. J. 445.
5. Where persons are accused of different offences committed in the course of the same transaction, it is not necessary that all such persons must have a common object in order to render their joint trial valid. 53 M. 937=1930 M. 857.
6. Where two persons abducted a girl and third person proceeds to cheat by false representation as to caste of the girl, and a person buys the girl there is no continuity of purpose or time. 1930 L. 896=31 P. L. R. 811.
7. A person omitting to give information under S. 232, I. P. C., respecting the commission of murder cannot be tried together with the murderer. 1921 A. 151.

Joint Trial—(contd.)

8. Five dacoities were committed in the same District within the space of one week. In each dacoity some witnesses were common but others were not. Held, that dacoities did not constitute same transaction. 1921 A. 408.
9. Sometimes two or more offences are committed in the same transaction, although they are separated by intervals of time, they can be legally tried together. 50 C. 1024, 28 M. L. J. 397, 66 I. C. 332=23 Cr. L. J. 268
10. Joint trial of the accused for falsely inducing various people at different times to pay money to the accused for securing employment in a foreign country is illegal. 1924 L. 734=81 I. C. 796=25 Cr. L. J. 1020.
11. Four owners of different houses who disobeyed notice about building purposes cannot be jointly tried. 7 L. 168=1926 L. 248=27 Cr. L. J. 1233.
12. Where the accused formed themselves into a body with the intention of looting and shooting any one who tried to prevent them and were tried for murder, attempt to murder and hurt. Held, that it was one transaction and separate charges were not necessary. 53 M. 937=1930 M. 857.
13. A series of falsification of accounts made to cover a single act of defalcation may be laid in one charge under S. 477-A, Penal Code. 1929 L. 843=118 I. C. 654=30 Cr. L. J. 938, 41 C. 722, 40 C. 318.
14. The offences of conspiracy and offences committed in pursuance of conspiracy form one and the same transaction. 1926 R. 53=27 Cr. L. J. 669, 42 C. 957.
15. Acts done in pursuance of common object are parts of the same transaction. 37 C. 467, 1 R. 604, 1923 A. 137=71 I. C. 505=24 Cr. L. J. 153.
16. If the offences charged form parts of the same transaction, there is no restriction that their numbers must not exceed three. 1921 A. 19=63 I. C. 401=22 Cr. L. J. 641.
17. The most essential tests of "same transaction" are community of purpose and continuity of action. 33 M. 502, 19 C. W. N. 672, 30 B. 49, 1 L. 562, 43 M. 411, 60 B. 148, 1925 M. 690, 27 B. 135
18. A series of acts separated by intervals are not excluded from "the same transaction," if the accused started together for the same goal. 30 B. 49, 14 Bom. L. R. 972, 50 C. 159 (164), 50 C. 1004, 38 C. 453.
19. When two offences are committed on different dates and there was no connection between the two as to make them the same transaction, a joint trial is illegal. 21 A. L. J. 859.
20. Wrongful confinement of several persons on two occasions for the same purpose of extortion of money is same transaction. 42 C. 760.
21. Theft of cart from one house and theft of two bullocks from another house to remove the cart form the same transaction. 2 N. L. R. 147.
22. Receiving stolen property and assisting to conceal that property form the same transaction. 28 A. 313.
23. Rioting and causing hurt in the riot form the same transaction. 7 A. 29, 39 A. 623.
24. Extortion and false personation of a public servant to commit extortion form the same transaction. 10 A. 53.
25. Forgery, abetment of forgery and use of the forged document in a Civil Court form the same transaction. 40 B. 97.
26. Criminal misappropriation and falsification of account in order to screen the misappropriation form the same transaction. 40 C. 318, 27 C. W. N. 626.
27. Possession of stencil plates for the purpose of counterfeiting trade mark (S. 485), selling goods to which a counterfeit trade mark was affixed (S. 486) and possession of such goods for the purpose of selling them (S. 486) form the same transaction. 27 C. 135.
28. Five murders committed in one day in two different villages do not form the same transaction. 17 A. L. J. 614
29. Kidnapping a boy and after a day or two, assaulting the boy's mother who came to demand the boy do not form the same transaction. 26 M. 454.

Joint Trial—(contd.)

30. To justify a joint trial, it is necessary that accused must be associated together in the preparation of the acts forming the same transaction from start to finish 29 B. 449, 30 B. 49, 50 C. 1004, 17 P. R. 1917 Cr.
31. In cases of rioting the two opposite parties cannot be said to commit rioting in the same transaction. They must be tried separately. 6 C. 96, 5 P. R. 1906 Cr., 10 P. R. 1906 Cr., 20 C. 537, 15 P. R. 1893 Cr.
32. The author of defamatory article who is charged under S. 500 and the printer of the article who is charged under S. 501 cannot be tried together, when there is no evidence of conspiracy between them. 50 C. 159=1923 C. 11.
33. Accused looted the linseed crops of the complainant on one day and his tobacco crop on another day, the offence must be tried separately. 33 C. 292.
34. Keeping a gaming house and using it as such are offences committed in the same transaction 1923 A. 88=71 I. C. 507=24 Cr. L. J. 155.
35. Where a number of villagers were tried jointly for disobedience of a lawful order, held, that each of the accused committed a separate offence and their joint trial was illegal. 1923 R. 132=76 I. C. 1039=25 Cr. L. J. 319.
36. Two persons travelled together without tickets and represented that one was the relative of the other and they had a pass. It was discovered that the pass was issued to a third person who lost it. They were tried together under Ss. 419 and 411 or in the alternative S. 403, I. P. C. Held, that several charges were rightly joined and there could be no objection to the other accused being joined under S. 239, as regards one of the charges. 1932 A. 25=33 Cr. L. J. 122.
37. If the property was stolen on one occasion, all the accused may be jointly tried for offence under S. 411, I. P. C., although they may have received it on different occasions. 1932 B. 201=137 I. C. 146, 6 P. 583.
38. If the common object of the unlawful assembly is changing gradually with the course of events and several offences are committed. Held, they were committed in the course of one and the same transaction. 1935 O. 190=153 I. C. 978.
39. Under S. 235 (1) the transaction itself need not be a criminal transaction. The test is that acts done must be related as cause and effect. 1935 N. 149=1935 Cr. C. 834, 15 B. 491 Rel on
40. Three offences of criminal breach of trust and three offences of falsification of account cannot be tried together as each false entry amounting to an act of falsification is in itself a separate offence. 1933 N. 327=34 Cr. L. J. 673=144 I. C. 94. (*Case law discussed*).
41. Where offences charged do not form part of the same transaction the trial of the charges together makes the whole trial invalid. 1935 N. 149, 25 M. 61 (P. C.) Ref.
42. It is not necessary that offences committed in the same transaction should be logical sequence to the others, as for instance when house breaking is committed for the purpose of committing adultery and that object is subsequently attained it was held that reiteration of the same offence or commission of similar offence in the course of same transaction also brings the case within S. 235. 1935 N. 149. 15 B. 491 Ref.
43. If offences of murder and grievous hurt are committed in furtherance of common intention and in the course of same transaction, all can be tried together. 1935 R. 299=158 I. C. 441.
44. Offences under S. 448, I. P. C., were committed on consecutive nights at the same place. The motive was the same. Held, that the joint trial was valid under S. 235 Cr. P. C. 1935 R. 357.
45. Joint trial of offences under Ss. 405—174 not committed in the course of same transaction is illegal. 1934 L. 630, 44 P. R. 1917.
46. Six dacoities were committed in one night. More than three cannot be tried at one trial. The defect by trying all together is not cured by S. 537. 1934 O. 325, 25 M. 261.
47. Joint trial of four persons committing certain offences to a person on a particular day and of another person committing different offence next day is illegal. 1933 A. 354=34 Cr. L. J. 853, 45 A. 54, 25 M. 61 (P. C.) and 1928 A. 417 Rel. on.

*Joint Trial—(contd.)***9. Of persons accused of offences of the same kind.**

1. Joint trial of persons accused of offences of the same kind is legal, e.g., when two persons pass counterfeit coins on three different occasions to three persons on the same date. 44 M. L. J. 130.
2. Falsification of account and criminal breach of trust are offences of the same kind. 30 M. 328.
3. Murder and hurt are offences of the same kind. 11 A. L. J. 188.
4. Forgery and false evidence are offences of the same kind. 10 S. L. R. 192.
5. Stolen articles of different kinds like stamps, carpets, buckets, padlocks recovered from a person are offences of the same kind. 3 P. 503 (519).
6. Offences under Ss. 41 (j) and 41 (h) are of the same kind and within the meaning of S. 239. 136 I. C. 289=1932 P. 188=33 Cr. L. J. 274.

10. Of persons accused of the same offence.

1. When A and B give false evidence in the same case on the same day, almost in the same words, they do not commit the same offence but different offences, which cannot be tried together unless committed in the same transaction. 13 N. L. R. 35, 5 S. L. R. 129.
2. Where two persons were charged with criminal misappropriation with respect to a certain sum of money. Held, that there was a misjoinder of charges. 16 C. W. N. 603.
3. Joint trial of two accused under S. 412, I. P. C., is illegal. 26 Cr. L. J. 1291=1925 O. 452=89 I. C. 155.
4. If more than one offence of theft has been committed in respect of certain property, persons in possession of such property cannot be jointly tried. 1935 O. 327=154 I. C. 901=36 Cr. L. J. 602.

11. Of persons accused under Penal Code and other Acts.

1. Framing an alternative charge under S. 201, Penal Code, and S. 52, Post Office Act, is not illegal. 1930 L. 460=129 I. C. 760.
2. Joint trial of offences under S. 307, I. P. C. and Arms Act is illegal. 1925 L. 326.

12. Of several persons under Ss. 110, 107, 108, Cr. P. C. See Security for good behaviour from habitual offender, S. 110, Cr. P. C.**13. Of summary and non-summary offences.** See Summary trial—7.**14. Of thief and receiver of stolen property.** See Receiving stolen property—10.**15. Validity of—**

1. The legality of joint trial depends on the accusation and not on the result of the trial. 1929 C. 160, 1922 C. 107, 3 R. 95, 1936 C. 753.
2. The accused was convicted in two separate cases. The Appellate Court tried both appeals together and accepted one. Held, that the procedure was bad. 1923 C. 230=109 I. C. 240=29 Cr. L. J. 512.
3. If the accused is likely to be bewildered by disconnected charges and mass of evidence, it is improper to combine the charges. 1921 A. 19, 15 B. 491.
4. When two or more persons are charged jointly, either the joint complicity of all must be proved, or it must not be left in doubt, as to who actually committed the offence. 1929 L. 61=112 I. C. 212=29 Cr. L. J. 996.
5. In a case of joint trial of accused persons, an alternative charge against one of them is legal. 56 C. 1105=1929 C. 278=30 Cr. L. J. 1015.
6. Although the misjoinder of persons in a trial is illegal, yet the irregularity is curable under S. 537 if it has not caused failure of justice. 1936 A. 337=163 I. C. 253, 1933 A. 264=55 A. 301 Foll.; 25 M. 61, Not foll.; 1927 P. C. 44=28 Cr. L. J. 259 Expl.; 5 P. R. 1906 Cr. *Contra*, 1932 B. 277, 1925 L. 326, 1933 A. 354, 1934 B. 255, 1927 L. 274, 1935 O. 327.
7. Joint trial should not be held where there is embarrassment to the defence. 1936 C. 753.

Joint Trial—(concl'd.)

8. If the joint trial had been illegally held, it can be validated by quashing proceedings against one of the accused. 1927 N. 22.
9. Even though the accused did not object the trial was vitiated. 20 P. R. 1914.

JOKE—

In a case of theft if the accused says he took away the thing in joke it is not confession. 1934 P. 651.

JUDGE.

1. **Act of—when no offence.** S. 77, Penal Code.

The protection under S. 77 is not confined to persons holding and exercising a regular judicial office, but it extends to any person whose duty it is to adjudicate upon the rights or punish the misconduct of any person. 14 Beng. L. R. 254.

2. **Defamation by—.** See Defamation—46 B.

3. **Definition of—.** S. 19, Penal Code.

1. A person who is empowered to give a definite judgment, is a Judge only when he is exercising jurisdiction in a suit or in a proceeding. 5 P. 110.
2. Legal proceeding in S. 19, I. P. C., means proceeding regulated by law, in which judicial decision may or must be given. 1929 M. 175=30 Cr. L. J. 365.
3. An arbitrator is a Judge. 5 P. 110 (115)=1926 P. 214.
4. A Magistrate is a Judge, only when exercising jurisdiction in a suit or proceedings. Therefore an affidavit sworn before a Magistrate cannot be used in the High Court. 5 P. 110=1926 P. 214=93 I. C. 963=27 Cr. L. J. 499.
5. When a President of a Union Board accepts or rejects a nomination paper under the election rules, he is a Judge. 1929 M. 175=114 I. C. 817=30 Cr. L. J. 365.
6. Village Court executing decree by *distrain* is a Court and the village Munsif if he himself distrained it is a Judge. 115 I. C. 53, 17 Cr. L. J. 394.
7. A Magistrate of the village panchayat under Madras Act, II of 1920, is a Judge. 30 M. L. T. 351, 42 M. L. J. 139.

4. **Personal knowledge of—.** See Judicial Notice—15.

5. **Prosecution of—.** See Prosecution of Judge.

6. **Taking judicial notice of facts transpiring in Court.** See Judicial Notice—3.

JUDGMENT. Ss. 366—367—369—370—424, Cr. P. C., S. 165, I. E. Act.

1. **Alteration or review of.** S. 369, Cr. P. C. See Review—5.

1. Judgment contemplated by S. 369, Cr. P. C., is only a decision on the merits. A dismissal for default of appearance, therefore, is not a judgment and High Court has power to review a dismissal order for default of appearance passed in its appellate jurisdiction. 1928 R. 288=117 I. C. 243=30 Cr. L. J. 749.
2. Order of discharge under S. 209 or 203, Cr. P. C., is not a judgment within S. 369, 1930 C. 61=31 Cr. L. J. 260, 1925 N. 457, 35 C. 350.
3. It is not open to a Magistrate to review an order which is final order, so far as one party is concerned under S. 145, Cr. P. C. 1925 N. 457=89 I. C. 153=26 Cr. L. J. 1289.
4. The Court has no jurisdiction to review or revise its own judgment. 1925 O. 476, 10 C. W. N. 1062, 23 B. 50, 25 P. R. 1916, 26 Cr. L. J. 543.
5. If a Sessions Judge passes a sentence of fine and omits through oversight to pass a sentence in default of payment of fine, he cannot order such sentence in default subsequently. The proper course is to submit his proceedings to High Court and ask for enhancement of sentence by inflicting imprisonment in default. 62 I. C. 880=1921 B. 368=23 Bom. L. R. 846=22 Cr. L. J. 608, 23 B. 50.
6. When a criminal appeal or revision is dismissed for default of appearance, there is no disposal according to law and the Court may rehear it. 46 M. 382.
7. Where a Magistrate accidentally fails to pass an order under S. 520, when disposing

Judgment—(contd.)

- of an appeal, it will be open to his successor to pass such an order. 71 I. C. 511= 1922 M. 329=24 Cr. L. J. 159=43 M. L. J. 87.
8. Where a Sessions Judge on appeal in annulling a conviction omits to order a retrial, he is not precluded by S. 369, from passing such an order subsequently. It is not alteration of judgment. 3 M. 48.
 9. Judgment can be altered before it is signed. 38 C. 828.
 10. A Court can rehear a case where it has been dismissed for default, though it cannot alter its own judgment. 10 Cr. L. J. 287=3 I. C. 393, 30 I. C. 745.
 11. A Magistrate cannot review his own order in maintenance proceedings under S. 488, Cr. P. C. 39 I. C. 700=21 C. W. N. 344, 18 Cr. L. J. 556.
 12. Clerical errors can be corrected under S. 369. 19 Cr. L. J. 225, 47 M. 428, 1925 O. 476, 8 C. 580, 43 B. 134.
 13. Court after signing and pronouncing judgment becomes *functus officio* and cannot add to or alter it. 22 B. 949, 4 Cr. L. J. 210, 20 Cr. L. J. 486 and addition of explanatory note to judgment 2 A. 33, or enhancement of sentence even at the request of accused to make it appealable 1883 A. W. N. 16 or addition of sentence of imprisonment in default of fine, though it was omitted by oversight, 1921 B. 638=22 Cr. L. J. 608, after the pronouncing of judgment is nullity and without jurisdiction.
 14. Where the Court finds that sentence or conviction is illegal, 53 M. 870, 4 M. H. C. R. 19 or the innocence of accused is discovered from facts which came to light subsequent to conviction and sentence passed by Court, 1923 A. 473=45 A. 143, the only remedy is to report the case to High Court.
 15. The *interlocutory* orders such as an order for transfer of a case, 8 C. 63, 20 C. 518, 1920 P. 563, or issue of summons to accused under S. 204, 1923 C. 662=25 Cr. L. J. 464, or issue of summons to witness, 9 P. 240, or an order of discharge 1930 C. 61=31 Cr. L. J. 260, 28 C. 652, 29 C. 726, 1929 B. 134 1925 B. 258, 29 M. 126 36 A. 129, 31 M. 543, 1925 N. 432, or dismissal of complaint under S. 203, 1930 C. 61, 29 M. 126, 55 M. 622 or an order cancelling a notice under S. 107, Cr. P. C. for absece of complainant 1923 A. 332=24 Cr. L. J. 232, is not a final order and can be re-considered by the Court.
 16. Administrative or ministerial order can be altered or reviewed. 12 P. 234.

2. Alternative.

Where the judgment did not state in express terms that the Court was in doubt as to the question under which of two sections the offence fell, it was held that this was at most an irregularity and did not vitiate the judgment. 2 Weir 440.

3. Appellate—contents of— S. 424, Cr. P. C.

1. An appellate judgment must be self-contained and the High Court must be able to follow it without reference to trial Court judgment. 2 L. 308, 1924 L. 344, 35 C. 138, 1924 L. 660, 21 Cr. L. J. 223, 1930 L. 1051, 2 P. L. T. 616, 17 Bom. L. R. 1085, 1 R. 301, 20 Cr. L. J. 444, 645, 19 A. 506, 1932 S. 180, 1923 L. 344, 7 C. W. N. 30.
2. Where neither the facts nor the points for determination nor discussion of those points find a place in a judgment, it should be set aside. 63 I. C. 336=22 Cr. L. J. 640, 2 L. 308, 91 I. C. 690=27 Cr. L. J. 114, 1927 N. 88=98 I. C. 716.
3. Appellate Court is bound to record the points of determination, the objections of the appellant and his decision thereon with his reasons. 66 I. C. 325=1922 P. 157=23 Cr. L. J. 261, 1925 L. 644=89 I. C. 516.
4. If the judgment of appellate Court does not discuss evidence and facts indicating the occurrence, it should be set aside. 1925 C. 266=25 Cr. L. J. 901, 29 Cr. L. J. 1031, 7 C. W. N. 30, 1924 C. 618, 1924 P. 350
5. In case of several accused, the appellate judgment must show that the case of each accused was considered. It must give explicit opinion as to the question of fact involved in the case. 1924 C. 618=25 Cr. L. J. 1044, 1925 M. 712, 35 C. 138, 20 C. W. N. 1296, 16 Cr. L. J. 496, 25 Cr. L. J. 113, 16 Cr. L. J. 735.

Judgment—(contd.)

6. In simple cases where the facts are clear, no further reason than that the evidence is accepted by the Judge may be strictly required. But in a complicated case, where there are more than one question both of law and fact, a mere statement of this kind is insufficient. 1926 A. 318=93 I. C. 241=27 Cr. L. J. 449.
 7. Where the Court rejected an appeal without specifying points mentioned in S. 367 the appeal was ordered to be reheard. 6 P. R. 1876 Cr.
 8. The appellate judgment must show that evidence of both sides and pleas raised in appeal have been considered with a judicial mind. 18 Cr. L. J. 689, 8 Cr. L. J. 314.
 9. Even if the Counsel does not refer to the defence evidence, the judge must consider it and give a decision. 40 C. 376, 18 Cr. L. J. 689.
 10. The appellate judgment shall contain point or points for determination, the decision thereon and reasons for the decision and omission amounts to an illegality which vitiates the order. 1930 B. 163=125 I. C. 710=31 Cr. L. J. 925, 1926 B. 512, 37 C. 194, 1922 P. 157, 2 L. 308, 1920 L. 335, 32 C. 178, 9 C. W. N. 23.
 11. If the judgment is of a stereotyped nature so as to suit any judgment of an appellate Court it should be set aside and appeal be reheard. 1921 P. 487.
 12. Where the appellate Court merely refers to the decision of the trial Court and says that nothing has been urged in appeal, such a decision is illegal but if the High Court is satisfied that the lower appellate Court considered the evidence it will not interfere merely because the reasons are not set out. 1931 P. 379=11 P. 143, 1931 M. W. N. 119, 19 A. 506, 1926 B. 512, 1929 P. 231. See 1926 A. 318, 2 L. 308, 9 Cr. L. J. 528, 1928 L. 863, 17 Cr. L. J. 167=261, 1 R. 31, 1927 N. 88, 1921 O. 102, 22 Cr. L. J. 378, 11 Cr. L. J. 331, 31 P. R. 1884, 10 C. W. N. 39.
 13. An appellate Court in an agreeing judgment need not repeat *in extenso* all that has been stated by the trial Court. 1931 M. W. N. 119, 18 Cr. L. J. 234, 20 Cr. L. J. 238, 17 Cr. L. J. 461, 1924 L. 863, 32 C. 178.
 14. Reasons for finding must be stated, 1925 L. 644, 2 R. 641, 1924 R. 380. See 35 C. 718, 37 C. 194, 18 Cr. L. J. 698=752, 34 A. 455
 15. Court is bound to consider the case on merits even if the appellant is absent. 1923 P. 368=24 Cr. L. J. 453, 11 C. W. N. 135, 1925 L. 644, 26 Cr. L. J. 419.
 16. Judgment should be sober and not satirical. 13 Cr. L. J. 259.
 17. Court should not give inconsistent findings. 14 Cr. L. J. 295, 13 Cr. L. J. 595.
 18. S. 424 does not apply to High Courts, which can dismiss an appeal without giving reasons. 1933 P. 38=11 P. 697, 1926 S. 275.
 19. Where the judgment was dictated by High Court Judge but could not be signed due to death, it was held that appeal should be deemed to have been finally disposed of. 55 A. 132.
 20. Omission to write proper judgment is an illegality and cannot be cured by S. 537, 15 B. 11, 29 Cr. L. J. 270, 1 Bom. L. R. 225, 9 C. W. N. 223, 1950 B. 163, 16 Cr. L. J. 832, 13 Cr. L. J. 559, 29 Cr. L. J. 270, 1921 P. 504, *Contra* 20 C. 353, 1926 B. 512, 10 Cr. L. J. 460, 21 C. 121, 22 C. 241, 13 Cr. L. J. 859, 1926 S. 244=27 Cr. L. J. 833. See 8 A. 514.
4. Appellate—when appeal dismissed summarily. See Appeal—35.
5. Basis of— S. 165, I. E. Act.
1. The judgment in the case must be based upon facts which are relevant proved in the proceedings in that particular case. *Field's Law of Evid India, 8th Ed., P. xlv.*
 2. There is no better criterion of truth, no safer rule for investigating conflicting evidence, when perjury and fraud must exist on one side than to consider what facts are beyond dispute and to examine what cases best accords with those facts according to the ordinary course of affairs and the usual habits of life. 1 Moo. I. A. 19=5 W. R. P. C. 2.
- 5.A. Civil Court—Admissibility. See Judgment of Civil Court.
- 6 Contents of—
1. Merely saying "I substantially agree with the trial Court is no ju-

Judgment—(contd.)

- When an appeal is dismissed summarily and it is liable to be set aside. 1924 C. 537
72 I. C. 71=24 Cr. L. J. 311, 20 Cr. L. J. 444.
2. A judgment which is deficient in the points mentioned in S. 362 is illegal. 63 I. C. 416=22 Cr. L. J. 656=1921 P. 501.
 3. The judgment should show that the Court has considered the evidence. 19 A. 507, 1 C. W. N. 163, 20 C. 353.
 4. If the judgment is so meagre that it is impossible to form an opinion as to the merits of the case, it should be set aside. 5 C. L. J. 452.
 5. Reasons must be given in the judgment in a summary trial. A judgment in a single line is not in accordance with law. 20 Cr. L. J. 431=444.
 6. Judgment is not evidence of all recitals therein. 1924 C. 523=81 I. C. 667.
 7. In a case under S. 476, Cr. P. C., the judgment of the Court of appeal was as follows "Heard the appellant, I don't think it necessary to direct prosecution. Appeal dismissed." Held, it was no judgment and appeal was directed to be reheard. 1931 C. 454=133 I. C. 672=35 C. W. N. 650.
 8. A judgment which consists of a few notes on the arguments of the Counsel and somewhat vague conclusion is no judgment. 32 Cr. L. J. 252=1930 L. 1054.
 9. If the appellate Court can gather from judgment of lower appellate Court what its decision is, that is sufficient. It was most unreasonable to expect an appellate Court to dot every 'i' and cross every 't'. 1935 C. 316.
 10. Judgment should commence with statement of facts and not with circumstances providing motive for offence. 1935 N. 81.
 11. Mere collecting of statements of witnesses in the judgment is not enough. A careful analysis and appraisal of evidence is essential. 1934 A. 776.
 12. All evidence need not be discussed. Judge can select important evidence sufficient to prove point for consideration. 1933 A. 690.
 13. "I have gone through the record and the conviction is sound" is no judgment. 1933 N. 328=35 Cr. L. J. 136, 13 Cr. L. J. 559

7 Conviction or acquittal before—

1. Pronouncing sentence before completing the judgment that is to say before preparing the essential parts of it such as the statement of points for determination and the reasons for decision, makes the sentence illegal and vitiates the conviction. S P. 504=1930 P. 148, 14 A. 242, 27 M. 237. See 23 C. 502, 38 M. 498, 45 M. 913.
2. Where the judgment was delivered after the order of acquittal was passed, the acquittal was set aside and retrial ordered. 1892 A. W. N. 157.
3. Where a Magistrate died after pronouncing the sentence but before writing the judgment, the High Court reversed the conviction and sentence and ordered a retrial. 1 Bom. L. R. 160.
4. Pronouncing sentence before writing judgment is an irregularity covered by S. 537 and is curable except in case of failure of justice. 1925 L. 137=81 I. C. 193=25 Cr. L. J. 705, 23 C. 502, 38 M. 498, 45 M. 913, 7 R. 370.

8. Copy of— See Appeal—22.

Where a copy of the judgment of a Bench of Magistrates is applied for, it is necessary that the copy should contain the signatures of all the Magistrates and not that of presiding officer alone. 1930 M. 867=53 M. L. J. 674.

9. Definition of— See—20.

1. There is no definition of judgment in the Criminal Procedure Code. In the Law Dictionary by Morley and Whitelaw "judgment" means "sentence or order of the Court in a civil or criminal proceedings." 1935 S. 84=1935 Cr. C. 370.
2. Judgment means expression of opinion of the Judge in a trial arrived at after due consideration of evidence. 21 C. 121, 31 M. 543.

Judgment—(contd.)

3. There is no dismissal of an appeal in default. Dismissal of an appeal under S. 421, Cr. P. C. is *prima facie* a judgment. 1915 S. 84=1935 Cr. C. 370.
4. Judgment is the judicial act of Court in finally disposing of the case. 1926 M. 420.
10. **Delivery of—pronouncing of—** S. 366, Cr. P. C. *See*—25.
 1. The succeeding Magistrate cannot be said to act without jurisdiction in pronouncing judgment signed and written by his predecessor. 1925 O. 62=25 Cr. L. J. 1075, 1923 A. 276 and 1924 C. 55 *Contra* 1931 C. 637.
 2. The judgment was signed and dated before delivery and sent to the chief clerk to deliver. Held, it was not legally pronounced; there was no Court as no presiding Judge was present. 1923 R. 44=73 I. C. 325=24 Cr. L. J. 584.
 3. The Magistrate was physically incapacitated to deliver the judgment and another Magistrate pronounced it. Held, that it was a mere irregularity covered by S 537, Cr. P. C. 1923 A. 276=71 I. C. 525=24 Cr. L. J. 173, 18 M. L. J. 197.
 4. If a Judge after writing a judgment and before delivering dies, it is no judgment but an opinion. 13 W. R. 209, 11 A. L. J. 745=11 Cr. L. J. 562.
 5. Judgment must be delivered in open Court. 21 C. 121, 14 A. 242, 1929 L. 692.
 6. Where a Magistrate went away to another District and sent his judgment to the District Magistrate of the former District who delivered it, the trial was set aside and retrial ordered. 50 C. 664, 1889 A. W. N. 181, *Contra* 18 M. L. J. 197=7 Cr. L. J. 459, 40 M. 108.
 7. The succeeding Magistrate can sign, date and pronounce a judgment written by his predecessor and thus adopt it as his own. 40 M. 108=32 M. L. J. 81=17 Cr. L. J. 166=33 I. C. 646.
 8. Pronouncing of judgment in the absence of the accused is illegal. 36 P. R. 1917 Cr.
 9. A judgment of acquittal or of fine only may be pronounced in the absence of accused. 6 S. L. R. 206=14 Cr. L. J. 242.
 10. It is not necessary that whole of the judgment should be read. It is sufficient if the substance of the judgment is delivered. Omission to read a portion of judgment is an irregularity covered by S. 537. 38 M. 498, 2 Weir 711.
 11. The judgment in a criminal case must be passed without undue delay. 5 C. P. L. R. 24 and at the close of trial. 1932 M. W. N. 648.
 12. Delivery of judgment after a Magistrate has been transferred is illegal. The irregularity is not curable under S. 537. 1931 P. 386=32 Cr. L. J. 1221.
 13. A judgment written by the predecessor Judge and delivered by the successor is without jurisdiction. 134 I. C. 1265=1931 C. 637=33 Cr. L. J. 60.
 14. If the sentence is pronounced before completing judgment, it is a curable irregularity. 1933 A. 660, 12 Cr. L. J. 610. *See* 27 M. 237, 19 M. L. J. 9, 1892 A. W. N. 157, *Contra* 8 P. 904=1930 P. 148 and 14 A. 242 Expl.
 15. Court after signing and pronouncing judgment becomes *juxta officio* and has no power to add to or alter it. 22 B. 949, 4 Cr. L. J. 210, 20 Cr. L. J. 486.
11. **Delay in—**

Judgment in criminal cases must be passed without delay. 5 C. P. L. R. 24.
12. **Expunging remarks from—** *See* Expunging remarks.
13. **Finality of—** *See* S. 430, Cr. P. C. *See*—20.
 1. Though S. 430 does not apply to judgment in revision, the principle of finality of judgments must apply to it. 1934 B. 471.
 2. A judgment of a criminal Court becomes final after it is pronounced and signed. 38 C. 828, 14 C. 42, 5 M. H. C. R. 19.
 3. A judgment though signed but not pronounced can be altered. 14 Cr. L. J. 562.
 4. Judgment should be taken to mean the judicial act of the Court in finally disposing of the case. 1926 M. 420.

Judgment—(contd.)

14. Heads of charge to Jury—. *See* Jury—15.

15. Importing personal knowledge in—. *See* Judicial notice—15.

16. In summary trial. *See* Summary trial—6.

17. Judicial Notice of—. *See* Judicial Notice—5.

18. Language of—.

1. The judgment must be written in the language of the Court or English. Where the Magistrate wrote it in Urdu instead of Hindi, the language of the Court, it was held to be an irregularity covered by S. 537, Cr. P. C. 4 C. L. J 162.

2. The language of the judgment must be sober and temperate and not satirical. 5 Bur. L. T. 20, 1931 M. W. N. 1152.

19. Loss of—.

In cases where the judgment has been lost, the appropriate course for a Judge is to rewrite the judgment from memory and from the materials on the record and place it on the record. 38 M. 498.

20. Meaning of—what is—. *See*—9.

1. Judgment means the expression of opinion of the Judge or Magistrate arrived at after consideration of evidence and the arguments. 21 C. 121, 31 M. 543.

2. An order of dismissal of complaint under S. 203 is not a judgment. 29 M. 126, 155 M. 622=1932 M. 369, 1930 C. 61=31 Cr. L. J. 260.

3. An order of discharge under S. 209 or S. 253, Cr. P. C., is not a judgment. 28 C. 652, 29 C. 726, 1930 C. 61=31 Cr. L. J. 260, 31 M. 543, 1925 N. 432, 1929 B. 134, 1923 B. 258, 29 M. 126, 36 A. 129.

4. An order dismissing a complaint for default of appearance is not a judgment. 10 C. L. J. 80, 9 Cr. L. J. 553, 46 C. 60, 21 C. 121, 1928 R. 288

5. The final order of acquittal on a petition of composition is not judgment, because it is passed without any consideration of the evidence. 29 P. R. 1914 Cr.

21. Mistakes in—.

In case of mistake in mentioning terms of imprisonment, benefit of doubt should go to accused. 1935 L. 230=156 I. C. 1056=35 Cr. L. J. 1180.

22. Of Presidency Magistrate. S. 370, Cr. P. C.

1. Honorary Presidency Magistrate should record reasons for conviction, where imprisonment is inflicted. The omission is only an irregularity if accused is not prejudiced. 1924 M. 799, 1926 C. 1109, 1932 C. 655. 13 C. 272 Dist.

2. Absence of reasons in the judgment vitiates conviction, where accused is sentenced to imprisonment. 1923 M. 144, 27 C. 461, 46 M. 253, 1929 M. W. N. 892.

3. Under S. 370, Cr. P. C., there is no serious objection to the Magistrate's referring to a document on the record instead of taking the trouble to rewrite those portions of it which should have been included in the final order. 1926 C. 1109.

4. In petty cases which can be met with a fine of few rupees, the decision of the Magistrate may be recorded shortly. 14 C. 174.

5. "I believe the evidence of the prosecution and of complainant and I convict the accused" is not a statement of reasons. 16 Cr. L. J. 771.

6. The Magistrate should state his reasons in such a manner as to enable the High Court to judge of the sufficiency of the material before the Magistrate to support a conviction. 13 C. 272, 31 C. 983, 8 C. W. N. 587.

7. Where there is no summary of evidence and statement of facts and reasons for conviction, the conviction should be set aside. 31 C. 983, 13 C. 272.

8. A Presidency Magistrate who convicted an accused in a summary trial is bound to record reasons. 68 I. C. 826=1923 M. 144=23 Cr. L. J. 602.

9. Imprisonment referred to in S. 370, Cr. P. C., is substantive imprisonment and not one in default of payment of fine. 14 C. 174.

Judgment—(contd.)

10. Where the provisions of S. 370 were not complied with and there was gross delay in the trial and the records were kept in slovenly manner. Held, that the practice was reprehensible. 1932 C. 62, 1932 C. 64.
23. **One-sided—**
The Court writing a judgment should set forth the points for determination in such a shape that at a first glance it may be apparent both to himself and the Appellate Court that nothing which is material has been omitted for the either side. 1932 S. 143.
24. **Opinion of Magistrate in—** See Opinion—15.
Private opinion of a Magistrate in a judgment is inadmissible. 8 P. W. R. 1909 Cr.
25. **Pronounced by successor—** See—10.
Where a judgment signed by a Magistrate is pronounced by his successor, accused is not entitled to *de novo* trial. 1933 M. 251 (1)=34 Cr. L. J. 117, 1929 M. 201, 18 M. L. J. 197 Rel. on. 40 M. 108, 1920 M. 337 and 27 M. 510 Ref.
26. **Pronouncing of order without writing—** See—10.
Proceedings of directing accused to be acquitted without writing judgment is irregular. Defect is cured by S. 537 if no failure of justice is caused. 1933 A. 660=145 I. C. 664, 14 A. 242 Expl. 1930 P. 148, 23 C. 502 and 1922 M. 502 Ref.
27. **Publicity of—**
It is of the essence of the administration of justice that judgments affecting the rights and liberties of the people should be made public. 32 Cr. L. J. 864=1931 A. 364.
28. **Remarks and comments in—** See Expunging remarks.
 1. The testimony and conduct of Police Officers examined in a criminal trial may be commented upon in the judgment to the same degree as those of any other material witnesses but no further. 23 W. R. 65.
 2. The judgment should not contain any damaging remarks regarding a witness in a criminal trial. 2 P. W. R. 1910 Cr.
 3. A judgment should not contain remarks to the effect that accused being a person of wealth and influence had prevented truth from appearing, unless such conduct is established by evidence. 8 W. R. 13.
 4. Judgment should not contain any damaging remarks as to the conduct of a counsel, when his conduct was not objectionable at all. 15 Cr. L. J. 420.
 5. The language of the judgment must be temperate and sober and not satirical. 5 Bur L. T. 20
29. **Signing of—**
 1. Where a Magistrate prepares a judgment but does not sign it, such omission is an irregularity covered by S. 537. 7 R. 370=1930 R. 77, 47 A. 284.
 2. Where the judgment was entirely in the hand-writing of the Magistrate, the omission to sign it is an irregularity covered by S. 537. 47 A. 234=1925 A. 299.
 3. If the record is prepared by a member of the Bench of Magistrates, it shall have to be signed by all. But where a judgment of Bench is prepared by the presiding officer, it is sufficient if he alone signs it. 52 M. 237.
 4. If all the members of the Bench sign the register, in which sentences are embodied, instead of presiding officer only, the irregularity is curable. 53 M. 165.
 5. Where one of three Magistrates only puts his initials instead of full name in the judgment of a Bench of Magistrates, the irregularity is not cured by S. 537. 1930 M. 867=25 C. 911, 32 I. C. 393, 23 C. 896, 1926 M. 827.
 6. The signature should be with a pen and not with a stamp, although affixing of a signature with a stamp is not more than a mere irregularity. 6 M. 396.
 7. The signature of the judge must be appended to the judgment at the time of pronouncing it in open Court. 40 M. 108, 1923 R. 44.
 8. The dating and signing of the judgment must be done by the presiding officer, it cannot be delegated to any body else. 1889 A. W. N. 181, 52 M. 252.

ment—'conclud.')

1. **Taking judicial notice of—** See Judicial notice—5.

. **Translation of—** S. 372, Cr. P. C.

Court is bound to translate judgment where it is recorded in different language from that of the Court. 1 B. H. C. R. 17.

JUDGMENT OF CIVIL COURT See Decree of Civil Court—4.

1. Save for very exceptional reasons a Criminal Court should not go behind the finding of a Civil Court, and convict of cheating a person, who upon the very same facts has succeeded in satisfying a Civil Court upon the merits of the case of the justice of his claim. 33 P. R. 1410 Cr.
2. Judgments are admissible with the limitation mentioned in Ss. 41-43, Ev. Act. Generally speaking, a judgment is only admissible to show its date and legal consequences. 59 C. 136=1932 C. 293.
3. A judgment of a Civil Court is not admissible in a criminal proceedings to establish the truth of facts upon which it is rendered. 23 C. 610, 1932 C. 293=59 C. 136, 6 C. 247.
4. The judgment of Civil Court holding a document to be forgers is not evidence of its being forged in a criminal trial. 59 C. 136.
5. Decree for damages for defamation is inadmissible. 55 M. 346.
6. But it was held that if Civil Court holds that there was no entrustment, the charge of criminal breach of trust fails. 41 B. 1.
7. A Civil Court decision is not binding on criminal Court. 59 C. 136.

JUDICIAL NOTICE. Ss. 56-57, Evidence Act.

. **Book or documents of reference for—**

1. Court can refer to appropriate books or documents of reference upon matters it is directed to take judicial notice of, e. g., on matters on public history, literature, science or art. 7 B. L. R. 63 (70).
2. When the Lower Court relied on Singunni Memon's History of Travancore as an authority as regards local usages, the High Court did not consider it regular to rely on the book without making it an exhibit in the case and without calling the attention of the parties to it. 12 M. 495.
3. The Judge, if he relies on any book or document of reference, must inform the parties during the trial and give them chance to contradict its authority. 40 C. 898, 38 C. 153.
4. Books written as late as when the dispute has already arisen cannot be referred to even if S. 57 is held applicable. 126 I. C. 171=1930 L. 744=31 P. L. R. 372.
5. Evidence of the sources of common knowledge may be obtained by reference to books like encyclopaedia. 1931 P. C. 189=131 I. C. 771.

2. **Of crimes in the District.**

Court can take judicial notice of a particular crime, e. g., dacoity which is rife in a particular District. 23 A. 124.

3. **Of facts transpiring in Court.**

A Court can take judicial notice of facts transpiring in Court. 121 I. C. 337, 1931 P. 114.

4. **Of Government notifications.**

A Court should not take judicial notice of Government notification unless the Gazette is produced in evidence. 1928 A. 355=107 I. C. 578.

5. **Of judgments.**

Court will take judicial notice of judgments but not the statements of facts contained therein. 1926 S. 161=93 I. C. 321=19 S. L. R. 376.

5. **Of Law Reports.**

1. Judgments not published in official reports may be considered, though may not be followed. 1932 N. 137 (2)=28 N. L. R. 116=141 I. C. 156.

Judicial Notice—(contd.)

2. Court can take judicial notice of Law Reports published under the authority of the Government. But High Court can look at an unreported judgment of Judges of the same Court. 23 C. 289.

7. **Of Magistrate in a Native State.**

Court cannot take judicial notice of a 'Magistrate' in a Native State. 16 Bom. L. R. 261=15 Cr. L. J. 433=24 I. C. 169.

8. **Of Municipal Rules.**

Court can take judicial notice of Rules of a Municipality which have the force of law. 1923 S. 1=87 I. C. 258=16 S. L. R. 98.

9. **Of notorious facts.**

1. Court cannot take judicial notice of matters of public notoriety, the running time and number of trains within a given time. 19 C. W. N. 489.
2. Judges can take judicial notice of notorious facts of social life of any class or community without requiring positive proof of the same. 14 Cr. L. J. 33=18 I. C. 257=24 M. L. J. 211.
3. It is unfair to the Railway Company to take judicial notice of thefts on the Railways. 10 L. 329=1923 L. 837=111 I. C. 523.
4. Court can take judicial notice of prevalence of a particular crime in a District. 23 A. 124.

10. **Of Registered letter.**

Court can take judicial notice that a registered letter reaches the destination 24 hours later than an ordinary letter. 99 I. C. 622=1927 A. 215.

11. **Of Reports issued by Government.**

1. A Court is not entitled to take judicial notice of Land Revenue Reports and they are inadmissible unless formally proved. 27 I. C. 470=20 C. L. J. 516.
2. The course of Proceedings of Parliament may be proved by the journals of the houses or reports printed by the Government. 37 C. 760.

12. **Of signature of a Gazetted Officer.**

1. Court can take judicial notice of the signature of a Gazetted Officer. It is not necessary that the Government Gazette containing the name of the officer should be produced. 1923 M. 600=72 I. C. 515=24 Cr. L. J. 403.
9. An affidavit sworn before a Pleader in the Bar Room, who was also an Honorary Magistrate is inadmissible. The Court can take judicial notice of the signature of Honorary Magistrate only when he was acting judicially and not in private capacity. 5 I. C. 537.

13. **Of statute or law.**

The Court should take judicial notice of a statute. 24 I. C. 721.

14. **Of Warrant.**

A warrant issued under S. 46 of the Calcutta Police Act is not a public record and there is no presumption of any kind attaching to it. 53 C. 718=1926 C. 966=96 I. C. 264=27 Cr. L. J. 920.

15. **Personal knowledge of Judge—importing of—**

1. A Judge should not import into a case his own knowledge of particular facts. 16 I. C. 859, 26 W. R. 55, 38 C. 153, 36 M. 168.
2. A Judge can use his general knowledge and experience in determining the credibility of the evidence. 36 M. 168.
3. Judge may use his knowledge of public, historical or scientific facts in coming to a conclusion. 36 M. 168.
4. A Judge can take judicial notice of matters of universal notoriety, its general knowledge of daily life. He cannot import into a case his personal knowledge of the previous conduct of the accused. 132 I. C. 476=1931 S. 127=32 Cr. L. J. 923, 38 C. 153, 30 M. 168.

Judicial Notice—(concl'd.)

5. A Magistrate acting judicially should not import into the case before him, his previous knowledge of the character of the accused. 7 Bom. H. C. R. 50.
6. If the personal knowledge of the Judge were capable of being tested, it would probably turn out that it depended upon mere rumour or hearsay, and that his evidence as to those facts would have been inadmissible if he were examined as a witness. L. R. 3 I. A. 286, 11 Moo. I. A. 213.
7. Court cannot base its judgment on its personal knowledge. 1925 L. 166, 1933 C. 36, 1931 S. 127, 27 P. R. 1903, 22 Cr. L. J. 89, 1 Cr. L. J. 589.

JUDICIAL PROCEEDINGS. S. 4 (1) (M.) Cr. P. C.**1 Applicability of S. 4 (1) (M.)**

The definition of judicial proceedings in S. 4 (1) (M.) is limited to that Code and does not apply to that phrase used in Penal Code. 45 B. 834.

2 Departmental inquiry.

1. A departmental inquiry by a Magistrate into a complaint made against a Sub-Magistrate is not a judicial proceeding. 29 M. 100
2. A departmental inquiry made by a District Magistrate into a complaint made against a Sub-Registrar is not judicial proceeding. 2 C L J 619
3. An inquiry under S. 197 of Bombay Land Revenue Code, (Act V of 1879) is not *judicial proceedings*. 22 B. 936.

3. Inquiry by Government before sanctioning prosecution of Magistrates or public servants under S. 197, Cr. P. C.

1. There is no provision of law empowering Government to hold a 'judicial enquiry to ascertain whether a sanction should be given. No oath can be administered and if held it is not a judicial proceeding. 23 M. 223.
2. The Government granting sanction under Ss 196-197 acts purely in its executive and not judicial capacity. The word 'sanction' does not import a judicial element into the act of the Executive 27 M. 54.

4. The following are—

1. Inquiries under S. 144, Cr. P. C. 19 M. 18
2. Inquiry on an application under S. 100, Cr. P. C. 34 P. R. 1916 Cr.
3. Proceedings under S. 8 of the Reformatory Schools Act 14 B. 381.
4. Inquiry under the Legal Practitioners Act. 6 M. 252
5. Investigation by a Magistrate under S. 202, Cr. P. C., to whom the complaint is sent for local inquiry. 36 C. 72.
6. Proceedings under S. 514, Cr. P. C. 25 C. 440.
7. Proceedings in which the statement of a witness is recorded under S. 164, Cr. P. C. 8 Bom. L. R. 589, 5 S. L. R. 174.
8. Investigation by a Magistrate under Chapter XIV. 29 M. 89.
9. Proceedings of a Court holding preliminary enquiry under S. 476, Cr. P. C. 37 C. 52.
10. Proceedings in execution of a decree. 1 P. R. 1910=11 Cr. L. J. 90, 32 C. 367, 37 C. 642, 35 C. 133
11. An inquiry by a Registrar of the Presidency Small Cause Court as to the proper service of summons. 18 C. W. N. 1323.
12. Proceedings in which Magistrate decides about the fitness of sureties under Chapter VIII 2 S. L. R. 11=10 Cr. L. J. 225.
13. An inquiry into the character of accused under S. 117, Cr. P. C., 10 P. R. 1899 Cr.
14. Maintenance proceedings under S. 488, Cr. P. C. 5 A. 224.
15. Inquiry by a Magistrate into the truth of allegations against a subordinate official, contained in a petition presented to a Deputy Commissioner. 28 A. 69.
16. An inquest held by a Magistrate under S. 167, Cr. P. C. 1928 B. 390--29 Cr. L. J. 1063=112 I. C. 567.

*Judicial Proceedings—(concl'd.)***5. The following are not—**

1. Calling for record under S. 435, Cr. P. C. 15 M. L. J. 489=3 Cr. L. J. 118.
2. An inquiry under S. 176, Cr. P. C., into the cause of death of a person under suspicious circumstances. 3 C. 742.
3. An inquiry held by a Magistrate not in his Magisterial but in his executive capacity. 21 P. R. 1886 Cr.
4. Proceedings conducted by a person not legally authorized or having no jurisdiction. 20 C. 719, 20 C. 724.
5. An inquiry into the unprofessional conduct of a Pleader, conducted not by the presiding officer of the Court in which the Pleader practises but by the District Judge. 32 M. L. J. 402.
6. Inquiry by a District Judge into the verification of an heir on a letter sent by the Telegraph Authorities. 6 A. 103.
7. An inquiry by a Magistrate on the strength of an information from the Secretariat that seditious pamphlet was published. 15 P. R. 1894 Cr.
8. Proceedings of a District Magistrate under S. 125 Cr. P. C., for cancelling a bond for keeping the peace for good behaviour. 37 C. 72.
9. Examination by a Police Officer under S. 161, Cr. P. C. 11 B. 659.
10. An inquiry by a Deputy Magistrate in pursuance of an order of the District Magistrate calling for an inquiry on the report by a Police Officer stating that complaint lodged was false. 33 C. 30.
11. Proceeding in which evidence is not taken on oath. 7 C. 121.
12. A statement recorded under S. 164, Cr. P. C., is not evidence in a stage of judicial proceedings within the meaning of Expl. II to S. 193, I. P. C. 1932 L. 254 (1)=137 I. C. 131.

JURISDICTION. Ss. 177 to 185, Cr. P. C.**1. Appellate.** See Appeal—38.

Political Agent, Phulkian States, has jurisdiction to hear appeal against convictions of offences committed on Bhatinda Railway station and tried by Ferozepore Court. 7 P. R. 1914 Cr.

2. Assumption of—by reducing the offence.

1. Jurisdiction in criminal cases is not to be assumed. 6 P. R. 1913 Cr.
2. Jurisdiction cannot be assumed by framing charge of minor offence, included in the major offence. 31 P. R. 1910 Cr., 2 P. R. 1876 Cr.
3. Where the offence complained of was one under S. 470, but the Bench of Magistrates tried the accused under S. 426, I. P. C., and it appeared that they had jurisdiction to try the former and not the latter offence, their proceedings are not illegal. 1930 M. W. N. 770=24 M. 675.
4. A second class Magistrate cannot try the case under S. 420, I. P. C. 82 I. C. 57.

3. Concurrent.

The revisional jurisdiction of the District Magistrate and Sessions Judge is concurrent, to order further enquiry. 151 P. L. R. 1903, 43 A. 497, 14 C. 887.

4. Consent of parties to—

The omission to raise objection, acquiescence or even consent cannot invest a Court with jurisdiction of which it is not otherwise possessed. 1932 O. 251 (1)=9 O. W. N. 319=137 I. C. 625=33 Cr. L. J. 511.

5. Consequences issuing in another District. Ss. 179—182, Cr. P. C.

1. The consequence mentioned in S. 179 means a primary consequence and not the secondary consequence of the offence. 39 M. 576.
2. Consequence includes secondary consequences as loss resulting to the employer and the place where loss accrues has jurisdiction. 35 A. 29, 46 B. 641, 32 A. 397, 2 P. R. 1902 Cr., 24 P. R. 1901, 38 M. 797.

Jurisdiction—(contd.)

3. Consequence contemplated by S 179, must be essential part of the offence charged. 45 M. 839, 1930 B. 490=32 B. L. R. 1195=129 I. C. 385, 1923 L. 487=73 I. C. 323 *Contra* 46 B. 641=1922 B. 39.
4. Consequence is to be understood in its grammatical meaning and need not be restricted to mean a consequence which is necessary ingredient of the offence. 1930 B. 358=127 I. C. 177=31 Cr. L. J. 1155, 1929 S. 30=114 I. C. 99=30 Cr. L. J. 249. *Contra* 1934 A. 846, 1934 A. 449, 1930 B. 490, 1925 C. 613; 1923 L. 483, 1924 L. 663 1924 L. 171, 1933 L. 559, 1932 M. 427, 1923 M. 50, 1935 M. 189, 1921 P. 85, 1929 P. 610, 1931 R. 164, 1923 R. 209.
5. A Company at Karachi employed an agent to sell goods in the Punjab who committed criminal breach of trust. Held, that Karachi Court had jurisdiction as "consequence" in its grammatical sense had ensued at Karachi. 1929 S. 30=114 I. C. 99=30 Cr. L. J. 249, 1922 B. 39=65 I. C. 637.
6. For other cases See Conspiracy, Defamation, Criminal breach of trust, Cheating.
6. Continuing offence. S. 182, Cr. P. C.
 1. In case of continuing offence it may be inquired into in any local area in which it continues to be committed, e.g., abduction. 1933 O. 45, 53 A. 140, 1914 A. 17, 25 C. 639, 9 Cr. L. J. 581. *Contra* 1928 B. 530.
 2. Kidnapping from lawful guardianship is not a continuing offence and S. 182 does not apply. 26 M. 454, 13 P. R. 1893, 8 P. R. 1894, 75 I. C. 297, 38 A. 664, 1921 O. 226, 26 A. 197, 19 A. 109, 18 A. 350.
7. Criminal and Civil. See Civil dispute.
8. Extra-territorial— See Ss. 3, 4, I. P. C. See—23.
9. Foreign. See Certificate—4.
- ✓ 1. Where a British subject abets in British India an offence committed outside British India, he may be tried under S 108-A, I. P. C., in British India. 24 B. 287.
2. For offence committed on the Railway Station Bhatinda and tried by Ferozepore Courts, the appeal lies to Political Agent, Phulkian States. 7 P. R. 1914 Cr. (Amended).
3. Where house breaking took place in British India and a non-British subject was found in a Native State to be in possession of stolen property, he was not triable by British Courts. 2 L. L. J. 348, 63 I. C. 160, 168 P. R. 1840 Cr., 22 P. R. 1888 Cr., 9 A. 523, 18 C. W. N. 1178, 126 P. L. R. 1932
4. If an Indian British subject is found in a Native State in possession of property stolen in British India, he can be tried in British India but a certificate of Political Agent under S. 188, Cr. P. C., is necessary. 21 M. L. J. 441, 35 C. W. N. 1082. See 38 M. 779.
5. If theft takes place in Native State and stolen property is found in British India, the offence of retaining stolen property can be tried in British India, although the offence of theft cannot be tried here. 10 B. 186, 1 B. 50, 6 C. 307, 1 M. 171. See 6 B. 622, 5 B. 338.
6. Ss. 179 to 184 are controlled by the provisions of S. 188 and the alternative jurisdiction can be exercised by production of certificate of Political Agent. 54 B. 171.
7. Framing of an alternative charge under Ss. 379—411, I. P. C., does not confer jurisdiction on a Magistrate when offence under S. 411 is without and beyond British India as he cannot exercise it without a certificate of Political Agent. 54 B. 171.
8. British Courts have no jurisdiction to try an offence committed and completed in foreign territory. 7 P. R. 1894 Cr., 7 M. 354.
9. High Courts are empowered by their charters to try European British subjects and servants of the King for offences committed in Native States. 8 B. H. C. (Cr. C.) 92, 2 M. H. C. 444.
10. A British subject can be tried in British India no matter where the offence is committed. 25 Bom. L. R. 772.

Jurisdiction—(contd.)

11. A British subject if he commits an offence punishable under the Code in foreign territory and is found in British territory, can be tried at the place where he is actually present. 6 B. 622, 29 Cr. L. J. 68.
12. It is no defence that accused was brought illegally from foreign territory. 13 Bom L. R. 296.
13. When the marriage procession let off fireworks in the vicinity of French territory or not in British India the cognizance of offence under S. 290 could not be taken by the British Indian Courts. 1935 M. 189=154 I. C. 146=68 M. L. J. 211.
10. For offence of abduction, cheating and others. See under those offences.
11. Holding trial outside British India
 1. An offence committed in British India, cannot be tried by British Courts in a place outside British India. (1888) Rat. 376, 13 A. 348.
 2. A criminal appeal was presented to Sessions Judge at a place within his jurisdiction but was heard at a place outside but where he had civil jurisdiction, the defect is curable. 17 A. 36.
 3. A Magistrate cannot record confession in Native State although the offence was committed in British India. 19 A. L. J. 355.
 4. Magistrate holding power within certain local limits cannot exercise those powers while he is beyond such local limits. 23 P. R. 1910=11 Cr. L. J. 570.
12. If territory is transferred to Native State.
 1. If after commitment of the case to the Court of Session, the place in which the crime is committed is transferred to Native State, it will not oust the jurisdiction of British Court to try the offence. 34 A. 118, 34 A. 451.
 2. If pending an appeal, the place where the offence had been committed was transferred to a Native State, the jurisdiction to dispose of appeal is not ousted. 33 A. 578, 12 Cr. L. J. 470.
13. In doubtful Cases of—concurrent jurisdiction. S. 185, Cr. P. C.
 1. The decision of High Court can be sought not only when the doubt arises whether one Court has jurisdiction or another, but also where the choice has to be made between the two Courts having jurisdiction. In such a case general convenience should be looked into. 44 C. 595 overruling 41 C. 305; 18 Cr. L. J. 148
 2. The doubt must be as to the jurisdiction of the Court by which the offence is tried and not whether a particular Magistrate is competent to try or commit. 13 P. R. 1887 Cr., 3 A. 251.
 3. Where no doubt exists as to jurisdiction of the Court, S. 185 does not apply. 24 P. R. 1887 Cr.
 4. High Court can transfer cases instituted in a Court beyond its local jurisdiction. 44 C. 595. *Contra* 40 M. 385.
 5. Where a policy holder in Chittagong brought a charge of cheating in Chittagong against an Insurance Company having its head office at Gujranwala and a branch office at Chittagong and the Insurance Company also brought a case of cheating at Gujranwala against the nominee, both relating to the payment of money secured on policy, the Calcutta High Court had jurisdiction to transfer the case at Gujranwala to Chittagong. 17 C. W. N. 761=14 Cr. L. J. 398.
 6. When it is doubtful whether offence was committed in British India or outside, the accused must get the benefit. 1923 L. 487.
 7. Where two Courts have concurrent jurisdiction, the mere fact that one has taken cognizance of the case will not preclude the other of the same offence. In such a case High Court should continue the proceedings. 14 L.
14. Irregularities in—. S. 531, Cr. P. C. See Commitment to Wrong Sessions.
 1. Where the place where the breach of peace was apprehended was within the jurisdiction but the accused resided outside and no objection was raised in the

Jurisdiction—(contd.)

- trial Court and accused was not prejudiced, the irregularity is cured by S. 531. 49 A. 228=1926 A. 707.
2. High Court can quash a commitment to wrong Sessions Court. 1925 P. 187.
 3. The fact that offence was committed outside the trying Magistrate's jurisdiction, does not itself vitiate the trial. The fact that objection was taken at an early stage of trial is not conclusive proof that accused has been prejudiced. 63 I. C. 458.
 4. If the appeal made over to the Additional Sessions Judge, by the Sessions Judge, is heard by the Sessions Judge, the hearing is not without jurisdiction. 44 A 157=1922 A. 387=23 Cr. L. J. 107.
 5. Where a criminal appeal was presented to Sessions Judge at a place within his jurisdiction but was heard and disposed of at a place outside, where he had civil jurisdiction, the irregularity is curable under S 531. 17 A. 36
 6. Where no objection was taken in the Lower Court and the petitioner failed to show in the High Court that he had been prejudiced. High Court declined to interfere 21 W. R 88
 7. S. 531 cures defects as to local jurisdiction. But it cannot cure a defect where a bond of appearance is taken by one Magistrate and forfeited by another Magistrate, for it is a defect not of local but of personal jurisdiction. 16 Bom. L. R. 84
 8. Order under S. 531 includes commitment. 3 P. 417 (421)=1925 P. 187.
 9. The policy of Code as shown by Ss 531—538 is to uphold in most cases orders passed by a Criminal Court lacking in local jurisdiction or which has committed illegalities or irregularities, unless failure of justice has been caused. 42 M. 791.
 10. Defect in local jurisdiction, can be cured under S. 531. 2 P. R. 1902 Cr., 36 M. 357
 11. Irregular exercise of jurisdiction does not make order nullity. 1934 M. 55=57 M. 259=35 Cr. L. J. 511.
 12. Where an offence is being tried in a wrong place the want of jurisdiction may be cured by High Court under S. 526. Cr. P. C. 1928 B. 140, 1925 O. 490, 1929 S. 250 *Contra* 1923 M. 320, 10 B. 274
 13. Where a person is tried in a wrong Court, it is an irregularity curable under S. 531. 46 A. 138, 2 P. R. 1902, 1931 R. 164, 32 A. 397.
- 14-A. Issue of warrant for offences committed beyond—** S. 186, Cr. P. C.
1. It is not necessary that the Magistrate issuing the warrant must be present within the local limits of his jurisdiction at the time of issuing it. 1 Bom. 340. See 23 P. R. 1910 Cr.
 2. S. 186 relates to offences which the Magistrate knows at the outset to have been committed outside the limits of his jurisdiction. 76 I. C. 424. 1923 C. 401 = 25 Cr. L. J. 184.
- 15. Letter**
- The accused gave false information by a letter posted at K and which reached the addressee D S P at T. Held, that offence was committed at T when the information reached the public servant. 1932 M. 427=137 I. C. 333=1932 M. W. N. 451 = 33 Cr. L. J. 452.
- 16. Local.** Ss. 12, 177, Cr. P. C.
1. Defect in local jurisdiction is curable under S. 531, 2 P. R. 1902 Cr.
 2. Crime is local and the jurisdiction of crime is local. 1930 B. 491, 17 B. 369.
 3. British Courts have no jurisdiction to try an offence committed and completed outside the British territory. 7 P. R. 1894 Cr., 7 M. 354, 1 B. 50, 5 B. 338, 9 A. 523, 5 M. 23
 4. S. 177, Cr. P. C., deals with offences only and the provisions of S. 177 are inapplicable to determine jurisdiction of a Court competent to entertain application under

Jurisdiction—(contd.)

S. 488. 13 P. R. 1855, 3 P. R. 1893.

5. If the offence is inquired into or tried by a Magistrate and committed beyond his local jurisdiction, the irregularity is curable under S. 331. 25 M. 640, 36 M. 387, 30 M. 94.
 6. No Judge or Magistrate can try or pass an order of commitment in respect of an offence committed outside the Province. 3 P. 417 (42?)=1925 P. 187.
 7. Where two different offences are tried in the course of the same transaction, the case should be tried by a Magistrate who has jurisdiction to try both offences. 2 Weir 144.
 8. Irregularity of arrest does not invalidate proceedings. 6 P. R. 1899 Cr., 1 P. R. 1911 Cr., 26 M. 124.
 9. "Local area" in S. 12, Cr. P. C., includes Sessions division, District or Sub-Division. 25 C. 858, 9 Bom. 40.
 10. A Sub-Divisional Magistrate who has had his jurisdiction in a Sub-Division or local area in the District by an order of District Magistrate, cannot take cognizance of a case outside such local area. 19 A. L. J. 77=59 I. C. 554.
 11. Unless the powers of a Magistrate have been restricted to a certain local area, he has jurisdiction over the entire District. 22 Cr. L. J. 713=63 I. C. 873, 29 C. 387, 10 C. W. N. 1095, 139 I. C. 850=1932 C. 864=33 Cr. L. J. 858.
 12. Where by a notification a Magistrate was empowered to try "all such cases as might be instituted in his Court," it was held that he had jurisdiction throughout the Province. 24 P. R. 1901 Cr.
 13. Transfer of a Magistrate from one local area to another in the same District does not oust his jurisdiction over the former area. 22 M. 47.
 14. The Magistrate can pass order in cases on his file even after he has been transferred to another local area in the same District. 34 A. 203.
 15. When a Magistrate is transferred from the District, his jurisdiction over the District ceases and a judgment passed by him after he is relieved is without jurisdiction. 3 A. 563, 19 A. 114, 50 C. 664.
 16. Where an offence is being inquired into contrary to S. 177, Cr. P. C., the High Court will transfer it to some competent Court and will not quash proceedings. 85 I. C. 721=1925 O. 490=26 Cr. L. J. 577.
 17. The mere definition of areas cannot exclude jurisdiction of Magistrate in rest of District. S. 12, (2) Cr. P. C., requires express or necessarily implied provisions to exclude provision. 1935 B. 409=37 Bom. L. R. 745, 1921 A. 123=22 Cr. L. J. 122=59 I. C. 554 Diss. from.
 18. S. 177 applies to trial of offences and is inapplicable to determining the jurisdiction of Court to entertain an application under S. 488, which is not an offence. 17 P. R. 1896, 3 P. R. 1893, 13 P. R. 1895.
- 17. Of British Courts over ceded territory.** See--10.
- Warrant of arrest against a non-British subject executed over ceded territory is illegal. 1 P. R. 1866 Cr., 6 P. R. 1897 Cr.
- 18. Of British Courts over foreign subject** See--8.
- A non-British subject retaining stolen property in Native State is not amenable to British Courts. 9 A. 523, 90 P. L. R. 1922, 22 P. R. 1888 Cr., 16 P. R. 1880 Cr.
- 19. Of British Courts after trial held in a State.**
- The trial of accused by a Court in Native State bars their trial by a Court in British India on the same facts. 5 L. L. J. 574.
- 20. Of District Magistrate.**
1. Conviction and sentence by District Magistrate on investigation by a Subordinate Magistrate is illegal. 65 P. R. 1866 Cr.
 2. Conviction on evidence recorded by a Subordinate Magistrate is not competent, although attested by District Magistrate on the spot. 17 P. R. 1867 Cr., 25 P. R.

Jurisdiction—(contd.)

1905 Cr.

3. District Magistrate has no power to alter sentence or order of Subordinate Magistrate except upon appeal. 52 P. R. 1866 Cr.
4. District Magistrate cannot quash sentence and order retrial. 14 P. R. 1900 Cr.
5. District Magistrate can withdraw an appeal from the Court of Sub-Divisional Magistrate to his own file and may not examine Court witnesses summoned by the Sub-Divisional Magistrate. 31 M. 277.
6. A District Magistrate cannot award sentence of imprisonment exceeding 7 years. 31 P. R. 1872 Cr.

21. Of High Court See Appeal, Revision, Inherent Powers of High Court, Habeas Corpus—7, Retrial—9, Jury—23.

Jurisdiction of High Court to punish for contempt of Court is not ousted by the fact that accused has removed himself from the jurisdiction of High Court. 57 M. 831 = 1934 M. 423.

22. Of Magistrates. See Cognizance of offences, commitment. S. 12, Cr. P. C.

1. Conviction for an offence not triable by the Magistrate is illegal. 10 P. R. 1869 Cr.
2. Magistrate cannot strike off a case for failure of complainant to defray expenses of accused after issue of warrant. 21 P. R. 1872 Cr.
3. A Magistrate cannot pass judgment on evidence recorded by his predecessor. 6 P. R. 1884 Cr., 3 P. R. 1903 Cr.
4. A Magistrate not having jurisdiction over the offence can record statement of the witness under S. 164, Cr. P. C. 29 C. 483.
5. Unless the powers of a Magistrate have been restricted to a certain local area, he has jurisdiction over the entire district. 29 C. 389, 10 C. W. N. 1095, 24 O. C. 255, 2 Weir 13, 139 I. C. 850, 1933 L. 143 = 142 I. C. 430, 1932 C. 864.

23. Offences committed Beyond British India. Consequence in British India. S. 3, I. P. C.

1. An Indian committed murder at Cyprus. He could be dealt with at Agra. 2 A. 218, 24 B. 287.
2. S. 3 applies when the accused was amenable to British Courts when he committed the offence. 30 P. R. 1869 Cr., 7 P. R. 1894 Cr.
3. Conspiracy to cheat committed out of British India cannot be tried in British India. 1933 S. 333.
4. Offences committed by foreigners out of India are not triable in India. 1933 S. 333, 1 M. 171, 1 B. 50, 6 C. 307, 1 B. 186, 5 M. 23.
5. Persons abroad can be amenable to Courts by employment of agents. 1933 S. 333.
6. Accused abducting a minor girl from a Native State is arrested on a Railway Station while going to another Native State. Held, that British Courts had no jurisdiction. 1 P. R. 1901 Cr.
7. A is assaulted in a Native State and his leg is broken. He undergoes treatment for 20 days in British Indian Hospital. Held, that accused cannot be tried in British India. 8 Bom. L. R. 514.
8. But if act is committed outside British India under circumstances mentioned in S. 188, it may be dealt with as if it had been committed in British India. 33 M. 779, See 1932 C. 465 = 59 C. 1065.
9. Where offence is initiated out of British India and completed in British India, the offence can be tried in British India. 36 B. 524, 1933 A. 498.

24. Offences committed during journey. S. 183, Cr. P. C.

1. Where a theft is committed from a running train, any Court through whose jurisdiction the train passes during the journey may try the offence, no matter in whose jurisdiction the offence is committed. 1924 L. 351 = 71 I. C. 797 = 24 Cr. L. J. 253.
2. Where during the course of journey through foreign territory and British India an

Jurisdiction—(contd)

offence of criminal breach of trust was committed, and there was nothing to show that the offence took place during journey in British India, the offence could not be tried in British India. 24 Cr. L. J. 579=1923 L. 487, 5 M. 24, 52 M. 61.

3. The Courts through or into the local limits of the jurisdiction of which the offender passed during his journey have jurisdiction to try him, when the offence is committed during journey. 1 C. L. J. 334=4 Cr. L. J. 411, 1 M. H. C. R. 193.
4. The journey must be continuous and uninterrupted. Where the offence was alleged to be committed between Bombay and Howrah but in fact took place between Bombay and Allahabad, where both complainant and accused broke the journey and proceeded by separate trains to Howrah, the Magistrate at Howrah had no jurisdiction. 21 W. R. 66=13 B. L. R. Appendix 4.
5. But any short stoppage in the course of journey does not break the journey. 25 W. R. 45=1 P. R. 1901 Cr.
6. Offence committed in the course of journey from one place to another, can be tried by the Court having jurisdiction at the latter place. 25 Cr. L. J. 439=1923 S. 177.
7. S. 183 does not apply when the carrier had to journey through British and foreign territory and breach of trust of goods was committed, and there was no evidence to show when and where the offence was committed. 52 M. 61. See 38 M. 639, 1925 M. 23.

25. Offences committed on High Seas.

1. Presidency Magistrate can convict a person for offence committed in British vessel on High Seas, when the officer of the ship misappropriated a pilgrim's money. 25 B. 636.
2. High Court can try an accused when he committed murder on High Seas. 39 C. 487, 53 M. L. J. 101=1927 M. 688.
3. Procedure at the trial should be regulated by local law. 14 B. 227, 25 B. 636, *Contra*. 39 C. 487.
4. An offence committed on High Seas, but within three miles from the Coast of British India, is punishable under the Indian Penal Code. 8 Bom. H. C. R. 63.

26. Offences committed on voyage S. 183, Cr. P. C.

1. S. 183 applies to offences committed in British India. The word 'journey or voyage' do not include a voyage on High Seas or in foreign territory. 5 M. 23.
2. Where the accused in a voyage on High Seas 9 miles from the coast of Honawar, threw box of the complainant into the sea, he could be tried at Honawar. Rat. 181.

26-A. On State Railway Line.

Accused was arrested at Gawahar Railway Station for non-extraditable offence, by the Railway Police on a Telegram from a District Magistrate of Montgomery. Held, that arrest was illegal as under Notification No. 534, I. B. of 8th February 1907, the jurisdiction in Railway line had been ceded by Gawahar State to British Government for the purpose of administration of Railway and of Civil Criminal justice in connection therewith within the Railway lines. 1 L. 406, 25 C. 20 (P. C.) Foll.

27. Offence committed partly in one local area.

Where offence is partly committed at one place and partly at another, the offence can be tried at either place. 1930 B. 358, 26 C. 745, 14 Cr. L. J. 398.

28. Time for objection.

An objection to the want of jurisdiction can be taken for the first time before the High Court on revision. 26 B. 50, 13 B. 389.

29. To try juvenile offender. See Juvenile offender.**30. When scene of offence is uncertain.** S. 182, Cr. P. C.

1. Where there is uncertainty in which of the two Districts, the scene of the alleged offence lies S. 182 applies and the offence may be tried by the Court of either District. 25 C. 858, 16 C. 667, 1922 N. 40.

jurisdiction—(concl'd)

2. If a defamatory letter is posted at A to be read in B, the offence can be tried at A or B. 24 Cr. L. J. 309=44 M. L. J. 648, 1923 M. 666.
3. An offence under S. 134 Companies Act for default in filing balance sheet, even though the company is situate outside Calcutta, is triable at Calcutta, because the office of Registrar, Joint Stock Companies, with whom the balance sheet was to be filed is in Calcutta. 45 C. 486.
4. Where the District Magistrate is moved against an order of a Magistrate under S. 182 and the contention is that a Court altogether outside the District has jurisdiction to try the case, the District Magistrate can deal with the matter in his revisional powers. 1529 C. 204=115 I. C. 95=30 Cr. L. J. 401.
5. Where a travelling agent misappropriated some of the money, he can be tried at the place where firm employing him is situated or at one of the various Districts through which the accused travelled, when it was not possible to ascertain where the various acts of embezzlement took place. 32 A. 397.
6. The local area in S. 182 means a local area in a portion of British India and not foreign country. 16 C. 667, 1 M. 171, 5 M. 23.
7. S. 182 applies when the place of occurrence is known but there is doubt as to which Sessions Division the place belongs. 25 C. 858, 1929 C. 204.
8. If it is not certain whether offence was committed in or out of British India, S. 182 does not apply. 1923 L. 487, 1 M. 171.
9. If it is not certain whether accused embezzled money at A, B or C, he can be tried at any of these places. 1918 C. 110, 32 A. 397, 1934 A. 499, 1933 N. 33.
10. Where acts amount to distinct offences, some of which are committed outside the jurisdiction, the mere fact that if they had been committed within jurisdiction they could have been tried jointly under S. 239 does not make S. 182 (4) applicable. 1924 C. 1034.

31. Where there is no—by the Magistrate. S. 346, Cr. P. C.

1. It is illegal to record verdict of acquittal when Court had no jurisdiction to try the case. 45 A. 226=1923 A. 91=21 A. L. J. 42.
2. Consent or acquiescence of parties cannot give jurisdiction. 9 O. W. N. 319.
3. A Magistrate who finds from the evidence that he has no jurisdiction to try a case, cannot discharge the accused, but must submit the case to a Magistrate to whom he is subordinate or such other Magistrate as the District Magistrate directs. (1881) 2 Weir 323, 4 M. 327.
4. The fact that Magistrate ignores the circumstances disclosing graver offence which he cannot try and tries for the lesser offence, will not render the proceedings void, if accused is not prejudiced or sentence is not too inadequate. 13 B. 502, 1927 M. 307, 14 Cr. L. J. 640, 1931 M. 494, 7 Cr. L. J. 215.

32. What determines—

1. Complainant's statement determines jurisdiction, unless it has been clear at the very outset that the allegations are exaggerated with the intention of seeking a particular Court for redress. 47 A. 64=1925 A. 290=26 Cr. L. J. 586.
2. Complaint, in a case of mischief, alleged the damage to be Rs. 250 and a third class Magistrate tried the offence and found the damage to be Rs. 140 and awarded Rs. 40 as compensation to the complainant. Held, that he had no jurisdiction to try the case. 47 A. 64=1925 A. 290=26 Cr. L. J. 586.
3. A second class Magistrate cannot try a case under S. 420, I. P.C. 82 I. C. 57.
4. Place of crime governs nature of offence and the Courts of that country alone have jurisdiction to try the offender is well established principle of international law. 1933 S. 333.
5. Person abroad can be amenable to British Courts by employment of agents. 1933 S. 333.

JURY.

1. Absence of— S. 232, Cr. P. C.

1. Where a Juror was deaf and blind, he was discharged and the case was tried *de novo*.

Jury—(contd.)

19 M. 375.

2. Where a Juror was discharged and replaced by another, and the Judge instead having new trial, read out the statement to the witnesses who had been examined which they admitted to be correct, it was held that there was no valid trial. 36 A. 481.
 3. If the trial becomes null and void owing to incompetency of Juror, the trial is not null and void for purposes and a witness can be prosecuted for perjury. 19 M. 375.
 4. There is discretion in the Judge whether to discharge the Jury or postpone the trial if a Juror is unable to attend. If a Juror is going to attend in a short time, the Jury should not be discharged. 1927 C. 199=99 I. C. 349=28 Cr. L. J. 141=C. W. N. 144.
- 2. Appeal against trial by—** S. 418, Cr. P. C. See Appeal—36.
- 3. Application for—in Nuisance case—** S. 135, Cr. P. C.
1. Since the proceedings under S. 133, Cr. P. C., is in the first instance *ex-parte*, the opposite party should be given reasonable opportunity to show cause. 44 C. 61.
 2. A party cannot both show cause and apply for Jury at the same time. 13 C. W. N. 367.
 3. When a party has applied for Jury and a Jury has been appointed, the party cannot set up the plea of *bona fide* claim. 20 A. 364, 22 A. 267, 7 Bur. L. T. 23=Cr. L. J. 259.
 4. A Magistrate is not competent to make a reference to the Jury without first determining whether the way is a public thoroughfare or not and whether there is a *bona fide* claim. 26 C. 869, 31 C. 979, 4 L. 224, 10 C. W. N. 845.
 5. If the Magistrate through a mistaken view of law, makes a reference to the Jury without finding whether the way is public or not, the Jury would be met by a *bona fide* objection that the way is private property which would render the Magistrate powerless to proceed, the Magistrate will then have to take up the matter himself and if the claim is *bona fide*, will refer the parties to Civil Court. 5 C. 875.
 6. The Jury has to consider whether the order passed by the Magistrate under S. 133 is reasonable or not. 26 C. 869, 31 C. 979, 18 C. W. N. 1148=15 Cr. L. J. 515.
- 4. Attendance of—** Ss. 295, 318, 332, Cr. P. C.
1. A Judge is bound to discharge a case in which a defence witness is absent but the Jury should not be discharged. 15 W. R. 34, 4 Bom. L. R. 939.
 2. The issue of summons to Juror by a registered letter is illegal and no fine can be imposed for non-attendance. 1 C. W. N. cxvi.
 3. If the summon was served by affixing a duplicate on the door of the dwelling house and he had no knowledge of the service as he was living away from home, held, he was not liable to fine for non-attendance. 6 C. W. N. 887.
- 5. Charge to—** S. 297, Cr. P. C.
1. In addressing the Jury, the Judge should speak in a manner simple and direct. The language should not be extravagant. 1 Cr. L. 7. 538, 1930 C. 430, 34 C. W. N. 365=1930 C. 434=128 I. C. 254.
 2. After certain witnesses for the defence were examined, the Foreman of the Jury asked if the defence could not cut down the number of witnesses. The Judge thinking that the Jury has made up its mind to acquit, charged them but they returned a verdict of guilty. The Judge examined the remaining witnesses. Held, that the procedure is illegal. 4 L. 382.
 3. A Judge cannot charge the Jury and take verdict for some of the accused and afterwards hear arguments for the remaining accused and take verdict. 35 M. 535.
 4. The charge should include the usual warning as to the duty of the Jury both towards Crown and accused. 23 C. W. N. 833.
 5. The Judge should not use expressions assuming the guilt of the accused. 45 C. 557.

Jury—(contd.)

6. If the Judge cannot charge the jury in Bengali, he should take the assistance of his Court Reader and not the Public Prosecutor. 23 C. W. N. 833, 1927 A. 721=105 I. C. 652=28 Cr. L. J. 950=25 A. L. J. 1077.
7. Where the foundation for the prosecution story is dying declaration, caution should be given as regards the weight and efficiency to be given to it. 1930 C. 754=34 C. W. N. 792=129 I. C. 264=32 Cr. L. J. 324.
8. If the accused is unrepresented, the Judge should bring to the notice of Jury the arguments which would have been advanced if he had been represented by Pleader. 1930 S. 308=128 I. C. 673=32 Cr. L. J. 172.
9. Where it is not proved that certain letters had been written by a certain person the Judge should not place them before Jury to get their opinion whether they were written by him or not. 53 C. 372=192, C. 139=27 Cr. L. J. 256=92 I. C. 442.
10. Judge should not say to the Jury that witnesses gave true statements before the Committing Magistrate and were screening offenders by resiling from their statements. 25 Cr. L. J. 1577=90 I. C. 537=1925 C. 235=53 C. 181.
11. If the Judge refers to Police diaries under S. 162, Cr. P. C., there is no misdirection. 9 P. 606=1930 P. 513=128 I. C. 121.
12. Where the Judge does not explain the law to the Jury, or omits to tell them that if they entertain any doubt about the guilt, they should return a verdict of not guilty, the trial is prejudiced. 1930 A. 24=120 I. C. 204=1930 Cr. C. 40, 1927 N. 117=99 I. C. 849=28 Cr. L. J. 177.
13. Even if the accused does not set up exception, the Judge should give proper direction as regard exceptions. 1926 C. 1107=30 C. W. N. 912=27 Cr. L. J. 1402.
14. Merely stating that particular sections have been read and explained to the Jury without showing the manner they have been explained is bad. 1925 C. 1055=85 I. C. 463=26 Cr. L. J. 1151.
15. In a case of unlawful assembly the Judge should set forth all the common objects before the Jury, to enable them to decide which of those has been proved against the accused. 1925 C. 494=83 I. C. 346=25 Cr. L. J. 1386.
16. In a case of unlawful assembly the charge to Jury must set out the defence of each accused and the common object of each accused. 1927 M. 56=27 Cr. L. J. 1164.
17. Reading passages from judgments to the Jury does not amount to misdirection. 4 R. 488=1927 R. 68=99 I. C. 1013=23 Cr. L. J. 213.
18. The Judge should warn the Jury that the statement of the accused not amounting to confession cannot be considered against the co-accused. 1925 S. 116=81 I. C. 249=25 Cr. L. J. 761.
19. The charge must be considered as a whole. If the case for the two sides had been fairly put, there is no misdirection. 1921 C. 73=34 Cr. L. J. 512=23 Cr. L. J. 342.
20. If an important witness has not been examined by the prosecution, the Jury should be told to draw adverse inference against the prosecution. 7 P. 50=104 I. C. 459=9 P. L. T. 57=1923 P. 31=23 Cr. L. J. 843, 50 C. 318.
21. If the witnesses named in the first information report as eye witnesses were not examined, it would be improper to tell the Jury that they were entitled to draw adverse inference, unless it appears that no satisfactory reasons for non-examination were forthcoming. 1927 M. 475=100 I. C. 531=28 Cr. L. J. 307.
22. Where there are two trials—one original and the other supplementary—the Judge should warn the Jury in the supplementary trial, that the accused must have a perfectly fair trial and the Jury are not to be biased by the result of the previous trial. 1924 C. 435=72 I. C. 65=24 Cr. L. J. 305.
23. If there is no specific defence, the Judge should draw the attention of Jury to discrepancies in prosecution evidence and criticism advanced by the defence. 36 C. W. N. 377=1932 C. 536=138 I. C. 756=33 Cr. L. J. 694.
24. Some prosecution witnesses were not called. The Judge told the Jury that if they accepted the prosecution version that they were not called because their evidence was valueless they should not draw the inference under S. 114 (g), Evidence Act,

Jury—(contd.)

19 M. 375.

2. Where a Juror was discharged and replaced by another, and the Judge instead of having new trial, read out the statement to the witnesses who had been examined, which they admitted to be correct, it was held that there was no valid trial. 36 A. 481.
3. If the trial becomes null and void owing to incompetency of Juror, the trial is not null and void for purposes and a witness can be prosecuted for perjury. 19 M. 375.
4. There is discretion in the Judge whether to discharge the Jury or postpone the trial if a Juror is unable to attend. If a Juror is going to attend in a short time, the Jury should not be discharged. 1927 C. 199=99 I. C. 349=23 Cr. L. J. 141=31 C. W. N. 144.

2. Appeal against trial by—. S. 418, Cr. P. C. See Appeal—36..

3. Application for—in Nuisance case—. S. 135, Cr. P. C.

1. Since the proceedings under S. 133, Cr. P. C., is in the first instance *ex-farte*, the opposite party should be given reasonable opportunity to show cause. 44 C. 61.
2. A party cannot both show cause and apply for Jury at the same time. 13 C. W. N. 367.
3. When a party has applied for Jury and a Jury has been appointed, the party cannot set up the plea of *bona fide* claim. 20 A. 364, 22 A. 267, 7 Bur. L. T. 23=15 Cr. L. J. 259.
4. A Magistrate is not competent to make a reference to the Jury without first determining whether the way is a public thoroughfare or not and whether there is a *bona fide* claim. 26 C. 869, 31 C. 979, 4 L. 224, 10 C. W. N. 845.
5. If the Magistrate through a mistaken view of law, makes a reference to the Jury without finding whether the way is public or not, the Jury would be met by a *bona fide* objection that the way is private property which would render them powerless to proceed, the Magistrate will then have to take up the matter himself and if the claim is *bona fide*, will refer the parties to Civil Court. 5 C. 875.
6. The Jury has to consider whether the order passed by the Magistrate under S. 133 is reasonable or not. 26 C. 869, 31 C. 979, 18 C. W. N. 1143=15 Cr. L. J. 515.

4. Attendance of—. Ss. 295, 318, 332, Cr. P. C.

1. A Judge is bound to discharge a case in which a defence witness is absent but the Jury should not be discharged. 15 W. R. 34, 4 Bom. L. R. 939.
2. The issue of summons to Juror by a registered letter is illegal and no fine can be imposed for non-attendance. 1 C. W. N. cxvi.
3. If the summon was served by affixing a duplicate on the door of the dwelling house and he had no knowledge of the service as he was living away from home, held, he was not liable to fine for non-attendance. 6 C. W. N. 837.

5. Charge to—. S. 297, Cr. P. C.

1. In addressing the Jury, the Judge should speak in a manner simple and direct. The language should not be extravagant. 11 Cr. L. 7. 538, 1930 C. 430, 34 C. W. N. 365=1930 C. 434=128 I. C. 254.
2. After certain witnesses for the defence were examined, the Foreman of the Jury asked if the defence could not cut down the number of witnesses. The Judge thinking that the Jury has made up its mind to acquit, charged them but they returned a verdict of guilty. The Judge examined the remaining witnesses. Held, that the procedure is illegal: 4 L. 382.
3. A Judge cannot charge the Jury and take verdict for some of the accused and afterwards hear arguments for the remaining accused and take verdict. 36 M. 535.
4. The charge should include the usual warning as to the duty of the Jury both towards Crown and accused. 23 C. W. N. 833.
5. The Judge should not use expressions assuming the guilt of the accused. 45 C. 557.

jury—(contd.)

6. If the Judge cannot charge the jury in Bengali, he should take the assistance of his Court Reader and not the Public Prosecutor. 23 C. W. N. 833, 1927 A. 721=105 I. C. 652=28 Cr. L. J. 950=25 A. L. J. 1077.
7. Where the foundation for the prosecution story is dying declaration, caution should be given as regards the weight and efficiency to be given to it. 1930 C. 754=34 C. W. N. 792=129 I. C. 364=32 Cr. L. J. 324.
8. If the accused is unrepresented, the Judge should bring to the notice of Jury the arguments which would have been advanced if he had been represented by Pleader. 1930 S. 308=128 I. C. 673=32 Cr. L. J. 172.
9. Where it is not proved that certain letters had been written by a certain person the Judge should not place them before Jury to get their opinion whether they were written by him or not. 53 C. 372=1925 C. 139=27 Cr. L. J. 256=92 I. C. 442.
10. Judge should not say to the Jury that witnesses gave true statements before the Committing Magistrate and were screening offenders by resiling from their statements. 25 Cr. L. J. 1577=90 I. C. 537=1926 C. 235=53 C. 181.
11. If the Judge refers to Police diaries under S. 162, Cr. P. C., there is no misdirection. 9 P. 606=1930 P. 513=128 I. C. 121.
12. Where the Judge does not explain the law to the Jury, or omits to tell them that if they entertain any doubt about the guilt, they should return a verdict of not guilty, the trial is prejudiced. 1930 A. 24=120 I. C. 204=1930 Cr. C. 40, 1927 N. 117=99 I. C. 849=28 Cr. L. J. 177.
13. Even if the accused does not set up exception, the Judge should give proper direction as regard exceptions. 1926 C. 1107=30 C. W. N. 912=27 Cr. L. J. 1402.
14. Merely stating that particular sections have been read and explained to the Jury without showing the manner they have been explained is bad. 1925 C. 1055=85 I. C. 463=26 Cr. L. J. 1151.
15. In a case of unlawful assembly the Judge should set forth all the common objects before the Jury, to enable them to decide which of those has been proved against the accused. 1925 C. 494=83 I. C. 346=25 Cr. L. J. 1386.
16. In a case of unlawful assembly the charge to Jury must set out the defence of each accused and the common object of each accused. 1927 M. 56=27 Cr. L. J. 1164.
17. Reading passages from judgments to the Jury does not amount to misdirection. 4 R. 488=1927 R. 68=99 I. C. 1013=23 Cr. L. J. 213.
18. The Judge should warn the Jury that the statement of the accused not amounting to confession cannot be considered against the co-accused. 1925 S. 116=81 I. C. 249=25 Cr. L. J. 761.
19. The charge must be considered as a whole. If the case for the two sides had been fairly put, there is no misdirection. 1921 C. 73=34 Cr. L. J. 512=23 Cr. L. J. 342.
20. If an important witness has not been examined by the prosecution, the Jury should be told to draw adverse inference against the prosecution. 7 P. 50=104 I. C. 459=9 P. L. T. 57=1923 P. 31=23 Cr. L. J. 843, 50 C. 318.
21. If the witnesses named in the first information report as eye witnesses were not examined, it would be improper to tell the Jury that they were entitled to draw adverse inference, unless it appears that no satisfactory reasons for non-examination were forthcoming. 1927 M. 475=100 I. C. 531=23 Cr. L. J. 307.
22. Where there are two trials—one original and the other supplementary—the Judge should warn the Jury in the supplementary trial, that the accused must have a perfectly fair trial and the Jury are not to be biased by the result of the previous trial. 1924 C. 435=72 I. C. 65=24 Cr. L. J. 305.
23. If there is no specific defence, the Judge should draw the attention of Jury to discrepancies in prosecution evidence and criticism advanced by the defence. 36 C. W. N. 377=1932 C. 536=138 I. C. 756=33 Cr. L. J. 694.
24. Some prosecution witnesses were not called. The Judge told the Jury that if they accepted the prosecution version that they were not called because their evidence was valueless they should not draw the inference under S. 114 (g), Evidence Act.

Jury—(contd.)

- and if they did not believe the same, they could draw the inference. Held, there was no misdirection. 58 C. 1335=1932 C. 118=135 I. C. 443=33 Cr. L. J. 135.
25. The Jury should be warned that the evidence of *accomplice* requires corroboration, omission to do so amounts to misdirection. 1932 C. 295=33 Cr. L. J. 477.
 26. If the Judge referred to Police statements under S 162, which were not even proved, to discredit prosecution evidence, it amounted to misdirection. 58 C. 1009=1931 C. 189=132 I. C. 159=32 Cr. L. J. 841.
 27. When it is possible if the Judge had clearly drawn attention to the fact that there was no corroboration of certain prosecution witnesses, the Jury would have returned a different verdict, the summing up amounts to misdirection. 8 O. W. N. 1215.
 28. If the whole of the evidence which affects both parties favourably or unfavourably does not go to Jury there is no proper direction. 131 I. C. 575. See 134 I. C. 71.
 29. If the *onus* of proving innocence is cast on the accused and Jury is told to presume the statement of a witness to be true unless defence have shown good reasons to reject his statement, it is misdirection. 58 C. 1095=1931 C. 796=135 I. C. 727.
 30. In a case of dacoity, the Jury must be told that if they acquit some of the accused, thus leaving the number of accused less than five, they must have due regard to the fact before convicting that they were acting conjointly with persons not charged in the case. 1931 M. 427=32 Cr. L. J. 1212=134 I. C. 801=54 M. 588, 133 I. C. 7.
 31. In a charge under S. 397, I. P. C., when the mind of the Jury was not directed to the question that carrying of deadly weapon was necessary for conviction, there was misdirection. 130 I. C. 267=1931 P. 49=32 Cr. L. J. 476.
 32. In a charge under S. 395, I. P. C., the Judge made reference to Ss. 448 and 323, the Jury convicted the accused under the latter sections. Held, that as accused were not charged under Ss. 448—323 and accused had no notice there was misdirection. 1931 C. 414=132 I. C. 254=32 Cr. L. J. 892.

6. Choosing of.— S. 276, Cr. P. C.

1. Proviso 2, S. 276, gives a discretion to Court to allow the Jurors to be taken from bystanders or not. 55 C. 371.
2. The provisions of choosing Jurors by lot is applicable when the required number is present in Court. 28 Cr. L. J. 615=102 I. C. 903=1927 C. 593=54 C. 1026.
3. Irregularities in choosing the jury by lot affects the constitution of the Court and can not be cured by S. 537, Cr. P. C. 33 A. 385, 7 C. W. N. 188.
4. The persons to be chosen by lot ought to be selected from the entire number and the selection must be made from one box. 1 B. 462.
5. Deficiency of Jurors cannot be filled up from persons not present in Court. 113 I. C. 328=30 Cr. L. J. 136=48 C. L. J. 479, 56 C. 835, 1928 C. 551.
6. Where out of the Jurors summoned, only the requisite number appear on the day of trial and the trial is conducted with their help, the trial is illegal. 7 P. 50=1928 P. 31=104 I. C. 549, 1927 C. 242
7. Where out of 12 Jurors summoned only two were present and the Court sent for three of the professors from the Local College and one of them being objected to another was called, the procedure was illegal. 1928 C. 551=30 Cr. L. J. 120.
8. Where only five Jurors attended and they were chosen as Jurors. Held, that the procedure was not illegal. 54 C. 1026=1927 C. 593=102 I. C. 903, 1927 C. 242 Diss from. 8 C. 739 Dist. 1925 C. 798 Foll.
9. If the Jury is not chosen by lot, the irregularity is curable under S. 537 (a). 1927 N. 117=28 Cr. L. J. 177, 33 A. 385, 7 C. W. N. 118. Not Foll. 8 C. 739 Appr.
10. A Jury having been discharged should not be called upon to do duty as Jurors in the same case. 56 C. 1032=1929 C. 343.
11. The provisions of Ss. 326 and 276 are imperative and their violation will render the constitution of the Court illegal. 1927 C. 593=54 C. 1026=28 Cr. L. J. 615
12. "Jurors" in proviso 2 is a general term meaning both special and common Jurors. 58 C. 1272=1931 C. 793=33 Cr. L. J. 129=135 I. C. 435.

Jury—(contd.)

13. In a case of murder only seven Jurors were summoned and empanelled and not nine, the trial was vitiated. 1931 C. 793=33 Cr. L. J. 129=58 C. 1272.
 14. Persons present in the Court precincts who are either summoned in another case or are there by mere chance, are persons 'present' within the meaning of S. 276, Cr. P. C. They need not be within the four walls of the room 36 C. W. N. 377.
 15. Eleven out of 15 Jurors were absent though duly summoned. Held, that the trial with 7 jurors was not illegal. 1935 C. 407=156 I. C. 481=36 Cr. L. J. 944, 1931 C. 261=32 Cr. L. J. 187 Rel on. 58 C. 1272=1931 C. 793 Dist.
- 7. Communication with—** S. 300, Cr. P. C.
1. A Jurymen should not communicate except to his fellow Jurymen. The mere presence of a Police Officer near the Jury Room when the Jury are deliberating does not render the trial invalid, unless it is proved that he interfered with their deliberations. 44 C. 723=38 I. C. 423=21 C. W. N. 167.
 2. If after a charge to the Jury, a non-Juror holds communication with a Juror without leave of the Court, it is sufficient to upset the verdict of the Jury. 46 C. 207.
 3. Where a stranger talked to a Juror but it did not appear that the conversation was with regard to the case, the verdict cannot be interfered with. 53 I. C. 694=20 Cr. L. J. 790.
 4. There is nothing wrong in the Clerk of Crown being sent to the Jury Room during the deliberations to inquire whether they wanted further assistance from the Court. 44 C. 723.
 5. The Jury who were nine in number retired to consider their verdict. At 4 P. M. five of the Jurors came out and others came out at 4-30 P. M. Held, that the accused had not the benefit of the joint deliberation and the verdict should be set aside. 1930 C. 446=146 I. C. 753=31 Cr. L. J. 1090.
 6. Where after the Judge's charge to the Jury, the latter were allowed to disperse for several hours and then returned to the Court and considered and delivered their verdict, the trial is vitiated. 1925 P. 595=85 I. C. 717=36 Cr. L. J. 861.
- 8. Contents of charge to—** S. 297, Cr. P. C.
1. It is the duty of the Judge to give direction upon the law bearing upon facts to the Jury. 8 C. 739, 19 C. W. N. 653.
 2. The Judge cannot omit to explain law to Jury on the ground that it has been sufficiently explained by pleaders on both sides 29 C. 379, 1926 N. 53=88 I. C. 178.
 3. No rulings or authorities should be cited by the Judge to the Jury nor should they be asked to differentiate or form any opinion on any authorities. 16 C. W. N. 46.
 4. Mere reference to or reading the section of the Indian Penal Code to the Jury does not amount to sufficient explanation of law. 4 C. W. N. 193, 14 C. 164.
 5. The Judge should call the attention of the Jury to the different elements constituting the offence and deal with the evidence by which it is proposed to make the accused liable. 25 C. 711, 30 M. 44, 21 Cr. L. J. 694.
 6. The law of abetment should be explained to the Jury. 47 C. 46.
 7. In a case of theft the word "dishonestly" must be explained to the Jury. 1926 M. 1121=97 I. C. 951=27 Cr. L. J. 1191.
 8. In a case of dacoity the Judge should explain to the Jury what is necessary to constitute the offence of robbery as defined in S. 390. 1924 O. 411=25 Cr. L. J. 1129=81 I. C. 953, 39 A. 348, 25 C. 711.
 9. A Sessions Judge is not required to comment on every point. 57 C. 248, 49 C. 573, 1925 S. 116=81 I. C. 249.
 10. The Jury should be asked to consider the explanation offered by the accused. It is not necessary that he should prove his allegations. 53 C. 157.
 11. In a case where there are no eye witnesses and no motive, it is better if the whole case is left to Jury. 1926 C. 996=96 I. C. 990.
 12. A Judge is not debarred from expressing his opinion on the evidence but it should be done in such a way as not to create any impression in the mind of Jury that it is a

allowed to go on the record. 25 C. 736.

17. If a Judge expresses his opinion, he should also add that it is his opinion and that the Jury is at liberty to draw their own conclusions. 10 C. 970, 2 Weir 335.
 18. The Judge should tell the Jury that his opinion is not binding on them and that they are the sole Judges of facts. 35 C. 351, 1923 P. 238=72 I. C. 959=24 Cr. L. J. 495.
 19. It is doubtful whether Judge has to determine whether there is evidence to corroborate the story of an approver, that being a question of fact. 56 C. 150=1929 C. 57=115 I. C. 258=30 Cr. L. J. 435=32 C. W. N. 945. See 19 C. W. N. 655.
 20. It is no part of the duty of the Judge to interpret for himself a verdict of an unintelligible character of the Jury, when they are there to explain. 1930 C. 520=57 C. 61=31 Cr. L. J. 761=125 I. C. 97.
 21. It is the duty of the Judge to advise the Jury as to the logical hearing of the evidence admitted upon the matters to be found by them. 23 C. W. N. 833.
 22. Omission of important points in accused's favour will vitiate trial. 40 B. 220.
 23. Where a Sessions Judge directs the Jury to make a broad view of the evidence ignoring small discrepancy in immaterial and collateral events in the case, there is no misdirection. 1 P. L. T. 708.
 24. The question as to whether the approver has forfeited pardon should be left to Jury. If the Judge decides the question himself and convicts the accused, the conviction is illegal. 33 M. 514.
 25. In a lengthy trial, the Judge should analyse evidence and show the light and shade of it. 35 C. W. N. 404.
 26. If the Jury first gave a confused verdict and on being charged again they returned a verdict. Held, the verdict need not be set aside. 58 C. 1335=1932 C. 118.
 27. The Judge should not make suggestions of bribery against the Police, when they are not borne out by the record. 1934 C. 77=35 Cr. L. J. 483.
 28. Earliest version of occurrence must be placed before the Jury to test the truth of the case. 1934 N. 94, 1926 C. 134.
- 13. Duty of Jury.** S. 299, Cr. P. C.
1. It is the function of the Jury to find the facts upon the evidence. 56 C. 150, 21 W. R. 69, 9 W. R. 51.
 2. It is for the Jury to determine whether the prisoner at the time of committing offence, was incapable of distinguishing right from wrong or was under the influence of delusion. 1929 C. 1=115 I. C. 561=33 C. W. N. 136.
 3. When the deposition of a witness is transferred to the Session's file under S. 238, Cr. P. C., it is open to Jury to believe it, although the Judge may be of opinion that the witness having given a different version ought not to be believed. 1930 C. 228=125 I. C. 743=31 Cr. L. J. 916.
 4. The question of intent in a case of kidnapping is one of fact to be found by Jury. 14 A. 25.
 5. The question whether the possession of the stolen property was recent enough to warrant a conviction for the substantive offence of dacoity is for the Jury to determine. 26 M. 467.
 6. It is for the Jury to find whether there was free consent in a case under S. 376, I. P. C. 1 W. R. 21.
 7. The question as to the identity of thumb impressions on two or more documents being of the same person is for the Jury to find. 1 C. L. J. 385, 4 C. W. N. 576.
 8. If the first information report is found to be false in another judicial proceedings, the Jury can consider it and come to a different finding. 1929 P. 34=114 I. C. 220=7 P. 153=30 Cr. L. J. 273.
 9. It is the duty of the Jury and not of Judge to decide whether the approver has forfeited his pardon or not. If the Judge decides it himself and convicts the accused, the conviction is illegal. 33 M. 514.

jury—(contd.)

10. Judge is to decide the admissibility while Jury the credibility of evidence. 1932 B. 406.

14. Expression of opinion by—.

1. After the summing up of the case by the Judge to Jury, one of the Jurors, in a room occupied by the Clerks of Pleaders, in answer to some questions, intimated that in his opinion accused was guilty of the charge against him and the Sessions Judge, although informed of the fact took the verdict of the Jury. Held, that there should be a fresh Jury. 25 C. W. N. 240=1921 C. 631=62 I. C. 334.
2. Mere expression of opinion on a question of fact is not misdirection. 1934 C. 757.

15. Heads of charge to—. S. 367, Cr. P. C.

1. The law requires in a trial by Jury, a Judge only to record the heads of his charge. But these must include such statements as will enable the appellate Court to understand exactly what he really said. 71 I. C. 56=1922 C. 192=24 Cr. L. J. 8, 34 C. 698, 39 A. 348, 25 C. 736, 1926 C. 895=96 I. C. 270.
2. The Judge is not required to write everything he says to Jury but only the heads of the charge. 51 C. 79.
3. The heads of charge should contain the point of law and directions given by the Judge to the Jury. 36 C. 281, 39 A. 348, 35 C. L. J. 437.
4. It is not sufficient for the Judge to state in his record of the heads of charge that he referred to certain sections of the Penal Code and explained the law to Jury. He should set out the directions which he gave to them in respect of law. 4 P. 626=1925 P. 797=91 I. C. 225=27 Cr. L. J. 797, 47 C. 795, 1930 C. 712, 57 I. C. 934, 1 P. L. J. 317.
5. The heads of charge should be written after it is delivered and the case is fresh in the mind of the Judge. 36 C. 278.

16. Interference with the verdict of—. S. 307, Cr. P. C.

1. High Court will not exercise its vast discretionary power vested under S. 307 in setting aside the unanimous verdict of a Jury, unless it is perverse or patently wrong or may have been induced by the error of the Judge. 11 C. 85, 15 B. 452, 46 A. 265, 9 C. 53, 1 B. 10, 9 A. 420, 10 B. 497, 20 B. 215, 22 C. W. N. 811, 51 C. 271, 51 C. 160, 1930 C. 141=124 I. C. 486, 1929 N. 56=112 I. C. 51, 1929 N. 113=117 I. C. 277.
2. The High Court should give due weight to the opinion of the Judge and the Jury. 51 C. 347, 51 C. 160, 17 C. W. N. 1077, 41 C. 754, 29 C. 128, 15 C. 269.
3. The High Court will not interfere unless the verdict is perverse. 46 A. 265, 22 C. W. N. 811, 2 Weir 388, 22 C. W. N. 1028, 1928 O. 277=112 I. C. 103.
4. The High Court will not disturb the unanimous verdict of acquittal in a case, where there is a substantial gap in the chain of evidence. 38 C. L. J. 155.
5. High Court cannot consider any question on which the Judge and Jury are agreed. 41 C. 662.
6. High Court cannot consider any question on which the Judge had accepted the verdict of Jury, although he did not agree with them. 50 C. 41.
7. The accused who was charged under S. 394, I. P. C., was caught at the spot with *lathi* and his guilt was fully established. The majority of the Jury gave a verdict of not guilty, as the injuries on the complainant were trivial and stolen goods were not recovered from the accused's house. Held, that the verdict was perverse. 1929 A. 338=119 I. C. 443=30 Cr. L. J. 1078.
8. High Court is not authorized to alter or reverse the verdict, unless it is erroneous owing to misdirection by the Judge or misunderstanding on the part of the Jury of the law as laid down by him. 8 P. 344=1929 P. 313=117 I. C. 173.
9. It is not enough to show that High Court would have come to a different conclusion if it had tried the case as a Court of original jurisdiction. 1924 C. 317=75 I. C. 145.
10. The verdict should not be set aside unless no sensible man could have arrived at their verdict particularly in the case of a verdict of acquittal. 8 P. 74=1926 P. 497, 41 C. 621, 39 I. C. 695.

Jury—(contd.)

11. If the verdict of the Jury is neither bad nor impossible, High Court should not reverse it. 1930 O. 334=124 I. C. 661=31 Cr. L. J. 719.
 12. High Court should not interfere with the verdict, which cannot be said to be unreasonable. 56 C. 132, 1923 C. 97=81 I. C. 236.
 13. Verdict unsupported by evidence will be set aside. 5 P. 573=1926 P. 535.
 14. For interference in the verdict the test is whether reasonable men would have taken the same view. 54 C. 705, 39 I. C. 695.
 15. Where the verdict of Jury has the assent of a Judge of the Division Bench it is ordinarily sufficient to show that the verdict should not be reversed. 117 I. C. 680=32 C. W. N. 783=30 Cr. L. J. 820.
 16. High Court will not interfere with the unanimous verdict even if it does not agree with it. 55 I. C. 282=30 C. L. J. 503.
 17. A person cannot be convicted of an offence of which the Jury have found him not guilty. 12 Cr. L. J. 140=9 I. C. 788.
 18. The practice of High Court is not to interfere in case of acquittal by a Jury unless the acquittal stood out as patently bad and amazingly perverse. 9 O. W. N. 301.
 19. High Court will not examine evidence unless there was misdirection. 1934 A. 1032.
17. Misdirection to—what is—. S. 297, Cr. P. C.
1. Where the Judge's charge to Jury confuses them, the accused must be retried. 58 I. C. 829.
 2. Failure to call the attention of Jury to the different elements of the offence is a misdirection. 25 C. 711, 16 B. 165.
 3. In a case of murder the Judge simply asked the Jury to find whether the prisoner inflicted the injuries to the deceased, making no reference to intention or knowledge is misdirection. 35 C. 531, 1 Bom. L. R. 784.
 4. If the Judge omits to ask the Jury to decide whether the accused knew or had reason to believe the property to be stolen, it is misdirection. 15 B. 369.
 5. It is a misdirection not to explain to the Jury the difference between a crime and civil wrong, e. g., in a case of trespass. 41 C. 662.
 6. Omission to warn the Jury to pay no attention to the previous proceedings amounts to misdirection. 31 C. L. J. 305.
 7. When accused has examined witnesses to prove right of private defence, the reference to S. 105, Evidence Act, as to burden of proof of exception would amount to misdirection. 50 C. 318, 23 C. W. N. 833, 1930 C. 442=127 I. C. 263.
 8. Where a number of persons who could have given important evidence are not examined by the Crown, the Judge should direct the Jury to draw an inference adverse to the prosecution. His omission to do so amounts to misdirection. 50 C. 318, 1930 C. 481=127 I. C. 767.
 9. Omission to point out discrepancies in the evidence of principal witnesses for the prosecution constitutes misdirection. 33 C. L. J. 180.
 10. Omission to tell the Jury that accused is entitled to the benefit of any reasonable doubt is a misdirection. 34 C. 698.
 11. Omission to examine witness mentioned in the first information report should be brought to the notice of Jury, but failure to so inform is not necessarily fatal. 1926 C. 728=93 I. C. 46.
 12. A misdirection regarding one of the charges may have a bearing on the other charge as well. 1930 C. 708=129 I. C. 99=32 Cr. L. J. 228.
 13. A Judge while charging the Jury dealt with a certain statement as confession, while in reality it was not. Held, that this was a serious misdirection. 1928 C. 416=109 I. C. 351=29 Cr. L. J. 527.
 14. Where the evidence had been mis-stated or circumstances in favour of the accused were ignored, it amounts to misdirection. 1929 M. W. N. 946.

Jury—(contd.)

15. Reference to evidence given before the Committing Magistrate and not transferred to the Session's file is a misdirection. 1930 C. 706=123 I. C. 801=32 Cr. L. J. 180=57 C. 540=1927 C. 200=99 I. C. 937.
 16. During a search stolen ornaments were found on the wife of the accused and a list of those was given during the investigation. The reference to list is a misdirection as it is inadmissible in evidence. 1929 C. 448=120 I. C. 458.
 17. In his charge to Jury the Judge suggested an alternative case but left it to Jury to accept or not. Held, there was no misdirection. 6 P. 572=1923 P. 139=107 I. C. 898, 11 C. L. J. 270 and 40 C. 367 Dist.
 18. Where the Judge directed the Jury that if the property was proved or presumed to be stolen, the *onus* would shift to the accused that he acquired it in an innocent manner amounts to misdirection. 52 C. 223, 31 Cr. L. J. 310.
 19. Miscarriage of justice through misdirection means that there must be reasonable ground for apprehending that misdirection must have affected the Jury's verdict. 1930 A. 28=30 Cr. L. J. 1146=120 I. C. 114=52 A. 207.
 20. Omission to invite the jury to consider the statements of the accused is a misdirection 47 C. 46.
 21. Omission to draw the attention of the Jury to rely upon the testimony of an absent witness, admitted under S. 33, Evidence Act, 39 M. 49.
 22. A direction to the Jury that they should convict the prisoner if they believed that he had shown the stolen property to Police. 2 Weir 493.
 23. Failure to point out to the Jury as to the relevancy or otherwise of a confession made under inducement, is a misdirection 25 M. 38.
 24. If the Judge gives his opinion on a question of fact, it amounts to misdirection. 34 C. 698, 4 C. W. N. 196=193.
 25. Omission to explain to the Jury the attitude to be taken towards a retracted confession as evidence against co-accused, is a misdirection. 47 C. 47, 23 B. 316, 21 M. 83.
 26. A Judge's direction to the Jury to consider the proof of previous conviction as evidence giving rise to an interference regarding the character of the prisoner amounts to a misdirection. 5 C. 763.
 27. A direction by Judge that as witness is declared hostile, his evidence may not be considered is misdirection. 1932 C. 523.
 28. Suggestion by Judge of fact of common occurrence without evidence of it on record is not misdirection. 1932 C. 536.
 29. Judge must tell Jury that confession of co-accused must be corroborated, when it is retracted. The omission amounts to misdirection. 1934 C. 853.
 30. If the Judge does not define robbery to the Jury, it amounts to misdirection and the trial is vitiated. 1935 O. 175=35 Cr. L. J. 507=147 I. C. 976.
 31. Omission to direct Jury to give benefit of doubt to accused, when the evidence is weak, may be misdirection prejudicing accused. 1935 C. 31=36 Cr. L. J. 480=154 I. C. 110.
 32. Expression of opinion that discrepancies in the complaint and subsequent evidence do not affect prosecution case is misdirection. 1934 C. 77=35 Cr. L. J. 483.
 33. Giving dogmatic and unqualified opinion on questions of fact is misdirection. 1934 A. 326=35 Cr. L. J. 658.
- 18. Misdirection to what is not—S. 297, Cr. P. C.**
1. It is not misdirection to tell the Jury that a conviction upon the evidence of the approver alone will not be illegal. 51 C 160, 9 P. 606.
 2. Accused were charged under Ss. 366, 498 and 147. In its charge to Jury the Court directed that mere dragging by hair and removal by force would amount to offences under Ss. 341—352. Held, there was no misdirection. 1926 C. 1059=98 I. C. 386=53 C. 599.

Jury—(contd.)

3. "If the shot was fired by any one of the three accused, in furtherance of the common intention, all are guilty of murder." Held, it is not a misdirection, as the balance of authority and reason is against the limited interpretation placed on S. 34, I. P. C. 41 C. 1072. 1924 C. 257=81 I. C. 353=25 Cr. L. J. 817=38 C. L. J. 411.
 4. If the Judge states to the Jury his impressions about the demeanour of witnesses, it is not misdirection, when the demeanour was not noted at the end of deposition. 1925 C. 980=85 I. C. 716=25 Cr. L. J. 572.
 5. In capital cases if the Judge says that there is a need for more careful consideration and of stronger evidence, it is not a misdirection. 1921 C. 111=62 I. C. 578=25 C. W. N. 788.
 6. Omission to mention in express terms that the burden of proof lies on the prosecution is no misdirection, when the whole trend of charge showed that Judge warned the Jury about it. 1935 A. J. 103=154 I. C. 1019.
- 19. Non-direction to—** S. 297, Cr. P. C.
1. Mere non-direction is not necessarily misdirection. 44 C. 477, 28 C. W. N. 170=1924 C. 257=81 I. C. 353.
 2. Omission to enter into details concerning the identification of stolen articles is not a misdirection. 1 W. R. 22.
 3. Omission to call the attention of the Jury to the evidence of defence witnesses whom the High Court considered to be untrustworthy is a mere non-direction and not a misdirection. 7 C. 42.
 4. In a charge of unlawful assembly, the omission to explain the alleged common object is not a misdirection but a non-direction. 17 Cr. L. J. 92, 4 C. W. N. 196.
 5. Where the Judge omitted to state the defence case and did not draw the attention of the Jury to the conduct of the complainant and the accused, the trial is vitiated. 34 C. W. N. 954.
 6. Where important points are not brought to the notice of Jury, there is non-direction and the case is fit for retrial. 53 C. 372, 1929 C. 170=118 I. C. 351=33 C. W. N. 84, 34 C. 698.
 7. Where the only witness for the prosecution was considered hostile, the omission of the Judge to direct the Jury that there was no evidence was a serious misdirection. 56 C. 145=1928 C. 690=32 C. W. N. 872.
 8. Failure to record the summing up of law to the Jury by the Judge is not a misdirection and retrial cannot be ordered. 7 P. 361=1928 P. 420=111 I. C. 308, 47 C. 795, 1927 C. 460, 1925 C. 926=1055.
 9. When the Sessions Judge did not explain in what the offence of theft consisted, there was no want of direction. 1923 M. 329, 30 M. 44 Dist.
 10. Omission to put all the suggestions of the defence counsel to the Jury is not non-direction, if the case for the defence is fairly put. 1924 C. 257=81 I. C. 353=25 Cr. L. J. 817.
 11. Non-direction as to facts constituting a lesser offence is not a misdirection. 1922 P. 321=64 I. C. 671.
 12. Where the charge to Jury contained no caution as regards the weight and efficacy to be given to a dying declaration, the verdict of Jury and sentence must be set aside. 1930 C. 754=34 C. W. N. 792.
 13. If direction to ignore irrelevant evidence is not given, it amounts to misdirection. 1929 C. 617=119 I. C. 193=30 Cr. L. J. 993.
 14. Where accused pleaded self-defence to prevent robbery, the omission to expound the law on the right of private defence of property amounts to misdirection. 1924 C. 776=83 I. C. 528.
 15. Judge cannot omit to draw the attention of Jury to a possible defence ignored by the defence counsel. 1924 C. 257=81 I. C. 353=25 Cr. L. J. 817.
 16. Where the Judge did not tell the Jury that they may draw unfavourable inference against the prosecution for its not producing material witnesses and did not draw

ry—(contd.)

their attention to discrepancies in the statement of principal witnesses, it amounts to misdirection. 61 I. C. 1003=1921 C. 257=25 C. W. N. 142, 1930 C. 708=34 C. W. N. 1151, 1930 C. 481=127 I. C. 767.

17. Omission to ask the Jury to consider the case of each accused individually amounts to misdirection. 53 C. 372.
18. Omission to point out variation in the first information report and subsequent evidence is a misdirection. 1925 C. 729=87 I. C. 833=26 Cr. L. J. 1039.
19. Where one of the witnesses is himself suspected of being implicated in the offence, the omission to direct the Jury not to accept his evidence without the most careful scrutiny amounts to serious misdirection. 52 C. 223.

20. Number of—. S. 326, Cr. P. C. See Choosing of—.

1. In a murder case only 14 Jurors were summoned of whom eleven attended and seven were empanelled. Held, that not less than 18 Jurors ought to have been summoned and the trial is vitiated. 56 C. 1154, 1928 C. 645=55 C. 794, 122 I. C. 558=31 Cr. L. J. 426. See 57 C. 1228.
2. Provisions about the number of Jurors are imperative, as it relates to the constitution of a valid forum. 54 C. 1026.
3. The intention of the legislature is to have greater chance for good Jurors to be chosen. 57 C. 1223.
4. Where only 3 Jurors attended, the Judge summoned Jurors from the town on the day fixed for trial. The procedure is illegal. 55 C. 835, 7 C. W. N. 188.
5. If the case is triable by Jury of nine and the Judge only had seven the trial is vitiated. 1930 C. 716=34 C. W. N. 735.
6. Deficiency of Jurors cannot be made good from persons not present in Court. 113 I. C. 328.
7. Summoning less number of Jurors does not vitiate trial. 10 P. 107, 57 C. 1228.

21. Objection to—. Ss. 277 to 279, Cr. P. C.

1. An objection that there was litigation pending between accused's master and the Juror's, should be allowed. 7 P. 50=1928 P. 31=104 I. C. 459.
2. Provided there is lottery, the choosing of literate men on the suggestion of parties is not illegal. 1930 C. 437=51 C. L. J. 352.
3. If the Judge instead of hearing and deciding objections, proceeded to exempt some persons on their own representation, the procedure is illegal. 7 C. W. N. 188.
4. The fact that Juror is clerk in a Magistrate's office is not sufficient to disqualify him. 7 C. 42.
5. Judge has a wide discretion in accepting or overruling objections. 1925 C. 798.
6. Objections should be raised before hearing of appeal. 1932 P. 302.

22. Opinion of—. S. 307, Cr. P. C.

1. The opinion of Jury means nothing more than the verdict of the Jury. It does not mean the reasons on which the verdict is founded. 35 C. 629, 51 C. 347, 29 M. 91, 18 C. W. N. 615, 3 P. L. T. 413.
2. The Judge should take the reasons of the Jury for the view taken by them, especially when there is some inconsistency in their verdict. 36 C. 629, 6 P. L. T. 264.
3. If the case entirely depends on circumstantial evidence and the Jurors are divided, the Judge should ascertain from the Jurors the reasons for their opinion. 1 P. L. T. 657, 3 P. L. T. 413.
4. The High Court should give more weight to the opinion of the Sessions Judge supported by reason than that of Jury. 55 C. 879, 81 I. C. 305.
5. In case of disagreement among the Jury, the individual opinion of members should never be disclosed. 1925 O. 746=89 I. C. 386, 36 M. 858.

23. Power of High Court—.

1. The whole case is open to High Court when hearing a reference under S. 307. 47 B.

Jury—(contd.)

31, 1928 P. 596=115 I. C. 229.

- 2 The High Court cannot consider any question on which the Judge and Jury are agreed. 41 C. 662.
 3. If the verdict of Jury is unanimous and is neither perverse nor manifestly wrong, the High Court should not reopen the matter. 46 A. 265.
 4. The High Court should give the weight to the opinion of Jury and the Judge. 41 C. 754, 15 C. 209, 29 C. 128, 17 C. W. N. 1077.
 5. The High Court is not bound by the opinion of the Judge and the Jury. 45 M. L. J. 406, 11 C. W. N. 715, 36 C. 629, 15 B. 452.
 6. The High Court cannot consider any question on which the Judge had accepted the verdict of Jury, although he disagreed with them. 50 C. 41.
 7. High Court can under S. 307 read with S. 238 convict an accused for a minor offence although he was not charged with the same. 22 C. 1006, 37 C. L. J. 34. See 41 C. 662.
 8. Where the common object in a case under S. 147, I. P. C., is not established, the High Court on a reference under S. 307 cannot invent another common object in order to support the conviction. 51 C. 271.
 9. No appeal lies from the judgment passed by High Court on a reference under S. 307, 29 C. 286.
 10. High Court sitting under S. 307 is not a Court of appeal. 50 A. 625.
 11. The real test for the High Court whether to interfere or not, is to see whether it was not possible for the Jury to have arrived at the verdict at which they have arrived. 1924 C. 956=82 I. C. 356=25 Cr. L. J. 1284.
 12. High Court can revise the verdict even if it is not alleged that there has been misdirection or misunderstanding by the Jury of the law as laid down by the Judge. 50 A. 625, 6 L. 98=1925 L. 401=88 I. C. 857.
 13. If the Judge refuses to refer the matter under S. 307, the High Court has no power to interfere, however wrong or absurd the verdict may be. 14 M. 36, 4 M. L. T. 483.
- 24. Procedure where Jury differ. S. 302, Cr. P. C.**
1. A Judge can ask the jury, if they are not unanimous, to retire for further consideration *before* the delivery of verdict, but cannot do so *after* its actual delivery. 36 M. 385.
 2. If the verdict is absurd, the Judge can ask them to reconsider it. 57 C. 61, 1 W. R. 50.
 3. A Jury can be asked to reconsider, when they are not unanimous. 5 C. 671, 7 W. R. 22, 3 L. B. R. 75, 6 Bom. L. R. 258.
 4. If the Jury is unanimous, and there is no ambiguity in the verdict, the Judge cannot require them to reconsider it. 19 B. 735, 20 B. 215.
 5. When Jury brought in a verdict, the Judge charged them again and then they gave a second verdict. Held, that the procedure is illegal. 1928 C. 228=107 I. C. 90.
- 25. Questioning by Judge. S. 303, Cr. P. C.**
1. If the trial is for the murder of two persons, the Judge should put questions to Jury whether the verdict is with regard to one or both. 22 C. 377.
 2. The Judge is entitled to question the Jury as to their verdict if it is ambiguous or incomplete. 36 M. 585, 20 B. 215, 15 C. 452, 32 C. 759, 21 C. 955.
 3. Where the Jury gave verdict under Ss. 147 and 148, I. P. C., against the accused but gave no verdict under Ss. 325-326, I. P. C., the Judge should question them as to their verdict. 50 C. 658.
 4. If the Jury leaves it uncertain what the common object of unlawful assembly was, the Judge should ascertain that under S. 303, Cr. P. C. If he does not do so, the verdict is bad in law. 21 C. 955.
 5. If the form of verdict is wrong, the trial is not vitiated. 1930 C. 717=34 C. W. N. 901.

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6. Where the verdict is general and complete and free from ambiguity, the Judge is not competent to put questions to the Jury. 9 C. 53, 15 B. 452, 28 E. 412, 27 C. W. N. 626.
7. When the Jury have delivered a verdict, Judge cannot ask them to reconsider it. He can question them to ascertain what their verdict really is. 4 L. 382, 30 M. 585, 1925 C. 250=85 I. C. 372, 7 L. E. R. 140.
8. If the Jury are not unanimous, the Judge should not make enquiries to learn the nature of the majority and its opinion. 10 C. 140.
9. If the verdict is unanimous, Judge cannot ask the reasons of the verdict. 43 M. 744, 9 C. 53, 6 Bom. L. R. 258, 22 M. L. J. 355, 1930 C. 443=127 I. C. 79=31 Cr. L. J. 1150, 7 P. 55, 86 I. C. 712, 58 I. C. 829, 15 C. W. N. 198.
10. The questions put to the Jury and the answers given by them must be recorded. 8 C. 739, 12 Cr. L. J. 140.
11. In case of disagreement, the individual opinion of Jurors must not be disclosed. 36 M. 853, 1925 O. 716=89 I. C. 386.
12. If the Jury is silent about the charge of murder although they gave the verdict to a charge under Ss 120-B and 354, I. P. C., retrial for a charge under S. 302 could be ordered. 1924 C. 809=81 I. C. 824.
13. Where the verdict is confused and unintelligible, it is the duty of the Judge to obtain from the Jury a proper and correct verdict. 1926 C. 893=46 I. C. 270=27 Cr. L. J. 926.
14. From the answers given by Jury, it appeared that they did not understand the law on the point. They asked the Judge to read to them the law and then retired. They returned a unanimous verdict. Held, the Judge was bound to accept it. 4 R. 488=1927 R. 68=99 I. C. 1013=28 Cr. L. J. 213.
15. The Jury when asked their opinion on a part of the case, informed the Judge that they omitted to consider it. The Judge sent the Jury back, which afterwards returned a verdict of guilty. Held, that the procedure is legal. 1927 A. 721=105 I. C. 662=28 Cr. L. J. 950.
16. The Judge can question the Jury if the verdict is ambiguous or defective. But he cannot address them again on law point and ask them to reconsider it. 1931 M. 775=134 I. C. 956.

Jury—(contd.)

9. When a case is referred to under S. 307, Cr. P. C., the trial does not end, until the High Court either convicts or acquits the accused. 9 A. 420.
10. It is in the discretion of the Sessions Judge to submit the case to the High Court. His failure to submit is not a subject for interference by the High Court on appeal. 6 P. 817=1928 P. 120=106 I. C. 673, 1924 C. 47 (1925 C. 795 and 13 M. 343 Dist.)
11. In a reference under S. 307 it is not sufficient to show that another Jury might have formed a different opinion. What the prosecution has to show is that no reasonable body of men would have returned the verdict complained of. 1925 P. 565=77 I. C. 17=27 Cr. L. J. 1041, 1930 P. 174=119 I. C. 893, 13 M. 343, 1927 P. 313.
12. The fact that Sessions Judge takes a different view of the evidence from that which the Jury took is no ground for reference under S. 307. 1930 P. 203=120 I. C. 290=31 Cr. L. J. 54, 1929 C. 737=124 I. C. 523.
13. If the Judge thinks that accused should have been convicted for lesser offence, he can make a reference under S. 307. 1927 N. 114=117 I. C. 234=30 Cr. L. J. 793, 1923 C. 101=73 I. C. 770.
14. Where the Jury disregard the warning as regards the grave defects in the case, the reference under S. 307 is competent. 1928 C. 243.
15. If the case against accused depends entirely on circumstantial evidence and the Jurors are divided, the Judge ought, before making a reference to the High Court, to ascertain their reasons for their opinion. 55 I. C. 294=21 Cr. L. J. 278, 35 P. W. R. 1915 Cr., 18 C. W. N. 612.
16. On a reference under S. 307, High Court has all the powers of an Appellate Court. 24 I. C. 601=15 Cr. L. J. 513.
17. The reference should show the reasons for convicting the accused in the same manner as if the Judge were to write a judgment. 50 A. 540.
18. Reference under S. 307 should be complete in itself, so that it may not be necessary to refer to the order sheet. 66 I. C. 180=25 C. W. N. 682.
19. A judge of the Judicial Commissioner's Court of Sind sitting in Sessions has no power to differ from the verdict of the Jury and refer the case to the Court in its High Court jurisdiction. 1925 S. 34=77 I. C. 604=25 Cr. L. J. 423.
20. If some charges are triable with the aid of assessors and others with Jury, the Judge has no discretion to refer the whole case to High Court. 1932 M. 512.
21. High Court can disregard and set aside a verdict of Jury if it is perverse and convict the accused. 1935 A. 970.
27. **Retrial after discharge of—** S. 308, Cr. P. C.
 1. If the Jury is discharged in the course of a trial for misconduct the Judge should hold a fresh trial before another Jury. 50 C. 872.
 2. An accused who is retried under S. 308 is not "tried again" within the meaning of S. 403, Cr. P. C., but is being tried of the original indictment. 41 C. 1072.
 3. S. 308 provides that making entry to the effect that the accused should not be retried amounts to an acquittal. 1929 S. 145=118 I. C. 195=30 Cr. L. J. 877.
 4. In an order under S. 308, the Judge cannot pass remarks implying the guilt of the accused. 1929 S. 145=118 I. C. 195.
 5. If the case is tried by Jury and retrial is ordered by appellate Court, the case should not be heard without Jury unless justified by exceptional circumstances. 1935 P. C. 122=156 I. C. 3=36 Cr. L. J. 978.
28. **Trial by—of offence triable with Assessors.** S. 536, Cr. P. C.
 1. The trial by Jury of an offence which is triable with the help of Assessors is not necessarily invalid. The objection should be raised in trial Court and not in appeal. 1930 M. W. N. 776, 33 Bom. 423.
 2. If a case triable by Jury is tried with Assessors, the trial is not invalid and the objection should be raised in the trial Court. 23 M. 632.

Jury—(contd.)

3. Jury returned a verdict of not guilty on a charge under Ss. 434, 392 and 397 but found the accused guilty of causing hurt with deadly weapon, an offence triable by Judge only with Assessors. Held, that conviction should not be set aside unless there was miscarriage of justice. 1923 M. 275=103 I. C. 214=2 Cr. L. J. 351, 26 M. 243 Dist.
4. If accused are charged with offences, some of which are triable by Jury and some with Assessors, the Judge should follow the procedure in S. 309, Cr. P. C., and convict or acquit the accused on charges triable by Assessors and refer the case to High Court, if he disagrees with the Jury. 1932 Bom. 61=135 I. C. 495, 9 Bom. L. R. 1057, 36 M. L. J. 452
5. In a trial by Jury and Assessors case, if the Judge disagrees with Jury sitting as Assessors also, the Judge should refer the whole case to High Court. 62 M. L. J. 571.

29 Transfer of cases triable by Jury to non-Jury District. See Transfer (Grounds of.)

30. Verdict of—. See—10.

A. Amending. S. 304, Cr. P. C.

1. Where the Jury commits a mistake in understanding the law the verdict cannot be amended by Jury, but the case must be referred under S. 307. 28 Bom. 412.
2. Where the Jury was charged before all the witnesses for the defence were examined and the Jury returned a verdict of guilty. The remaining witnesses were examined and again the Jury returned a verdict of guilty. Held, that both the verdicts are illegal. 4 L. 382.
3. The power of amending a verdict must be exercised before or immediately after it is recorded. 6 P. R. 1913.
4. Where verdict is not clear or definite, it may be sent back to Jurors for clear one. 1934 O. 34=147 I. C. 689.
5. The Judge is entitled to tell the Jury to consider the matter once again if the verdict is absurd. 57 C. 61.
6. After the Jury has left the box and verdict had been recorded, it would be improper for Judge to listen to any application to amend the verdict. 58 C. 1138.

B. Binding nature of—. S. 306, Cr. P. C.

1. The Judge in passing sentence upon the accused should not give weight to what ever doubts he personally entertained. Having accepted the verdict, he is bound to award punishment. 8 P. 344=1929 P. 313=117 I. C. 173
2. The disagreement referred to in S. 306 must be sufficient to impel the Judge to take action under S. 307. 8 P. 344.
3. If once the Judge agrees with it, he cannot afterwards disagree with the verdict and refer it to High Court. 4 C. W. N. 683.
4. Judge thinking verdict of Jury wrong but not expressing disagreement, can give judgment without referring to High Court. 1935 B. 165=57 B. L. R. 109.
5. Accused was charged under Ss. 302—201. He agreed with Jury on murder charge but disagreed with assessors on a charge under S. 201 and convicted the accused. Held, his action was right. 1935 B. 165.
6. Verdict after discharge of jury is not competent. 1934 P. C. 227.

C. Reasons for—.

1. If the verdict is unanimous, the Judge cannot ask the reasons of the verdict. 43 M. 744, 9 C. 53, 6 Bom. L. R. 55, 86 I. C. 712, 58 I. C. 829, 15 C. W. N. 198, 7 P. 55=109 I. C. 114=1928 P. 203
2. Where in the opinion of the Judge the unanimous verdict of Jury is manifestly wrong, he ought to ask the Jury to state their reasons for disbelieving the prosecution evidence and ought to record it for the information of the High Court. 1929 N. 84=114 I. C. 458=30 Cr. L. J. 310, 1926 N. 305=95 I. C. 309, 36 C. 629, 41 C. 621, 64 I. C. 379.

Jury—(contd.)

9. When a case is referred to under S. 307, Cr. P. C., the trial does not end, until the High Court either convicts or acquits the accused. 9 A. 420.
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 2. If a case triable by Jury is tried with Assessors, the trial is not invalid and the objection should be raised in the trial Court. 23 M. 632.

ry—(contd.)

3. Jury returned a verdict of not guilty on a charge under Ss. 434, 392 and 397 but found the accused guilty of causing hurt with deadly weapon, an offence triable by Judge only with Assessors. Held, that conviction should not be set aside unless there was miscarriage of justice. 1928 M. 275=103 I. C. 214=2 Cr. L. J. 351, 26 M. 243 Dist.
4. If accused are charged with offences, some of which are triable by Jury and some with Assessors, the Judge should follow the procedure in S. 309, Cr. P. C., and convict or acquit the accused on charges triable by Assessors and refer the case to High Court, if he disagrees with the Jury. 1932 Bom. 61=135 I. C. 495, 9 Bom. L. R. 1057, 36 M. L. J. 452
5. In a trial by Jury and Assessors case, if the Judge disagrees with Jury sitting as Assessors also, the Judge should refer the whole case to High Court. 62 M. L. J. 571.

29. Transfer of cases triable by Jury to non-Jury District. See Transfer (Grounds of.)

30. Verdict of—. See—10.

A. Amending. S. 304, Cr. P. C.

1. Where the Jury commits a mistake in understanding the law the verdict cannot be amended by Jury, but the case must be retried under S. 307. 28 Bom. 412.
2. Where the Jury was charged before all the witnesses for the defence were examined and the Jury returned a verdict of guilty. The remaining witnesses were examined and again the Jury returned a verdict of guilty. Held, that both the verdicts are illegal. 4 L. 382.
3. The power of amending a verdict must be exercised before or immediately after it is recorded. 6 P. R. 1913.
4. Where verdict is not clear or definite, it may be sent back to Jurors for clear one. 1934 O. 34=147 I. C. 689.
5. The Judge is entitled to tell the Jury to consider the matter once again if the verdict is absurd. 57 C. 61.
6. After the Jury has left the box and verdict had been recorded, it would be improper for Judge to listen to any application to amend the verdict. 58 C. 1138.

B. Binding nature of—. S. 306, Cr. P. C.

1. The Judge in passing sentence upon the accused should not give weight to whatever doubts he personally entertained. Having accepted the verdict, he is bound to award punishment. 8 P. 344=1929 P. 313=117 I. C. 173
2. The disagreement referred to in S. 306 must be sufficient to impel the Judge to take action under S. 307. 8 P. 344.
3. If once the Judge agrees with it, he cannot afterwards disagree with the verdict and refer it to High Court. 4 C. W. N. 683.
4. Judge thinking verdict of Jury wrong but not expressing disagreement, can give judgment without referring to High Court. 1935 B. 165=37 B. L. R. 109.
5. Accused was charged under Ss. 302—201. He agreed with Jury on murder charge but disagreed with assessors on a charge under S. 201 and convicted the accused. Held, his action was right. 1935 B. 165
6. Verdict after discharge of jury is not competent. 1934 P. C. 227.

C. Reasons for—.

1. If the verdict is unanimous, the Judge cannot ask the reasons of the verdict. 43 M. 744, 9 C. 53, 6 Bom. L. R. 55, 86 I. C. 712, 58 I. C. 829, 15 C. W. N. 198, 7 P. 55=109 I. C. 114=1928 P. 203
2. Where in the opinion of the Judge the unanimous verdict of Jury is manifestly wrong, he ought to ask the Jury to state their reasons for disbelieving the prosecution evidence and ought to record it for the information of the High Court. 1929 N. 84=114 I. C. 458=30 Cr. L. J. 310, 1929 N. 305=95 I. C. 309, 36 C. 629, 41 C. 621, 64 I. C. 379.

Jury—(concl'd.)

3. If the Jury says "we give him the benefit of doubt and we can give no other reason," it cannot be said that their reasons are inadequate. 1925 C. 525=86 I. C. 43=26 Cr. L. J. 805=41 C. L. J. 35.
4. If there is some inconsistency in the verdict, the Judge should consider the reasons the Jury. 36 C. 629, 6 P. L. J. 264.
5. If the case depends entirely on circumstantial evidence and the Jurors are divided in opinion, the Judge ought, if he intends to make a reference to the High Court to ascertain from the Jurors the reasons for their opinion. 1 P. L. T. 657, 3 P. L. T. 413.

D. Recommendations in—.

Recommendations made by jurors in their verdict is not a part of the verdict and should not be treated as such. 1934 O. 34=147 I. C. 689.

E. Setting aside of—. See Interference in verdict of—.

1. High Court will set aside an unreasonable verdict not justified by the evidence. 11 I. C. 207=1929 O. 280, 52 C. 987.
2. High Court is not bound to act in accordance with the unanimous verdict of Jury although it is not shown to be perverse or clearly and manifestly wrong. 1922 P. 348=67 I. C. 581=23 Cr. L. J. 421.
3. Unless misdirection occasioned failure of justice, the verdict will not be set aside. 1922 C. 106=71 I. C. 367=26 C. W. N. 558.
4. The mere fact that the question was put to Judge by Jury not in open Court but in chambers is not sufficient to set aside verdict. 77 I. C. 231=1923 C. 647=22 Cr. L. J. 343.
5. The High Court will not set aside a unanimous verdict of Jury unless patently wrong or perverse or may have been induced by an error of the Judge. 20 Bom. 215, 46 A. 265, 9 C. 53, 15 Bom. 452, 10 Bom. 497, 9 A. 420.
6. For setting aside a verdict under S. 537 (d) there must be reasonable ground for apprehending that the misdirection may have affected the Jury's verdict. 1926 A. 429=95 I. C. 385=27 Cr. L. J. 785.
7. If the Judge charges Jury and takes verdict as regards some of the accused and then hears arguments and takes verdict as regard remaining accused, it should be set aside. 36 M. 385.

JUVENILE OFFENDERS. See First Offender Reformatory Schools Act.

1. Confinement of—in Reformatories. S. 399, Cr. P. C.

1. Where no Reformatories have been established, but reformatory schools, the Court should proceed under the Reformatory Schools Act and not under S. 399, Cr. P. C. 12 M. 94.
2. Introduction of Reformatory Schools Act repeals the operation of S. 399, Cr. P. C. 12 M. 94.
3. S. 399 does not apply to Punjab where the Reformatory Schools Act is in force. 17 P. R. 1918 Cr.
4. Where there is no sentence of imprisonment, an order under S. 399 cannot be passed. 34 P. R. 1910 Cr.
5. The period of detention in the Reformatory School should be a definite period. 15 Bom. L. R. 306.

2. Jurisdiction to try—. S. 29-B, Cr. P. C.

1. In view of the provisions of S. 29-B, a Magistrate other than a District Magistrate has no jurisdiction to try an offence under S. 130, Railways Act. 1928 L. 939=29 P. L. R. 536=110 I. C. 589=29 Cr. L. J. 733, 43 Bom. 888 Diss. from.
2. S. 29-B authorizes the Magistrate in charge of the Central Children Court to try all offences other than those punishable with death or transportation for life. It cannot try a case under S. 304, I. P. C. 36 C. W. N. 164.
3. It is within the discretion of the Magistrate to try a lad of fifteen under the provi-

Juvenile Offenders—(concl'd.)

sions of the Code or send him to a Magistrate specially empowered. 1931 Bom. 198=131 I. C. 476.

4. Offence under S. 304, I. P. C., is not triable by a Magistrate incharge of Central Children Court. 1932 C. 487.
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4. Sending to jail.

A first offender of immature age should not be sent to jail for he will become a hardened criminal by associating with convicts. 1930 L. 424=126 I. C. 578=31 Cr. L. J. 1076.

K**KALMA OATH.** See Oaths Act.

1. There is no legal authority to give Kalma oath to witness. 27 P. R. 1903 Cr.
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KEY. See False key. See S. 27, I. P. C.

1. If the Magistrate hands over key of a house under S. 517, Cr. P. C., to any person, it amounts to delivery of possession under S. 517, Cr. P. C. 1931 L. 527=132 I. C. 202=32 Cr. L. J. 847.
2. In a house occupied by a joint Hindu family, a locked bag containing stolen property was found, the key of which was produced by the wife of a member who was not in the house at that time. Held, that husband was not guilty under S. 411, as it cannot be presumed that it is *per se* the possession of the husband. 1922 A. 83=67 I. C. 338=23 Cr. L. J. 386.

KHATIKS.

Divorce among Khatiks—low class Hindus—is recognised. 181 P. L. R. 1914.

KICK.

1. Death by—. See Culpable Homicide—17, Murder—31.
2. In spleen. See Hurt—22. See Spleen.

KIDNAPPING. Ss. 361—363, I. P. C.**1. Abetment.**

1. Abetment is not possible after the minor is taken out of the keeping of lawful guardian. 6, 7, 8 P. R. 1894 Cr., 13 P. R. 1904 Cr., 55 P. L. R. 1916.
2. Concealing an abducted person is not abetment of kidnapping. 7 P. R. 1894 Cr.
3. Where a Hindu woman left her husband's house, taking with her, her minor daughter for marrying her to the brother of accused in pursuance of previous arrangement between her and the accused, the accused was guilty of abetment. 8 C. 969.
4. If A removes a minor from the house of B to his own house and then C joins him to remove the minor to a greater place of security, C is not guilty of abetment. 27 C. 1041, 26 A. 197, 18 A. 350, 26 M. 454, 5 P. 536.
5. A person whose tonga is used for abducting a girl is only accessory after the fact and is not guilty unless a previous conspiracy is proved. 1930 L. 163=31 Cr. L. J. 131.
6. Conveying a kidnapped person from place to place after the offence is complete, is not abetment. 13 P. R. 1893 Cr., 6 P. R. 1894 Cr.

2. Accessory in—. See Accessory.**3. Age of girl—. See Age.**

1. It is for the prosecution to prove that girl is under 16 years. 133 I. C. 560=1931 L. 401=32 P. L. R. 98=32 Cr. L. J. 1041.
2. The belief of the accused that girl is over 16 years is no defence. 30 Cr. L. J. 218=113 I. C. 765=1929 A. 82=19 H. L. J. 114, 1929 P. 651.

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Kidnaping—(contd.)

3. If a girl below 18 and above 16 is kidnapped from lawful guardianship of the husband, accused is not liable under S. 363. 1933 B. 417.
4. **Applicability of S. 363.**
 1. S. 363 applies to married and unmarried female minors. 12 P. R. 1879 Cr.
 2. S. 363 does not apply when the girl abducted is not in charge of any one. 27 P. R. 1901 Cr.
 3. Kidnaping of minor wife by husband from her father's home is not possible. P. W. R. 1906 Cr., p. 14.
5. **Charge.**
 1. The charge for kidnapping should be so clear that the accused and his counsel may clearly understand it. 81 I. C. 80=1923 A. 245.
 2. Where the complaint did not show that the girl was minor and there was no evidence under S. 363, but the Magistrate framed a charge under S. 493. A conviction cannot stand. 1928 L. 548=110 I. C. 794=29 Cr. L. J. 762.
 3. Where the accused is charged with kidnapping or abduction it is defective. 1927 C. 644=28 Cr. L. J. 805, 1933 C. 194=34 Cr. L. J. 1107.
6. **Complaint.**

A minor brother is not the guardian of his sister and hence cannot institute a complaint of kidnapping of his sister. 1921 L. 316=67 I. C. 831. See 1929 L. 835.
7. **Consent of guardian.**
 1. Removing minor with the consent and subsequently by marrying her improperly without the consent of guardian is not kidnapping. 36 M. 453.
 2. Consent given by guardian after the commission of the offence is of no avail, nor the consent given by a temporary guardian in collusion with the accused. 31 A. 448=6 A. L. J. 682=10 Cr. L. J. 295=3 I. C. 480.
 3. Connivance of mother at the seduction of her daughter amounts to consent. 18 I. C. 669=14 Cr. L. J. 109.
 4. Consent of third person in charge of minor for a limited purpose and for a limited time is insufficient. 3 L. 213=1922 L. 380=68 I. C. 620=23 Cr. L. J. 588.
 5. Father pledged his minor daughter to a creditor, who pawned her for a loan. She was recovered by her father through Police. Held, that no offence of kidnapping is committed. 1929 P. 316=119 I. C. 72=30 Cr. L. J. 980=11 P. L. T. 326.
 6. A consent given under misrepresentation of fact is no consent. 36 M. 453, 17 P. R. 1916 Cr.
 7. If an elder sister takes a minor girl from the house of the mother to take her to a mill, to help her to carry flour, the taking is taken to be with the consent of the mother. Any person taking her from the elder sister commits an offence under S. 363. 1931 L. 53=130 I. C. 782=32 Cr. L. J. 615, 6 P. 471.
8. **Consent of minor.**
 1. The consent of girl does not exonerate the seducer. The underlying policy of law is to protect the minor and uphold the authority of parents and guardians over their minor wards. 1930 A. 19=120 I. C. 433=31 Cr. L. J. 85, 1929 A. 709=119 I. C. 14=30 Cr. L. J. 985, 19 I. C. 149, 17 P. R. 1916 Cr.
 2. The consent of a girl to Rakshasa marriage does not exonerate the accused for previous abduction. 1927 N. 279=103 I. C. 195=28 Cr. L. J. 659.
 3. The consent of the girl has a great bearing on the question of sentence. 1926 L. 677=96 I. C. 874=27 Cr. L. J. 1018, 1926 L. 547=95 I. C. 931=27 Cr. L. J. 851.
 4. When a girl under S. 16, left her husband and meeting the accused on her way, voluntarily stayed with him for a few days without fraud or force, the accused is not guilty of kidnapping or abduction. 12 A. L. J. 265=23 I. C. 473, 37 A. 624.
9. **Continuing offence.**
 1. The offence of kidnapping is complete as soon as a girl under 16 is actually taken

Kidnapping—(contd.)

out of the custody of lawful guardian and it does not continue until she returns to her guardian. 38 A. 664, 64 I. C. 842, 5 P. 536=1926 P. 493, 27 C. 1041, 26 M. 454, 2 C. W. N. 81, 26 A. 197, 1930 O. 289, 6 P. 471, 1931 L. 53=32 Cr. L. J. 615, 1 M. 173, 38 A. 664 *Contra* 57 A. 140.

2. Whether the taking of a minor girl out of the custody of her lawful guardian is or is not complete depends on the circumstances proved in the case. 55 P. L. R. 1916=25 P. W. R. 1916 Cr., 5 P. 536=1926 P. 493, 6 P. 471=1923 P. 159=104 I. C. 436=28 Cr. L. J. 820.
3. So long as minor can at will take advantage of guardian's protection the relation between the minor and the guardian implied by the word lawful guardian is not dissolved. 14 Cr. L. J. 439=20 I. C. 599, 1929 S. 249 (2)=1929 Cr. C. 543.
4. Where A enticed a girl to come to road and then to a car when B drove her away Held, that B is guilty of kidnapping and the offence was completed by A driving her off. 1928 P. 159=104 I. C. 436=6 P. 471.
5. When after inducement offender offers girl to several persons, fresh offence under S. 366-A, is not committed at every fresh offer of sale. 51 A. 888=1929 A. 585.
6. Kidnaping is not a continuing offence. 13 P. R. 1893 Cr., 6, 7, 8 P. R. 1894 Cr., 1 P. R. 1901 Cr., 13 P. R. 1904 Cr., 27 C. 1041, 26 M. 454, 5 P. 536=1926 P. 493=95 I. C. 392 *Contra* 1931 A. 55.

10. Conviction of guardian.

S. 361 Explanation cannot be used to mean that as against a civil guardian a *de facto* guardian can be set up to convict the real civil guardian. 58 C. 897=1931 C. 446.

11. Essentials and Evidence.

1. A Chamar minor girl left the custody of her husband and stopped with a person who sold her to somebody and afterwards married her. Held, that the accused is neither guilty under S. 363 nor S. 372. 37 A. 624, 2 A. 694, 12 A. L. J. 265. See 40 A. 507.
2. The belief of the accused that the girl is over 16 years is no defence. 113 I. C. 765=1929 A. 82=30 Cr. L. J. 218=1929 A. L. J. 114, 1929 P. 651.
3. It is not necessary for a conviction under S. 363 that accused should know definitely as to who is the guardian of a minor girl wandering about whom he uses for his own ends. 1924 O. 335=81 I. C. 529=27 O. C. 32=25 Cr. L. J. 913.
4. Prosecution need not prove that the minor was actually taken from the custody of the guardian. It is sufficient if she was in a position to apply for his protection. 1929 S. 249 (2), 14 A. L. J. 792.
5. The *onus* is on the accused to prove circumstances constituting exception to S. 361, I. P. C. 27 P. R. 1887 Cr.
6. S. 363 does not apply when the girl kidnapped is not in charge of any one. 27 P. R. 1901 Cr.
7. Father marrying girl to a minor, keeping her with him and subsequently passing her to another family is not guilty under S. 363. 161 P. L. R. 1914.
8. Where the accused seduced a minor married girl, who was then with a prostitute and carried her from place to place. Held, that the accused was not guilty as the girl was already with the prostitute. 2 C. W. N. 81, 12 A. L. J. 265, 26 A. 197, 5 P. 536=1926 P. 493=7 P. L. T. 812=95 I. C. 392=27 Cr. L. J. 792.
9. Where a cooly girl living with her mother was induced by a woman to accompany her on the understanding that she would find work for her. She was driven in the evening to an empty house where accused cohabited with her for two days. Held, the woman is guilty under S. 363 and accused under S. 363, I. P. C. 6 Bom. L. R. 785=1 Cr. L. J. 931, 14 A. L. J. 792, 40 A. 507.
10. If the accused induced a minor girl to leave her father's house promising to keep her and making other promises and she left. Held the accused is guilty under S. 363. 20 I. C. 599=14 Cr. L. J. 439.
11. Where a girl was betrothed to the accused, who took her off to his house without using force and did not conceal her. Held, he is guilty as he carried her off without

Kidnapping—(contd.)

28. There is nothing in the definition of the offence of kidnapping from lawful guardianship which requires the prosecution to prove that the accused knew that the minor had a lawful guardian. 27 P. R. 1887 Cr.

12. Intention.

1. For kidnapping the intention to prevent the kidnapped girl from returning to her guardian is not necessary. 69 I. C. 444=23 Cr. L. J. 715.
2. Motive or intention has nothing to do with the offence of kidnapping but has great bearing on punishment. 31 A. 448, 161 P. L. R. 1914.

13. Jurisdiction.

1. A person kidnapped outside British India and conveyed into British territory cannot be tried by British Courts. 1 P. R. 1901 Cr., 20 C. W. N. 62=33 I. C. 304, 7 S. L. R. 17.
2. The offence may be tried in Court within whose jurisdiction the person kidnapped was kidnapped, or was concealed or detained. 1883 A. W. N. 164.
3. A Magistrate should not give himself jurisdiction by trying cases under S. 363 which really fell under S. 366. (1901) 1 U. B. R. 328.

14. Lawful guardian.

A. General.

1. Lawful guardian includes a *de facto* guardian whose guardianship is not against the wishes of the husband of the minor. 10 I. C. 281=12 Cr. L. J. 239.
2. A master is not lawful guardian of his minor servant. "Lawfully entrusted" means handing over a minor to the care and custody of a person. 49 I. C. 481=1919 P. 33=20 Cr. L. J. 161=4 P. L. J. 74.
3. The control of the guardian is not put an end to by the fact that the minor has temporarily left the guardian's house. 16 I. C. 768, 1929 S. 249 (2).
4. Where a girl lived with her maternal uncle for over a year and her paternal uncles claiming interest in properties in her name forcibly carried her away and married her. Held, that they were rightly convicted. 25 I. C. 840.
5. Where accused accompanied by the mother of the abducted girl kidnapped her from the guardianship of her maternal uncle, no offence is committed because the guardianship of the mother revived. 27 I. C. 909.
6. Lawful guardian does not include a person giving possession of the girl by offence under S. 361. 7 P. R. 1911 Cr.
7. A minor brother cannot be the guardian of his sister. 67 I. C. 831=1921 L. 316=3 L. L. J. 588, *Contra* 1929 L. 835=1929 Cr. C. 835.
8. The test of lawful guardianship is that minor should be in a position to apply to guardian for protection. 1929 S. 249 (2).
9. A person in charge of minor girl for a limited purpose and for a limited time is not a lawful guardian. 3 L. 213.
10. Where minor left the guardian with the intention of not returning to his keeping, the offence of kidnapping is not committed if she goes to any person. 87 I. C. 513=1926 C. 467=30 C. W. N. 215=26 Cr. L. J. 977.
11. Lawful guardian includes any other person with whom minor resides with the express or implied consent of the guardian. 7 P. R. 1911, 25 I. C. 840, 27 P. R. 1915 Cr., 24 M. 284, 49 I. C. 481=20 Cr. L. J. 161=1919 P. 33.
12. Lawful guardian means a person lawfully entrusted with the care or custody of minor. 24 M. 284, 3 L. 213.
13. Lawful guardian does not include a chance protector. 7 P. R. 1880 Cr.
14. Lawful guardian may be different from legal guardian. 60 P. R. 1905 Cr.
15. A husband is the lawful guardian of his minor wife and his taking his wife from the house of her father is not kidnapping. P. W. R. 1906 Cr., P. 14, 17 C. 298.

Kidnapping—(contd.)

16. A dissatisfied minor girl left her husband's house for her maternal uncle's. Accused deceitfully took her away to Aligarh and tried to pass her off as Jat. Held, he is guilty as she did not cease to be under the guardianship of her husband. 36 I. C. 580=17 Cr. L. J. 532=14 A. L. J. 792, 85 P. L. R. 1916=34 I. C. 652=17 Cr. L. J. 231.
17. Where a girl was ordered by father to take fodder for bullocks and on her way she was persuaded by accused to accompany him, it was taking out of the keeping of lawful guardian. 40 A. 507.
18. Guardian though not a *de-jure* guardian is still a guardian *de facto* if his custody is not illegal. 8 C. 971, 42 A. 146.
19. A school mistress is not a lawful guardian to give the girl in marriage. 24 M. 284, 31 A. 448.
20. The husband of a minor girl sold her to B. Accused kidnapped the girl from the custody of B. Held, B was lawful guardian under S. 361, although the act of the husband was immoral and reprehensible. 7 P. R. 1911 Cr., 8 C. 971, 2 N. W. P. H. C. R. 2-6.
21. An orphan girl accompanied a Brahmin woman. She was taken by accused without the consent of that woman. Held, there was no lawful guardianship. 2 N. W. P. H. C. R. 286.

B. Under Hindu Law.

1. Father is the natural guardian and if mother removes a girl from her father's house for giving her in marriage, she is guilty. 8 C. 969, 8 P. R. 1878 Cr.
2. After father, the mother is the natural guardian of her children. 7 W. R. 74.
3. Although paternal uncles are preferential guardians to maternal uncles but if they claim adverse interest, they are not entitled to the minor's person. 25 I. C. 840.
4. Mother is the natural guardian of an illegitimate child. 8 C. 971.
5. Husband is the lawful guardian of the girl after marriage and the father taking the girl from her husband without his consent is guilty under S. 363. 17 C. 298, 1 P. W. R. 1914 Cr.
6. In case of widows, the husband's relations are preferable guardians. 27 P. R. 1915 Cr.=31 I. C. 380=16 Cr. L. J. 780=43 P. W. R. 1915 (Cr.), 16 C. 584.
7. Though a person happens to be the nearest male relative of a Hindu minor girl, he cannot take her away without the consent of the person in whose custody she was. 54 I. C. 402=21 Cr. L. J. 50=18 A. L. J. 64.
8. The father and mother have absolute right to the custody of a minor and the nearest male relation cannot kidnap the minor from a *de facto* guardian. 42 A. 146.
9. In default of father and mother, guardianship of minors devolve on the eldest brother, who should not be minor himself. 67 I. C. 831=1921 L. 316.
10. An adoptive father has the right to custody of adopted son even as against the natural father. 3 B. 1.
11. Where the mother in good faith believed that she was entitled to the custody of her minor children a conviction for kidnapping from lawful guardianship is illegal. (1886) 1 Weir 208.
12. A husband is no doubt the guardian of his minor wife but he must institute suit and cannot use force to obtain her. He cannot be given possession of wife if she is under 14, as marriage cannot be celebrated under Child Marriage Restraint Act. 1935 A. 916=1935 Cr. C. 1133.

C Under Mohammadan Law.—

1. The mother being the lawful guardian, if a father takes away a son under 7, or a daughter under age of puberty (or under 7 if Shiah) or an illegitimate child from the custody of the mother, he is guilty. 11 C. 649, 8 A. 322, 2 A. 71, 32 C. 444, 5 P. M. L. R. 557.
2. Mother is natural guardian of her illegitimate children. 8 C. 971 and of a married daughter under 15 years. 32 C. 444, 60 P. R. 1905 Cr., 37 M. 557.

Kidnapping—(contd.)

3. In the absence of mother, mother's mother is the lawful guardian of a girl who has not attained puberty and not the husband. 73 I. C. 936=27 C. W. N. 531=1923 C. 672=24 Cr. L. J. 712.
4. According to Mohammadan Law the occurrence of puberty determines the minority and mother's right to custody, but, for S. 363 regard must be had to the definition of minority in S. 3, Indian Majority Act. 37 M. 567.
5. Mother from whose custody minor girl was removed, was proved to have married in a stranger family, the guardianship terminated and there was no offence under S. 363, I. P. C. 1930 C. 665=51 C. L. J. 476=128 I. C. 181.
6. According to Sunni School, the guardianship of mother of married or unmarried daughters continues up to puberty, viz., 15th year. But for the purpose of S. 363, it continues up to 16 years. 60 P. R. 1905 Cr.
7. Husband is not the guardian of his minor wife till she attains puberty and is fit to receive the embraces of her husband. 5 N. W. P. H. C. R. 196, 5 B. L. R. 557, 13 B. L. R. 160, 11 C. 649.

D. Under other laws. (Christians).

1. Where the Court awarded custody of a child of the union to the husband, who had obtained a decree *nisi* for divorce and the wife removed the child. Held, that her conviction for kidnapping was illegal, as the decree *nisi* against her had not been made absolute. 41 C. 714.
2. During the period of nurture or in case of illegitimate child, the mother of the infant is the proper person to keep custody. 8 C. 971.

15. Minor. See Age.

1. According to Mohammadan Law, puberty determines the minority of a girl. For S. 363 regard must be had to the definition of the Minority in S. 3 of Majority Act. 37 M. 567.
2. If the girl was under 16 years of age, the honest belief on the part of the accused that she was over 16 is of no avail, as he acted at his peril. 113 I. C. 765=1929 A. 82=30 Cr. L. J. 218, 1925 P. 651, 13 P. R. 1916 Cr.
3. Accused's belief as to the age of the minor is immaterial 1929 P. 651.
4. "Minor" includes married females. 12 P. R. 1879 Cr.

16. Of a child to take property from the person S. 369, I. P. C. See Abduction—16.

1. If kidnapping is with the intention of stealing ornaments from the person of the child, the offence falls under S. 369. The consent of the child is immaterial. (1867) 8 W. R. (Cr.) 35.
2. This being a serious offence, the Magistrate should always commit the case to the Court of Sessions (1866) 6 W. R. (Cr.) 2.

17. Procedure.

1. An appellate Court cannot alter a charge under S. 376 into one under S. 366. 8 Bom. L. R. 120.
2. Accused cannot be convicted both under Ss 366 and 363 7 W. R. 56.
3. If a Magistrate finds that a girl is over 16 years and was enticed away, he should find out if some other cognate offence is committed and should not throw out the case because girl is not minor. 1924 L. 718=95 I. C. 36.
4. After acquittal under S. 498, opposite finding on the same evidence under S. 363 is illegal. 56 P. L. R. 1911
5. A joint trial of A under S. 366 and of B under S. 368 is bad, 1933 C. 563, 1929 L. 496 *Distinguishing* 1928 L. 751 *Contra* 1932 L. 203, 1932 O. 28.

18. Sentence.

Maximum punishment should be awarded in cases of aggravated nature. (1867) 8 W. R. 3 Cr.

19. When offence is complete. See—9.

1. Whether the taking of a minor girl out of the custody of her lawful guardian is

Kidnapping—(concl'd.)

- complete depends on circumstances proved in each case. 55 P. L. R. 1916=25 P. W. R. 1916 Cr., 20 I. C. 599.
2. The offence of kidnapping is complete as soon as a girl under 16 is actually taken out of the custody of a lawful guardian and does not continue till she returns to the guardian. 36 I. C. 466=38 A. 664, 64 I. C. 842=1921 O. 226, 24 O. C. 329.
 3. The word "taking" in S. 361 means physical removal or taking away. 25 I. C. 631=15 Cr. L. J. 630.
20. With intent to forcible marriage or illicit intercourse. S. 366, I. P. C. See Abduction.
21. With intent to murder. S. 364, I. P. C. See Abduction.
22. With intent to wrongfully confine. S. 365, I. P. C. See Abduction.
23. Without guardian—waifs.
1. In the case of waifs and strays there can be no "keeping" nor taking nor enticing away as required by S. 361. 20 Cr. L. J. 161=49 I. C. 481.
 2. A girl was living with a Brahmin in a village serai and from there she went to the house of a woman who betrothed her to her son. Accused enticed her away. Held, he was not guilty, as the woman was not her lawful guardian. 2 N. W. P. H. C. R. 286, 7 P. R. 1880, Cr., 27 P. R. 1887 Cr.
24. Whether father or mother can kidnap.
1. A father who did not remove his daughter from the guardianship of any one but himself is not guilty. 24 P. W. R. 1914 Cr.=161 P. L. R. 1914.
 2. A mother can be guilty of kidnapping her child. 55 P. L. R. 1911=58 P. W. R. 1911, 8 C. 969, 8 P. R. 1876.
 3. Father taking away his unhappy daughter from her husband's home and giving her as wife to another is guilty under S. 366-A. 1930 A. 497=125 I. C. 577=31. Cr. L. J. 861.
 4. A Christian woman became Hindu. She left the house in which she was living during the absence of her husband. He demanded the children on his return, who were not handed over to him. Held, she was not guilty under S. 363. 102 I. C. 239=1927 L. 495=28 Cr. L. J. 513.

KILLING UNDER OFFICER'S ORDER. See Murder—46.

KILL. See Public Nuisance—21.

KNIFE DEATH BY—. See Wound—14-B, Culpable homicide—18.

KNOWLEDGE OF ACCUSED.

About marriage. See Enticing away married woman—13.

About the place where stolen property buried. See Receiving stolen property—12.

Proof of—

1. Knowledge of the accused can be inferred from the circumstances of the case. 1932 C. 550=139 I. C. 89=33 Cr. L. J. 657=1932 Cr. C. 887.
2. Knowledge, like intention may be proved by declaration, contemporaneous or subsequent, of the party whose knowledge is in question, where such it amounts to admission against the party. 1929 S. 250=121 I. C. 81.

L.

LACERATED WOUND. See Wound—16.

LAHAN.

Lahan is not a fermented liquor within the meaning of Excise Act. 29 P. R. 1881 Cr., 22 P. R. 1900 Cr., 10 P. R. 1901 Cr.

LAMBARDAR,

1. Confession to—. See Confession by inducement.
2. Evidence of—. See Witness—108.
3. Whether person in authority. See Confession by inducement.

LANDHOLDER—**1. Duty to give information to Police—** S. 45, Cr. P. C.

1. S. 45 does not make it incumbent on the village chaulkidar, etc., to communicate any rumour of the occurrence prevailing in the village. 1924 P. 691=81 I. C. 620=25 Cr. L. J. 972, 1900 A. W. N. 207.
2. Under S. 45 the owner of land and not of a house is liable. 53 B. 184=1929 B. 12=30 B. L. R. 157=113 I. C. 310=30 Cr. L. J. 172, 12 M. 92.
3. Where the accused did not report an accidental death of a person, who fell from a tree, it would not come within the meaning of "unnatural" as used in S. 45. 1922 N. 87=66 I. C. 1001=3 Cr. L. J. 345.
4. The report to Police must state facts. 51 C. 402=1924 C. 476=81 I. C. 220=25 Cr. L. J. 732.

2. Liability of—on whose land lawful assembly is held. S. 154, I. P. C.

1. S. 154 is a highly penal section and great caution is required before starting proceedings under this section. 39 C. L. J. 236=1924 C. 1018=82 I. C. 266=25 Cr. L. J. 1258.
2. Persons jointly connected with the land, e.g., co-widows, would be both liable. 39 C. 834.
3. A non resident partner or co-sharer, who had taken no active part in the management of the estate, is not liable. 7 C. L. J. 289, 8 C. W. N. 908.
4. The liability of the landholder does not depend upon his knowledge of the riot or the acts and intentions of his agent. 1924 C. 1018=82 I. C. 266=25 Cr. L. J. 1258.
5. A person is not guilty under S. 154, unless there is finding that the riot was premeditated. 12 W. R. 75.
6. Non-residential landholders are responsible for any dereliction of duty on the part of their agents and independently of any knowledge on their part of the acts and intentions of their agents. 28 C. 504, 12 A. 550, 4 C. W. N. 691, 3 W. R. 54, 1 A. L. J. R. 145, 39 C. 834.
7. Where the agent instead of suppressing the riot, accompanied the rioters and stood by them when riot was committed and then absconded, his master was guilty, although he had no knowledge of the riot. 28 C. 504, 39 C. 834.
8. Accused was convicted under S. 154 because a riot was committed upon his threshing floor, though the registered owner of it was his brother and the riot did not relate to the threshing floor at all. 38 I. C. 1067.
9. There should be independent proof in the case. The records in the rioting case is wholly inadmissible to convict the accused under S. 154. 7 C. W. N. 245, 7 C. W. N. 301.
10. If there is no evidence that accused had the means or influence to stop or disperse an unlawful assembly, Court cannot convict him on mere conjecture. 4 C. W. N. 691, 10 C. 338.
11. For essentials of S. 154, I. P. C. See 8 O. C. 418=3 Cr. L. J. 27.

3. Liability of agent or—for whose benefit riot is committed. Ss. 155-156, I. P. C.

1. S. 156 confers on the Magistracy power of startling magnitude and it is incumbent upon them to act not upon inference or suspicions or surmises but upon proof. 10 C. 338.
2. That a riot was committed must be proved independently in the case. The record of the riot case is inadmissible in evidence. 15 W. R. 76 Cr. 17, C. W. N. 1247.
3. It must be proved that accused claimed some interest in the land or subject of dispute. 17 C. W. N. 1247.
4. The fact that riot was sudden and unpremeditated and there was no reason to infer that accused could have anticipated or thought it likely to happen, is sufficient for his exoneration, though it may have been to his interest or benefit. 3 W. R. 54.
5. An absentee co-sharer in a Zimindari, who does not take active part in the management, is not liable after a resident co-sharer had been convicted. 8 C. W. N. 908.

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Landlord

LANDLORD.

1. Forcible entry by—. See Forcible entry—1.

2. Trespass by—. See Criminal Trespass—11.

3. Wrongful restraint by—. See Wrongful restraint—3.

LAND MARK. (Altering). S. 434, I. P. C. See Mischief—2.

LAND OWNER. See Landholder, Landlord.

LATRINE IN A PRIVATE PLACE. See Public Nuisance—32.

LAWFUL GUARDIAN. See Kidnapping—14.

LAW REPORT. See Judicial notice—6.

LEADING QUESTIONS. Ss. 140—143, Evidence Act.

1. Leading questions be asked if they are not objected to by the other party. 56 M. 7 = 133 M. 137 = 144 I. C. 629.
2. The objection to leading questions is not that they are absolutely illegal, but only that they are unfair. 7 A. 385—397.
3. Even if the question is objected to, the Court may allow or disallow it and the Court of appeal or revision will not interfere in the discretion except in extreme cases. 42 C. 975.
4. The proper way to exclude evidence obtained by leading questions is to disallow the question. 15 W. R. 23 Cr.
5. If a Judge disallows a question, the Pleader should have the question and order disallowing it recorded, as such a refusal is illegal. 36 I. C. 468 = 17 Cr. L. J. 500, 55 I. C. 593 = 21 Cr. L. J. 321.
6. The defence may cross-examine the prosecution witnesses for eliciting facts in their favour by asking leading questions. The Court may allow the prosecution to cross-examine them with regard to the matters elicited by the defence. 16 Cr. L. J. 497 = 19 C. W. N. 676.
7. It is not open to the prosecution to put a leading question or question of the nature of cross-examination to their own witness without declaring him hostile. It is improper for the Court to allow such a question. The question and answer are both inadmissible. 1 P. 758 = 1923 P. 62 = 71 I. C. 117 = 24 Cr. L. 69.
8. Leading questions may be asked (1) with the permission of the Court, (2) from adverse or hostile witness, (3) with regard to introductory or undisputed matter, (4) complicated matter, (5) for identification, contradiction or (6) when the memory of a witness is defective. *Evidence Act by Woodroffe and Amcer Ali (1921). Pages 913—915.*
9. Leading questions may be asked with the permission of the Court, not for getting contradictions but for addition to something said by a witness, without getting him declared hostile. 1930 C. 139 = 31 Cr. L. J. 610 = 50 C. L. J. 467.
10. If the dying declaration appears to be the result of leading question, it has no value. 1930 O. 60 = 31 Cr. L. J. 689 = 124 I. C. 444 = 6 O. W. N. 1056.
11. A party can put leading questions if not objected to but he cannot cross-examine his witness without permission of Court, even if no objection is taken. 56 M. 7.
12. Leading questions may be asked in cross-examination, provided firstly, that a counsel is not entitled to go to the length of putting the very words into the mouth of a witness which he is to echo back; secondly, a question which assumes facts as proved which have not been proved. *Taylor S. 1431. See Monir's Law of Ev. Page 993. See 42 C. 957.*

LEAVE TO APPEAL. See Privy Council—2.

LEGAL ADVICE.

1. Absence of—. See Transfer (Grounds)—1.

2. If abetment. See Abetment—6.

3. Right to—. See Accused—9, Remand—1.

LEGAL PRACTITIONERS ACT (XVIII of 1879).

7.

An order of District Judge suspending a practitioner pending the receipt of his renewed certificate is illegal. 54 M. 574=1931 M. 688=133 I. C. 522.

12.

1. S. 12 does not apply unless the conviction alone shows that a person is unfit to be a Pleader. 32 Cr. L. J. 604=130 I. C. 826=1931 N. 33.
2. A Pleader cannot go behind the conviction and say that it was not justified. 130 I. C. 826=1931 N. 33, 22 A. 49.
3. Conviction under Salt Act for certain activities in pursuance of Civil Disobedience movement renders a Pleader unfit to continue as such. 1931 P. 208, 1933 C. 731.
4. 'Criminal offence' used in S. 12 means an offence under any enactment. 134 I. C. 945=1931 P. 359.
5. A Pleader or Vakil can be dismissed for conviction of an offence involving moral turpitude. 131 I. C. 67=32 Cr. L. J. 625=1931 O. 161.
6. A Pleader sent to jail for refusing to give security under S. 107, Cr. P. C., cannot be said to have been convicted of a criminal offence. 1931 P. 369=134 I. C. 945=32 Cr. L. J. 1256. See 1934 C. 808.
7. High Court can either act on the report of District Judge or *suo motu* for dismissal or suspension of a Pleader. 1931 P. 569=32 Cr. L. J. 1256.
8. Disciplinary action is not taken as punishment but on consideration whether a Pleader is a proper person to practise or not. 130 I. C. 826=1931 N. 33.
9. In case of conviction for political offence if the Pleader persists in breaking the law, he may be dismissed. 38 C. W. N. 276, 1934 C. 242.

13.

Abandonment of case and non-attendance

1. Where a case requires more hearings than anticipated, an Advocate refuses to appear unless a further fee is paid to him, he is guilty of professional mis-conduct. 30 I. C. 995=16 Cr. L. J. 707
2. A Plader cannot abandon his client's case in the midst. 14 Cr. L. J. 739
3. Wilful neglect of Pleader to appear is professional mis-conduct, although a fee or portion of fee remains unpaid. 37 M. 238
4. Pleader engaged in murder case if unable to attend Court personally should spend whole fee received by him in procuring his substitute. His absence can be excused on the ground of physical inability only. 1928 L. 448=29 Cr. J. 362
5. Boycott of a Court and throwing up a proof without obtaining client's consent amounts to mis-conduct. 2 R. 265=1924 R. 320=25 Cr. L. J. 135.
6. Refusing to appear in the Court is not the proper course for Pleaders when ill-treated by any Court. 1923 C. 212=69 I. C. 209=26 C. W. N. 580
7. The *onus* of proving a special agreement lies on the Pleader. 49 C. 732.
8. Observing *Hartal* through fear of public wrath does not amount to professional mis-conduct. 49 C. 732=1922 C. 515.

2. Acting without instructions

1. A Mukhtar is not guilty of mis-conduct where in the absence of any instructions from the first client he appears for the opposite party in a subsequent proceedings. 30 I. C. 145.
2. A Pleader receiving instructions from a person who is neither the recognised agent, guardian, servant, relative or authorised to give instructions on behalf of the party is guilty of mis-conduct. 17 Cr. L. J. 229, 36 I. C. 442, 37 I. C. 492

2.-A Advertising by counsel.

Circulating election manifestoes or sending out agents or clerks to canvass for votes for Bar Council is breach of professional etiquette and not misconduct. 1934 A. 1067.

3. Agreement for payment on success.

To agree with a client for *Inam* or present over and above his fees in the case of success is disgraceful for an Advocate. It is a gross mis conduct. 14 B. L. R. 691=13 Cr. L. J. 916=16 I. C. 780.

4. Altering documents.

1. A Mukhtar added his name on the *Vakalatnama* and also altered certain words without any improper motive, no order under S. 14 can be passed against him 24 I. C. 718.
2. Where a solicitor substituted the name of two witnesses in a summons on the ground that the persons originally summoned were totally ignorant of the facts of the case. Held, that the solicitor was not guilty of the forgery and that his name should not be removed from the list. 16 C. W. N. 386=15 I. C. 72.
3. Where a Pleader tampered with Court's record and mis-described in the application for execution the property to be sold he is guilty and is also responsible for the act done by his clerk. 18 Cr. L. J. 42, A. L. R. 1933 P. 40.

5. Appearing for opposite side.

1. It is improper on the part of legal practitioner who acted for one party in dispute to act for other party in subsequent litigation between them relating to or arising out of that dispute. 42 I. C. 236, 1934 P. 352.
2. If the other side wants to engage for subsequent litigation, the Pleader should at least in the first place inform his first client. 28 I. C. 996.
3. For Mukhtar changing side on retrial of a case. See 2 P. R. 1504 Cr.
4. A Pleader cannot act for the opposite party in the latter stage of the same proceedings or a subsequent litigation unless he has been discharged. 12 Cr. L. J. 37.
5. Court can refuse audience to a Pleader where he is appearing for the opposite party in a subsequent civil suit. 38 M. 650.
6. A Pleader who acts for both the parties in the suit in one stage or another is guilty of professional mis-conduct. 45 I. C. 684=19 Cr. L. J. 636.

6. Boycott of Court.

1. Certain Pleaders collectively agreed upon abstention from Court and made their clients agree to the same. It appeared that the object was political and to assist the boycott movement. Held, they were guilty of unprofessional conduct. 1931 C. 705=132 I. C. 900=32 Cr. L. J. 980.
2. Certain Pleaders failed to attend Court on a *hartal* day. They explained that (a) they were hurt by the news of arrest of Mr Gandhi, (b) that there were no carriages available, (c) that if they had attempted, they would have been molested and socially boycotted, (d) that they had no cases on that day. Held, that it was not proved that they conspired to boycott the Court, so as to paralyse the administration of justice and so it was not proper to take action under S. 13 (f). 1931 C. 616 134 I. C. 1044=33 Cr. L. J. 2.

7. Charges against and threat in Court.

1. Making charges against judicial officers which the Pleader has no prospect of substantiating amounts to mis-conduct 51 M. 798=1923 M. W. N. 317, 61 C. 522
2. Threat to a Magistrate by a Pleader is mis-conduct. 1923 B. 234=72 I. C. 353.
3. Statements unnecessary made in an open Court which contain imputations against the fairness and impartiality of the Court without any foundation amounts to professional mis-conduct. 1922 C. 550=71 I. C. 673=24 Cr. L. J. 209.
4. A letter written by a legal practitioner imputing racial antipathy to a Judge and imputing prejudice constitutes a mis-conduct. A belated apology in the High Court was held to be insufficient. 67 I. C. 504, 44 I. C. 338=19 Cr. L. J. 322.

8. Clients' money.

- A Pleader receiving money from the Court on behalf of his clients and appropriating it to his own use for a long time is guilty of mis-conduct. 1930 M. 927=129 I. C. 233=32 Cr. L. J. 26, 1925 O. 464=111 I. C. 880, 1925 M. 797.

*Legal Practitioners Act—(contd.)***9. Contempt of Court.**

1. If a Mukhtar writes a grossly insulting letter to a Magistrate in connection with copy for which he had applied, he is guilty of mis-conduct. 42 A. 86.
2. Where a Mukhtar practising in a Court abuses the accountant of the Court which was heard by a Judge holding his Court in an adjoining room, the mis-conduct amounted to a contempt for which warning was deemed sufficient. 44 C. 639.
3. A Pleader addressing a letter to a Commissioner appointed to investigate a case to report in his client's favour is guilty of professional mis-conduct. 18 P. R. 1915 (Civ.), 29 C. 890, 34 M. 29, 9 P. R. 1903 Cr.
4. A Pleader is guilty of professional mis-conduct if he suggests that he is in a position to influence a Judge in his favour by indirect or improper means. 23 I. C. 789

10. Criminal offences.

1. A Pleader intentionally concealing his conviction in his application for admission is liable to be dismissed. 25 I. C. 339
2. Disciplinary proceedings should not be taken against a Pleader who is suspected of a criminal offence. 57 I. C. 931, 57 I. C. 460=21 Cr. L. J. 636.
3. Where a legal practitioner found guilty of a serious offence was removed from the rolls seven years ago, he should be re-instated if his conduct had become irreproachable. 12 Cr. L. J. 461.

11. Duty of legal practitioner.

1. A Pleader by virtue of his position is an officer of the Court and it is his duty to protect all minor officials of the Court from any temptation to depart from their duty. Taking a document from record to Pleader's house for inspection by his client should be strongly deprecated 1929 P. 338=115 I. C. 673.
2. Pleaders should not tamper with witnesses of the other side. 1929 M. W. N. 384.
3. Statements of clients in an application for transfer should be attested by Pleaders. The Pleader is guilty of professional mis-conduct if the statements are all totally unfounded and untrue. 1929 P. 151=8 P. 575=116 I. C. 762.
4. A Pleader should not represent parties whose interests are conflicting. 36 B. 606.
5. A Pleader should not follow the instructions blindly and accuse persons of dishonesty, etc. 1934 P. 398.

12. Error of law.

Error of law is not professional mis-conduct. 35 C. 685.

13. False statement.

1. Legal practitioner making two contradictory statements one before the Police and the other as witness in the Court is guilty of gross mis-conduct. 1929 L. 803=121 I. C. 297=31 Cr. L. J. 242=31 P. L. R. 224.
2. Bail was refused by the District Judge and the Pleader applying again for bail to District Magistrate, did not inform him of previous application to District Judge, the Pleader is guilty of mis-conduct. 1923 L. 211=23 Cr. L. J. 714.
3. Telling a lie in order to deceive a Court is professional mis-conduct. 1923 M. 485.
4. If an application for transfer is made in good faith, the mere fact that it turns out subsequently that there are no sufficient grounds for transfer cannot lead to an inference that there was mis-conduct on the part of practitioner. 1928 A. 396=110 I. C. 686=29 Cr. L. J. 750=26 A. L. J. 1250.
5. A Vakil sending a notice containing facts false to his knowledge is guilty of mis-conduct. 11 Cr. L. J. 165.
6. Where a Pleader was asked to turn out a tout by the Bar Council and he gave a false statement that he had dispensed with his services, is guilty of mis-conduct. 49 P. W. R. 1914 Cr.=214 P. L. R. 1915
7. Where a Mukhtar attested a will after testator's death and showed his repentance, he was not removed from the list. 13 Cr. L. J. 61=14 Cr. L. J. 606.

Legal Practitioners Act—(contd.)

8. A Pleader in defending himself against charges of professional mis-conduct made certain false statements. Held, he is guilty of mis conduct. 36 B. 605.
9. Legal practitioner is guilty of mis conduct if he identifies a person not known to him. 57 I. C. 818, 1930 P. 455, 1929 P. 339=115 I. C. 673.
10. A Pleader making an application containing a false statement without instructions is guilty of professional mis-conduct. 42 A. 450.
11. A Pleader informed the Court that his client was unwell, whereas he saw him in Court and talked to him. Held, it amounts to mis conduct and he should be removed. 1934 P. 142=35 Cr. L. J. 453.

14. Fees and non-payments.

1. Exorbitant fees claimed by Pleader, do not amount in themselves to mis-conduct. 1930 P. C. 144=123 I. C. 184=31 Cr. L. J. 489.
2. If a client is putting off the settlement and payments of fees, a legal practitioner will be well-advised if he serves a registered notice upon him that he did not settle and pay his fee he would repudiate all his responsibility as a Pleader. 1930 L. 947=130 I. C. 62=32 Cr. L. J. 303, 37 M. 238.
3. If the Pleader is not paid his remuneration the Pleader is not absolved from his obligation to the client unless the instructions are expressly repudiated to the knowledge of the client. 1929 P. 337=115 I. C. 676=10 P. L. T. 723.
4. Pleader accepting *Vakalatnama* and papers but not filing the appeal is guilty of mis-conduct. 1928 C. 820=114 I. C. 490.
5. Taking of mortgage-deed in lieu of fee at exorbitant rate is mis-conduct. 1933 P. 571.

15. Gratification for employment.

1. A Pleader who himself pays a sum of money to a procurer of clients or allows himself to take his clerk's *Munshiana* in whole or in part as a gratification for having procured him client is liable under S. 13 (c). 27 P. R. 1910 Cr.=22 P. W. R. 1910 Cr.
2. To sustain a charge under S. 13 (c), the gratification which is paid to the tout must be out of any fee paid or payable to a Pleader, but does not include payment out of *Munshiana*. 31 P. W. R. 1909 Cr.

16. Improper advice.

1. A Pleader in order to secure his fees placed his client in the hands of unscrupulous lender without warning his client of the extortionate nature of the bargain, is guilty of mis-conduct. 11 Bom. L. R. 1150=10 Cr. L. J. 526.
2. A Pleader was suspended on the ground of giving improper advice and getting a nominal sale for a low value and pleaded a false defence in giving false evidence. 39 I. C. 289=18 Cr. L. J. 449=40 M. 69.

17. Intimidation.

- A Pleader intimidating a witness to prevent him from giving evidence is guilty of professional mis conduct 46 I. C. 819=19 Cr. L. J. 803.

18. Jurisdiction and procedure.

1. The enquiry should proceed on formulated charges and evidence should be weighed according to ordinary standard. 1930 P. C. 144=123 I. C. 184.
2. It is the duty of applicant to substantiate his allegations and to submit himself to cross-examination. 1930 L. 947=32 Cr. L. J. 303=129 I. C. 301.
3. The evidence on another file cannot be transferred to the enquiry which is being held against a Pleader. 1929 M. W. N. 384.
4. District Judge can take action for the mis-conduct of a Pleader before a Subordinate Judge, although the final order is to be passed by the High Court. 49 C. 850=1922 C. 484=1926 M. W. N. 466.
5. If the Court thinks that there has been any breach of professional etiquette in the conduct of the Pleader in the case, it should decide the merits and reserve such questions for further consideration after the disposal of the suit. 40 A. 147=44 I. C. 28

Legal Practitioners Act—(contd.)

6. The Subordinate Courts should issue a notice to the Pleader after holding a preliminary enquiry and if such notice is issued on a vague report it is liable to be set aside by the High Court. 31 P. W. R. 1909 Cr.

19. Misappropriation.

1. Where a Pleader received certain shares from a lady client with instructions to sell them but appropriated the proceeds without her consent he is guilty of mis-conduct. 14 B. L. R. 499.
2. Mis appropriation of the client's money entrusted to a Pleader for a specific purpose amounts to professional mis conduct. 30 P. W. R. 1917 Cr. = 42 I. C. 135.
3. A Vakil acting as agent for the sale of a house and using the sale-proceeds for his own use without the consent of the principal is guilty of unprofessional conduct. 11 Cr. L. J. 307.

20. Negligence.

1. Negligent management of Pleader's office and permitting his clerks to cheat the clients and to inform the clients that a case has been dismissed on merits when in fact it was due to Pleader's neglect, is mis-conduct. 35 M. 543.
2. Recklessly signing a *Vakalatnama* for the other side very nearly amounts to mis-conduct. 14 Cr. L. J. 44 = 18 I. C. 268.
3. A Pleader wilfully neglecting the case of a poor client and attending to the case of rich client is guilty of mis-conduct. 1929 P. 153 = 116 I. C. 764.

21. Non-acceptance of brief.

Refusal to take up a case merely with intention of not appearing against professional brothers is professional mis-conduct. 51 A. 892 = 1930 A. 262.

22. Politics

1. The action of a Pleader in advising the public not to attend Court and thereby interfering with the administration of justice amounts to mis-conduct. 1928 C. 853 = 114 I. C. 96, 49 C. 845, 1931 N. 33 = 130 I. C. 826.
2. Advising non-payment of taxes or boycott all Courts justifies refusal to issue Sanad. 1924 M. 129 = 75 I. C. 977, 79 I. C. 367 = 49 C. 845.
3. Taking of pledge by offering resistance and civil disobedience of laws is professional mis-conduct. 44 Bom 418, 134 I. C. 945 = 1931 P. 369 = 32 Cr. L. J. 1256.
4. Organising seditious meetings is a reasonable cause within S. 13 for suspension or dismissal of Pleaders. 11 Cr. L. J. 274.
5. Taking part in meetings of association declared unlawful by Criminal Law Amendment Act, amounts to mis-conduct. 12 P. L. T. 725 = 1923 P. 185.

23. Privilege. See Privilege—2.

A Pleader cannot be charged for mis-conduct for refusal to disclose to the Court a professional communication made to him by his client. 14 Cr. L. J. 438.

24. Reasonable cause.

1. Criticising the administration of justice though such criticism may not be wholly justified is not a reasonable cause within S. 13. 55 I. C. 198 = 21 Cr. L. J. 246.
2. Pleaders becoming directors of bogus life insurance companies are guilty of unprofessional conduct. 34 M. 29.
3. Mere conviction of a Pleader is not sufficient for his dismissal or suspension. 11 Cr. L. J. 615.
4. Before a Vakil embarks on a commercial transaction he should give notice to and obtain the permission of the High Court. 52 I. C. 638 = 17 A. L. J. 1147.

25. Renewal of Sanad.

1. If a prosecution is ordered against a practitioner, the Judge ought not to wait until the result of criminal proceedings are known before renewing the Pleader's certificate. 38 A. 182.
2. Where a Pleader was sent to prison for default in complying with an order under

Legal Practitioners Act—(contd.)

S. 107, Cr. P. C., and the Pleader later obeyed the order, held, that the Sanad of the Pleader may be renewed. 1924 M. 479=27 Cr. L. J. 230.

3. The High Court has power to re-instate a legal practitioner who had been dismissed for mis-conduct at any time. 1 P. 684=1922 P. 604=71 I. C. 122.

26. Miscellaneous.

1. Where in a criminal trial legal practitioner appeared for the accused, suggests without reasonable grounds that the prosecution story is a concoction, the Pleader is guilty of mis-conduct. 9 P. 31=1930 P. 195=124 I. C. 395=31 Cr. L. J. 641.
2. Pleader drafting for complainant in one case and acting for accused in different cases instituted by the same complainant is not guilty of any mis-conduct. 8 L. 671=1928 L. 65=29 Cr. L. J. 500
3. A Pleader working for both sides is guilty of mis-conduct. 1923 C. 105=72 I. C. 22=24 Cr. L. J. 294.
4. For fraudulent act of his clerk, a Pleader is not necessarily guilty of professional mis-conduct. 1923 C. 817=114 I. C. 137=30 Cr. L. J. 256.
5. A legal practitioner who purchases property *banami* and also takes his fees as Pleader is guilty of mis-conduct. 1925 O. 130=81 I. C. 975=25 Cr. L. J. 1151.
6. A Pleader standing surety to a man arrested under S. 420, I. P. C., and keeping in his possession on behalf of the accused properties held later on and to have been involved in the offence is not guilty of professional mis-conduct. 1925 R. 110=2 R 491=88 I. C. 279=6 Cr. L. J. 111
7. A Pleader who proclaimed before a criminal Court when he was tried under S. 188, I. P. C., that he owed no allegiance to the British Court and had no faith in British justice renders himself liable to disciplinary action. 1924 C. 329=77 I. C. 936.
8. An order of High Court refusing to enrol a person as legal practitioner comes under its disciplinary or administrative powers and no leave to appeal to His Majesty can be granted. 1 P. 590=1922 P. 603=70 I. C. 172.
9. A Pleader who had been engaged by the plaintiff, withdrew on behalf of complainant money which he knew was payable to the plaintiff and took an active part as arbitrator in the matter in which he was personally concerned is guilty of mis-conduct. 41 I. C. 328=18 Cr. L. J. 808.
10. A Pleader entered into a series of money-lending transactions in his own name and his minor son, which were all of a usurious nature, he is guilty of mis-conduct. 11 Cr. L. J. 697.
11. Where in execution of his client's decree a Pleader made a purchase on behalf of his father, he is guilty of mis-conduct. 13 Cr. L. J. 795=17 I. C. 539.
12. A Pleader obtaining adjournment on false grounds is guilty of mis-conduct. 54 M. 520.

S. 14.

1. If there are allegations amounting to abetment of an offence proceedings under S. 14 should not be taken, but a criminal prosecution may be started. 54 C. 721, 1926 C. 502=94 I. C. 893=27 Cr. L. J. 701, 1934 C. 272.
2. Amending a petition already filed by a Mukhtar in a Court, without permission, is at the most a foolish act. 1925 C. 223=87 I. C. 843=26 Cr. L. J. 1019.
3. The enquiry under S. 14 should be made by the presiding officer of the Court. 1928 A. 396=110 I. C. 686, 1923 P. 185=71 I. C. 703, 72 I. C. 521.
4. Proceedings under the Act are neither civil proceedings nor criminal. 1926 L. 199=93 I. C. 700=27 Cr. L. J. 476=27 P. L. R. 225.
5. The proceedings under S. 14 are quasi criminal proceedings and the Pleader may be examined on oath. 49 C. 732=1922 C. 515=24 Cr. L. J. 33.
6. An Additional District Magistrate should forward the report through Sessions Judge. 1922 C. 550=71 I. C. 673, 1929 A. 655=118 I. C. 712.
7. Where the evidence was not recorded as required by S. 14 upon the date on which the enquiry was held it is a substantial defect in procedure. 54 C. 721.

Practitioners Act—(contd.)

8. High Court will exercise jurisdiction even though the reference is not made by the trial Court in whose Court the occurrence had taken place, but by the appellate Court which has no power to refer it. 1922 P. 608=71 I. C. 209.
 9. A standing counsel of a client accepting brief against that client in another suit is guilty of professional mis-conduct. 1930 P. C. 60=12 I. C. 4=34 C. W. N. 432.
 10. A District Judge has no power to award costs in a matter referred by him to the High Court under the Act. 36 I. C. 125.
 11. Under S. 14 the proceedings cannot be instituted only by the Deputy Magistrate in whose Court the alleged mis-conduct or offence took place 1920 P. 225.
- 36.
1. If the enquiry is entrusted to a subordinate Court it is the subordinate Court which must be satisfied that the person is proved to be tout 1930 A. 641=12 I. C. 387
 2. The Judge and officers mentioned in the sect on cannot delegate the task of recording the evidence to a Subordinate Officer. 5 L. 443=1925 L. 225, 59 I. C. 322
 3. When out of 64 members of the Bar Association present only 26 voted in favour and 14 against the resolution, held that there was no legal evidence to declare a person a tout 1930 A. 752=128 I. C. 603=32 Cr. L. J. 139.
 4. Law does not require that all members of the Bar Association should be present. It is sufficient if the majority of members present pass a resolution 36 C. 800.
 5. A resolution passed by a Bar Association declaring certain persons to be tout is merely evidence to be weighed by the judicial officer. 1928 A. 331=118 I. C. 524.
 6. A resolution or report of a sub committee of a Bar Association is no evidence of general repute under S. 36. 6 P. 567=1927 P. 282=28 Cr. L. J. 532.
 7. S. 36 does not authorise the District Magistrate to compel the attendance of alleged tout in the proceedings or to receive orders in the case. He is not guilty under S. 174, I. P. C., if he fails to attend the Court. 4 R. 529=1928 R. 296.
 8. A person proceeded against as tout should be given sufficient opportunity to produce his evidence. 1930 A. 796, 1926 L. 227=42 I. C. 749=27 Cr. L. J. 333.
 9. An enquiry under S. 36 cannot be conducted according to Cr. P. C. 1923 M. 188.
 10. A person should not be declared tout on the ground that he habitually acted as tout without any legal evidence 116 I. C. 173=49 C. L. J. 118.
 11. High Court can revise an order passed under S. 36 for the ends of justice by virtue of Government of India Act. S. 107 1930 L. 889, 1930 A. 641, 45 A. 676
 12. A person cannot be declared tout on hearsay evidence which cannot be tested by cross-examination. 40 A. 153=19 Cr. L. J. 269.
 13. Proof by general repute or otherwise is necessary before a person can be declared tout. 112 P. L. R. 1912.
 14. Evidence that a barrister pays a person commission on any case brought to him while he denies the fact, does not prove a person to be tout. 27 P. W. R. 1909.
 15. A person cannot be declared tout on vague and general evidence, when there is testimony of respectable persons to the contrary. 26 P. W. R. 1909 Cr.
 16. An admission by a person that he is a tout understanding its full legal significance is not enough to declare a person tout. 25 I. C. 918.
 17. A notice to show cause why a person should not be declared a tout must be given to him and evidence should be taken in his presence. 42 I. C. 996.
 18. If a resolution of Bar Association is based on general repute, the Court may attach less weight to it, but it is legally admissible. 1931 A. 711.
 19. If the District Judge disagrees with the report of subordinate Court, the High Court will not interfere unless the order is manifestly wrong. 1931 L. 98 (2)=134 I. C. 98=32 Cr. L. J. 1129=31 P. L. R. 1003.
 20. The proceedings under S. 36 are quasi criminal and consent of parties cannot validate an irregularity. 12 L. 385=1931 L. 57=32 Cr. L. J. 672.

Legal Practitioners Act—(contd.)

21. If some of the members of Bar Association were not served, the meeting and the resolution is invalid. 12 L. 385=1931 L. 57.
22. A Pleader sending a printed circular to other Pleaders inviting them to send him cases, offering to share with them the fee of cases is punishable under S. 116, I. P. C., as it is abetment of an offence under S. 36, Legal Practitioners Act. 17 A. 498.

S. 41.

If the practitioner had been debarred for 15 years and offers apology, order should be rescinded. 1934 O. 140=35 Cr. L. J. 678.

LETTER.

1. Abetment by—. See Abetment—15.
2. Anonymous—. See Anonymous letter, Criminal intimidation—1.
3. Insult to provoke breach of peace by—. See S. 504, I. P. C.
4. Insulting modesty of a woman by—. See S. 509, I. P. C.
5. Secreting of—. See Criminal misappropriation—20.
6. Whether property—. See Moveable property—2.

LIMITATION.

1. For filing appeal.— See Appeal—33.
2. For filing complaint.— See Cognizance of offence—11.
3. For restoration of property under S. 517. See Disposal of property—12.
4. For restoration of absconder's property—. See Absconding—7.

LIQUIDATOR. See Breach of trust—16.

LIST OF STOLEN PROPERTY. See Statement to Police—12.

LOADED GUN. See Firing gun, unlicensed gun.

Death resulting from a struggle to snatch loaded gun is no offence. 111 P. L. R 1902

LOCAL INSPECTION. S. 539-B, Cr. P. C. See Disqualification of Judge.

1. Absence of Memorandum.

1. Mere omission to record a memorandum of a local inspection is not an illegality vitiating the proceedings. 1928 Bom. 433=112 I. C. 221=29 Cr. L. J. 1005, 135 I. C. 226, 53 A. 215, 1925 C. 1246, 1930 A. L. J. 1437. See 1924 C. 1035.
2. Failure to make a record of local inspection is an irregularity cured by S. 537. 50 Bom. 680=1926 Bom. 534=97 I. C. 671, 53 C. 46, 1923 C. 1246, 52 C. 148 and 1924 C. 1035 Not foll.
3. Absence of memorandum may vitiate a trial if accused is prejudiced. 1929 N. 233=114 I. C. 609=30 Cr. L. J. 335, 53 C. 46=1925 C. 1246=90 I. C. 308, 1931 A. 433.
4. The Magistrate should place on the record, the result of his inspection at once, so that the parties may have an opportunity to rebut his opinion. 10 L. 138=1928 L. 479=110 I. C. 463=29 Cr. L. J. 719, 37 C. 340.
5. The omission to make a memorandum is highly irregular. 1921 P. 415=61 I. C. 794=22 Cr. L. J. 442=2 P. L. T. 455.
6. Magistrate must put on record a note of his inspection. 1922 P. 51=71 I. C. 698=24 Cr. L. J. 234, 37 C. 340.
7. Magistrate should put on the record the result of his inspection and ask the parties if they desire to adduce evidence and bear arguments about the same. Putting on record such a note after delivering judgment is irregular. 25 Cr. L. J. 705=1925 C. 353=81 I. C. 193.
8. Failure to comply with the provisions of S. 539-B. Cl. (2) is an illegality and not mere irregularity. 52 C. 148=1924 C. 1035=25 Cr. L. J. 1375=82 I. C. 767.
9. When the appellate Court has not relied on anything it saw or heard at the time

Local Inspection—(contd.)

of inspection, the absence of inspection note is only a curable irregularity. 1935 N. 23=1935 Cr. C. 111.

10. Memo of inspection should be made immediately. If it is signed by four out of five Magistrates, the trial is vitiated. 1932 M. 676.

2. Absence of parties.

1. If a Magistrate visits the spot without giving notice to the parties and makes enquiries, he becomes an important witness in the case and incapacitates himself to proceed with the trial. 1926 R. 180=4 R 106=97 I. C. 60=27 Cr. L. J. 1084.
2. A Magistrate must be accompanied by parties or their Pleaders, so as to avoid drawing wrong inferences. 19 M. 263, 2 Weir 727
3. A Sessions Judge must give notice to the parties, if he desires to visit the place of occurrence and proceed with the assessors before their opinion is recorded. 1 C. L. R. 143, 9 Bur. L. T. 133, 9 L. B. R. 88.
4. Court going to the parties' village and examining witnesses without notice to parties acts illegally. 1927 M. 361=100 I. C. 123=28 Cr. L. J. 251.

3. By one of the Bench of Magistrates.

If the local inspection is made by one Magistrate only in a case tried by Bench of Magistrates, the trial is not proper. 1935 N. 77=17 N. L. J. 269. 1932 M. 676=128 I. C. 608=33 Cr. L. J. 655 and 1932 N. 95=33 Cr. L. J. 559 Foll. he brought in as evidence, as they are inadmissible. 1935 N. 69.

4. Purpose of—

1. The Magistrate should visit the spot for the purpose of understanding the evidence which has already been given. 1923 C. 320=68 I. C. 38=23 Cr. L. J. 502, 37 C. 340.
2. --- " " " uses that for the purpose of obtaining the evidence of witnesses, the trial is irregular. 1928 P. 567=110 I. C. 112=29 Cr. L. J. 656.
3. Inquiries from spectators are irregular. 10 L. 790=1929 L. 120=122 I. C. 95=31 P. L. R. 39.
4. Accused were charged under S. 457. The Magistrate in order to test the truth of the defence, made each accused point out the spot. No evidence was taken as to what took place at the spot and he relied solely on his knowledge. Held, that the procedure adopted by the Magistrate is wrong. 1922 L. 456=67 I. C. 591=23 Cr. L. J. 431.

5. Recording of facts.

Magistrate should make a note of any relevant facts observed by him at the time of inspection. 49 A. 475=1927 A. 350=28 Cr. L. J. 291=100 I. C. 371=25 A. L. J. 377.

6. Revision.

1. When an order of discharge was challenged on the ground that S. 539-B was not complied with, but was in reality obeyed, the High Court declined to interfere. 1927 N. 397=99 I. C. 852=28 Cr. L. J. 180, 1924 C. 1035 Dist.
2. Where notes of inspection were not placed on record, conviction was set aside and retrial ordered. 1924 C. 1035=82 I. C. 767=25 Cr. L. J. 1075.

7. Statements at the—

Statements made at the spot or inspection are inadmissible in evidence unless the witnesses are duly examined on oath. 1935 N. 69, 1935 N. 198.

8. Use of the result of—

1. The use of the result of local inspection is allowable only for understanding the evidence adduced. It cannot be used for deciding the main issue. 1921 P. 415 = 61 I. C. 794 = 22 Cr. L. J. 442.

Local Inspection—(could.)

2. Local inspection cannot take the place of evidence itself. 49 A. 475=1927 A. 350.
 3. If the judgment is based on a new point discovered at the local inspection which was not known to the accused, the conviction is bad. 1921 P. 471, 37 C. 340.
 4. It is open to Magistrate to use the evidence of his own eyes, *i. e.*, the local inspection to test the truth of what the witnesses have deposed to. 1923 M. 694=75 I. C. 695=25 Cr. L. J. 7.
 5. It is illegal, on local inspection, to take into account the evidence of witnesses not recorded on oath. 1927 N. 250=101 I. C. 671=23 Cr. L. J. 495.
 6. If a Magistrate makes use of knowledge derived from local inspection without giving the accused an opportunity to cross examine or to explain the points against him, the trial is vitiated. 49 A. 475, 10 L. 134, 37 C. 340.
 7. A Magistrate received *utaras* at the time of local inspection and did not place it on record. The judgment was based mostly on local inspection and *utaras*. Held, that it was not a legal judgment. 1935 N. 77.
 8. Magistrate is not expected to base his judgment on inspection note only. At least complainant should be examined. 1934 A. 325=35 Cr. L. J. 703.
9. When—is ground of transfer. See Transfer (grounds of)—59.

LOCAL JURISDICTION. See Jurisdiction—15.**LOCAL OR SPECIAL LAW.** Ss. 5, 42, I. P. C.**1. Definition of—.** S. 42, I. P. C.

1. A local law is a law applicable to a particular part of British India. S. 42, I. P. C.
2. A local law does not necessarily include all rules made under the provisions of a local law. 23 P. R. 1894 Cr., 6 R. 791=1929 R. 75.
3. Where a local law declares a breach of the rules made under its authority to be punishable, then a breach of such rules constitutes an offence. 6 R. 791=30 Cr. L. J. 509=115 I. C. 664=1929 R. 75.
4. Special or local law like Opium Act, Gambling Act, etc., does not include English common Law. 1925 R. 345=92 I. C. 737=3 R. 524.

2. Sentence under Penal Code. S. 5, I. P. C.

1. No special or local law is repealed, varied, suspended, or affected by the Penal Code. Although an offence is expressly made punishable by a local or special law, it will be punishable under the Penal Code. 6 M. 249, 8 Bom. L. R. 414.
2. A Police Constable punished departmently under the Police Act is liable to be punished under Penal Code. 26 P. R. 1915 Cr.
3. The only distinction between new and existing Act is that new offence is punishable by the new penalty only. 2 P. 134.
4. Where the abetment of an offence is punishable by a special law such as Salt Act, the Court cannot impose higher punishment, by convicting the accused under S. 117, I. P. C. 7 O. W. N. 895=1930 O. 497=128 I. C. 221=32 Cr. L. J. 104.
5. Ss. 2 and 5, Penal Code, taken together declare that offences defined by special or local laws continue to be punishable as before. 48 C. 388, 1929 L. 217=115 I. C. 428=30 Cr. L. J. 460.
6. If an act is an offence under general and special law, it will be punished under the special law. 1930 O. 497. See 1931 A. L. J. 986.
7. If sufficient punishment cannot be given under the Special Act, the accused will be punished under the Penal Code. 9 Mys. L. J. 156.
8. If the offence falls strictly under the Special Act, it would be proper to lodge prosecution under the Special Act and not under Penal Code. 1932 A. 69=136 I. C. 571.
9. A person cannot be convicted both under the Special Act and Penal Code. 1928 B. 231=29 Cr. L. J. 981=112 I. C. 101.

Local or special Law—(concl'd.)

3. Right to prosecute under—.

1. If there exists a right to prosecute under the Penal Code such right cannot be taken away impliedly by the provision of another statute. 52 M. 79.
2. Private complaint under Opium Act cannot be allowed. 52 M. 613, 1923 M. 339.

4. Rules made under— See—1.

LOCUS PENITENTIAE. See Reading over statement—5.

LORRY OR MOTOR CAR. See Motor Vehicles Act.

1. Detention of—Pending trial— See Detention of Motor Car—.

2. Forcible taking of— See Breach of Trust—42.

If a purchaser of lorry on instalment system committed default in payment vendor Company has right to recover possession through Court and not by force. 1934 O. 108=35 Cr. L. J. 740, 15 Cr. L. J. 232, 1928 P. 124, 1924 P. 143.

3. Hire Purchase agreement— See Breach of Trust—42.

4. Rash or negligent driving— Rash driving.

LOTTERY. S. 294-A, I. P. C.

1. Advertisement of—

1. The proprietor of a Newspaper publishing an advertisement of lottery is guilty. 10 B. 97, 27 Bom. L. R. 363=1925 B. 243=26 Cr. L. J. 980=87 I. C. 516.
2. Publication of an advertisement of Rs. 52,500 lottery by which a ginning factory was to be raffled at Rs. 5 ticket was held to be an offence under S. 294-A. 50 M. 479=1927 M. 66=28 Cr. L. J. 4=99 I. C. 36.
3. A mere publication on a trade hand bill that tickets in a lottery (unauthorised) can be had at a particular place is no offence, since it does not constitute a proposal to pay any sum or any contingency relating to the drawing of any ticket in a lottery. 26 Bom. L. R. 963=1925 B. 26=83 I. C. 1006, 53 B. 57.
4. In case of advertisement with regard to lottery in a Newspaper both printer and publisher are liable. 35 C. 945, 10 B. 97, 87 I. C. 517.
5. The accused invited the public to buy his bonds by advertisements. No subscriber was ever to get his capital back. The whole capital was to be expended on poor and the interest was to go by lot to the subscribers every three months. Held, he was guilty under S. 294-A. 1932 R. 143=10 R. 232=138 I. C. 687, 17 P. R. 1910 Cr., 22 M. 212, 50 M. 696, 48 M. 661 Ref.

2. Authorized—.

1. A lottery authorized by a foreign Government, British or Native, is an unauthorized one under S. 294-A. 10 B. 97.
2. The authorization by Government must be express and cannot be implied by the levy of income tax or the like. 23 I. C. 195.
3. A lottery on Melbourne Cup Race is illegal 10 B. 97.

3. Chit fund—.

1. A chit fund was promoted by raising a capital of Rs. 500 monthly by 500 subscribers. There was a drawing by lot and the person drawing the ticket was paid Rs. 50 and his connection with the transaction ceased. At the close of 50th month each of the remaining subscribers was paid Rs. 50 and stake holders divided the profits. Held, this is not a lottery. 48 M. 661, 50 M. 696, 22 M. 212.
2. Where several persons make monthly payments and the person whose name is drawn in the monthly drawing gets a prize and is not required to make any further payments and the unsuccessful persons have to continue, it is lottery. 1934 M. 464=57 M. 923, 1934 M. 482, 1934 M. 136 and 1927 M. 583 Dist. 1933 M. 16 Ref. 1936 M. 225=162 I. C. 65.
3. Promoters of chit fund are liable and not the subscribers. 1936 M. 225=162 I. C. 65, 48 M. 661=1925 M. 870 and 50 M. 696=1927 M. 583 overruled.

Lottery—(contd.)

4. Drawing.

1. Drawing in S. 294-A is used in its physical sense. 35 P. R. 1917 Cr., 1928 B. 550, 17 P. R. 1910, 41 I. C. 144=18 Cr. L. J. 768.
2. The accused a dealer in cigarettes caused five rupees notes to be placed in some packets and any purchaser stood the chance of getting a packet containing five-rupee note. He also published a pamphlet setting out these facts. Held, that there is no actual drawing, it is not a lottery. 53 B. 57=1928 B. 550=112 I. C. 777=30 Cr. L. J. 9.

5. Essentials of—.

1. It is the place for drawing a lottery and not for planning it that is punishable. 17 P. R. R. 1910 Cr.=1910 P. L. R. 92=11 Cr. L. J. 382=6 I. C. 620.
2. *The intention is to suppress lotteries unauthorized by Government.* 10 B. 97.
3. Lottery is a game of chance in which prize is dependent upon the drawing or casting of lots. 35 P. R. 1917 Cr., 1 M. H. C. R. 448, 22 M. 214.
4. Goods in S. 294-A applies to immoveable property. 50 M. 479.
5. S. 294-A only punishes the keeping of an office for holding a lottery and publication of proposals for drawing a lottery. 1926 M. 168=92 I. C. 968.
6. Prize on the correct prediction of the price of opium on a certain day is a lottery. 35 P. R. 1917 Cr.
7. Keeping a small office for doing a preliminary business and correspondence and not intended for the drawing purposes is not punishable. 17 P. R. 1910 Cr.
8. It is not necessary that office or place should be used exclusively for drawing a lottery, e.g., a social club. All the members are liable. 23 I. C. 195.
9. It is not necessary that lottery must actually be drawn in the office or place. 59 I. C. 272.
10. Where a scheme has for its object the carrying on of a legitimate business, the fact that it provides for the distribution of its profits, in certain events by lot will not vitiate the scheme and make it a lottery. 48 M. 661, 49 M. L. J. 791.
11. An agreement whereby a number of persons subscribe, each a certain sum, by periodical instalments and each in his turn to take the whole subscription by lot is not lottery. 22 M. 212.
12. Intention of the accused is immaterial. 1932 R. 143.
13. Officers of an association can be liable under S. 294-A. 1932 L. 581.
14. A District Magistrate acting under S. 155 (2) can order investigation into a case under S. 294-A. 1932 L. 581=138 I. C. 751.
15. A scheme that a bond-holder of Rs. 10 would get Rs. 10-8 after 20 years and out of the interest he will get prize according to the number of the first deceased bond-holder and 10 added to his number, was held to be lottery. 1934 L. 840, 17 P. R. 1910, 1932 R. 143, 55 M. 26=1933 M. 16, 35 P. R. 1917, 53 B. 57, 50 M. 696 and 1 M. H. C. R. 448 Diss. from.
16. Purchaser of sweets getting also ticket entitling him to try his luck in lottery, the transaction is lottery within the meaning of S. 294-A. 1534 S. 69=35 Cr. L. J. 1249, 1932 R. 143 Ref. (1906) 1 K. B. 448 and (1883) 11 Q. B. D. 207 Rel. on.
17. Where every person purchased ticket at the door and thus contributed to the common fund out of which prizes were given and every purchaser had an equal chance of winning four hundred times as much as he put in, it was held to be lottery. 1934 S. 149.
18. Lottery is an arrangement for the distribution of prizes by chance among purchasing tickets. 1933 M. 16=56 M. 26, 1932 R. 143=33 Cr. L. J. 696, 17 P. R. 1910 Cr. Oxford Dictionary.
19. Even if number of subscribers is known, it is lottery. 1936 M. 225.
20. For keeping of place for lottery, exclusive dedication is not necessary. 1936 M. 225=162 I. C. 68.

Lottery—(contd.)**6. Foreign Lottery.**

Any lottery not authorized by Government includes foreign lottery. 10 B. 97, 1925 B. 243.

7. Procedure.

District Magistrate can order an investigation into a case under S. 294-A, I. P. C., even though such offence cannot be tried without the complaint of Local Government or some one authorized by Government. 1932 L. 581.

8. Publication of Proposal

1. Delivery of ticket books of a lottery is sufficient publication. 1930 L. 81, 1926 S. 213 Dist.
2. A mere casual or gratuitous delivery of a lottery ticket or offer of a single ticket is not necessarily publication. 1926 S. 213=95 I. C. 313=27 Cr. L. J. 777.
3. Publication of terms for prizes on horses winning at Derby races in an offence. 1925 B. 243=87 I. C. 516=26 Cr. L. J. 980, 92 I. C. 968.
4. Publication of a proposal of a lottery though authorized by British Government is illegal. 10 B. 97.
5. Printer and publisher are responsible for publishing the terms of lottery in their periodical. 35 C. 945.
6. If A sends the advertisement to B, both A and B would be deemed to publish the advertisement, and both are guilty. 10 B. 97.
7. Where on the face of a lottery ticket it is stated that the prize if any due to number will be paid, it contains a proposal inviting persons to take part in lottery and offering such a ticket is a publication. 27 Cr. L. J. 777.
8. A mere publication on a trade hand bill that lottery ticket can be had at a particular place is no offence since it does not constitute a proposal to pay. 26 Bom. L. R. 968, 53 B. 57.
9. Publication of proposal for payment for Irish Sweep tickets is an offence under S. 294-A. 1933 C. 312=34 Cr. L. J. 518.

9. Raffle.

Publication of an advertisement of Rs. 52,500 lottery by which a ginning factory was to be raffled at Rs. 5 ticket was held to be an offence under S. 294-A. 50 M. 479=1927 M. 66.

LOVE LETTERS.

If a girl of less than 14 years was love smitten and wrote love letters, her consent is immaterial in a case of abduction or kidnapping. 1930 C. 497.

LOVE POTIONS—DEATH BY. See Death by negligence—5.**LOW STATUS OF WITNESS.** See Witness—65.**LUNACY ACT.****1. General.**

A Court cannot delegate its function of determining whether the person alleged to be lunatic is of unsound mind. 43 A. 459=62 I. C. 430=19 A. L. J. 334.

S. 3.

The procedure relating to enquiry should be strictly followed irrespective of the opinion of the relations. 1930 L. 289=122 I. C. 570=31 P. L. R. 98.

S. 4.

Order by District Magistrate under Part II is executive order and is not subject to Revision by High Court. A person aggrieved may apply for an inquisition under Part III. 4 L. 1=1924 L. 55=73 I. C. 696=24 Cr. L. J. 664.

S. 7.

If notice is not served on alleged lunatic the procedure is illegal. 35 C. W. N. 481=1932 C. 20.

*Lunacy Act—(concl'd.)***S. 22.**

A lunatic must be placed under observation and the Court should itself record his statement. 96 P. L. R. 1916=38 I. C. 219.

S. 37.

1. *High Court jurisdiction excludes that of the District Court, though the person resides in latter's jurisdiction.* 48 C. 577=1921 C. 309=23 C. W. N. 178.
2. A temporary removal of a lunatic to the Muffasil does not oust the jurisdiction of the High Court. 57 I. C. 768=32 Cr. L. J. 314.

S. 40:

Notice must be issued after an order for inquisition is made. 54 C. 836=1927 C. 636=103 I. C. 725=31 C. W. N. 838.

S. 42.

S. 42 applies to a case of a lunatic's attendance and examination before a doctor. 126 I. C. 507=1930 O. 301=7 O. W. N. 483.

S. 62

1. Once notice is served on lunatic, subsequent proceedings can proceed without lunatic. 96 I. C. 956=1926 S. 223.
2. Applicant under S. 62 must have a medical certificate of insanity. 49 A. 3.
3. If lunacy is disputed, Court should follow the procedure of S. 62. 96 I. C. 333.
4. An inquisition under S. 62 ought not to be taken except upon a very careful consideration of evidence. 51 C. 480=1924 C. 658=28 C. W. N. 513.
5. An affidavit or examination of applicant and a medical certificate are necessary. It is better that Judge should personally interview the lunatic. 42 A. 504.
6. Temporary residence of lunatic does not confer jurisdiction on a Court. 134 I. C. 1135=1931 C. 711.

S. 65.

1. *An aged man whose mental condition is effected by a stroke of paralysis, but who is able to answer questions sensibly cannot be said to be of unsound mind.* 90 I. C. 878=1926 C. 155=30 C. W. N. 180.
2. Proceedings can be stopped at any stage at the discretion of the Judge. 33 I. C. 857.
3. *A person found to be lunatic under the Act will be presumed to be lunatic until the contrary is shown.* 33 I. C. 578=19 M. L. T. 243

S. 67.

A Judge has no right to delegate his function to any person except a person appointed to assist or advise him, who is after all only in the position of a witness. 43 A. 459.

S. 82.

When it is brought to the notice of the Court that a person has ceased to be a lunatic, it must proceed to enquire about it. 88 I. C. 580=1925 L. 533=26 P. L. R. 593.

S. 83.

Any interested relation of lunatic can prefer appeal. 54 C. 836=1927 C. 636.

LURKING HOUSE TRESPASS. Ss. 453—456, I. P. C. See Criminal trespass, House trespass—16. House breaking.

1. By night. S. 456, I. P. C.

1. The burden of proving that accused had innocent intention is on him, when he pleads that he is found in another's house at night. 29 A. 46=4 Cr. L. J. 291.
2. A conviction under S. 456 is good even though the accused is charged under S. 457. 20 C. W. N. 107.
3. A conviction under S. 456 is not bad for want of specification of intention in the charge. It is enough if it is shown that intention must have been one or other of those specified in S. 441, though it may not be certain which it was. 22 C. 391, 23 A. 124, 4 P. 459, 22 C. 994.

Lurking House Trespass—(concl'd.)

4. If the accused is prejudiced by omission to specify the intent in the charge, a retrial would be ordered. 2 P. L. T. 140.
 5. A mere non-production of owner or person in actual possession of house does not vitiate conviction under S. 456. 1924 A. 764.
 6. Execution creditor breaking open the complainant's door before sunrise to distrain his property is not guilty. 2 M. 30.
 7. For cases of entry to commit adultery or sexual intercourse. *See* House trespass—14.
- 2. Essentials of.—** Ss. 443—453, I. P. C.
1. In order to constitute lurking house trespass, the offender must take some active means to conceal his presence. 21 P. R. 1916 Cr.
 2. Entry on the roof is not a lurking house trespass. 9 P. R. 1887 Cr., 20 A. W. N. 151.
 3. Hiding in a corner of the porch is within the definition of lurking house trespass. 16 P. R. 1889 Cr.
- 3. To commit an offence.** S. 454, I. P. C.
1. Accused was seen leaving the house of one S at noon and was seized on an outcry made by a female in the house. He had on him jewels belonging to that female. Held, he was guilty under S. 350 and not under S. 454. 10 P. R. 1885 Cr.
 2. S. 454 includes cases of house trespassers and house breakers who have not only intended to commit theft, but have actually committed theft. 10 A. 146.
 3. An owner of cattle who rescues the cattle from a cattle pound which is only a sort of fencing to prevent ingress and egress by opening its door does not commit an offence under S. 380 or S. 454 but under S. 378, S. 441 or S. 24, Cattle Trespass Act. 1927 M. 343=100 I. C. 120=28 Cr. L. J. 248

M.

MACHINERY—NEGLIGENT CONDUCT WITH REGARD TO. *See* Public Nuisance—24.

MAGISTRATE.**1. Conferring Powers on—** S. 39 (2), Cr. P. C.

Criminal powers cannot be granted retrospectively, it takes effect from the date on which it is communicated. 1933 Pesh. 97 (1).

2. Duties of— *See* Court's duty.**3. Exercising Powers under S. 30.** Ss. 30—34, Cr. P. C.

1. A Magistrate empowered under S. 30 not signing himself as such, can impose a sentence of rigorous imprisonment exceeding two years. 1935 Pesh. 108=157 I. C. 211=195 Cr. C. 832, 17 P. W. R. 1908 Cr., 1933 B. 58=34 Cr. L. J. 162=141 I. C. 574 and 1934 L. 361=151 I. C. 265=35 Cr. L. J. 1288, Ref. and Explained.

2. A Magistrate not signing as S. 30 Magistrate, a sentence in excess of powers of First Class Magistrate is illegal. 1934 L. 361 (1), 17 P. W. R. 1908 and 1933 B. 58 Appr.

4. Jurisdiction of— *See* Jurisdiction—2.**5. "Specially empowered".** S. 39 (1), Cr. P. C.

1. Government has authority to pass general order authorising all Magistrates to take action under certain sections. It is not necessary that he should be "specially empowered" by name. 1933 A. 676.
2. When a notification empowers a class of Magistrates such officials are "generally" empowered and not specially empowered. 17 M. L. T. 191.

MAINTENANCE. S. 488, Cr. P. C.**1. Adultery.**

1. A single act of adultery cannot be considered as living in adultery and will not

Maintenance—(contd.)

- justify a Magistrate refusing maintenance. 1924 Bom. 59=52 B. 160=104 I. C. 24=30 B. L. R. 79=29 Cr. L. J. 314, 25 A. 326=1 A. L. J. 18, 30 M. 332=17 M. L. J. 279, 1925 C. 794, 5 N. L. R. 19=9 Cr. L. J. 390.
 2. Adultery prior to application will disqualify wife to the right of maintenance. 1926 O. 604=97 I. C. 950=27 Cr. L. J. 1190=3 O. W. N. 717.
 3. Although a woman had given birth to the illegitimate child it was open to Magistrate to find that apart from that circumstance she was not living in adultery. 1925 C. 794=88 I. C. 608=26 Cr. L. J. 1184, 25 A. 326, 30 M. 332, 20 M. 470.
 4. Single act of adultery on the part of wife does not entitle husband to discontinue maintenance allowance fixed by Court. 1929 N. 238=115 I. C. 161=30 Cr. L. J. 403.
 5. An order cancelling maintenance on the ground of adultery can retrospectively operate so as to bar the recovery of arrears already accrued prior to cancellation order. 1930 L. 99=117 I. C. 67=30 Cr. L. J. 719.
 6. A woman committed adultery with a low caste man and was expelled from her caste. She cannot claim maintenance although at the time of application she was not living in adultery. 31 M. 185, *Contra* 1933 B. 32=31 Cr. L. J. 140.
 7. Mere suspicion by the husband that the child of the wife was the result of intimacy with another man, is not the ground for refusing maintenance. 1881 A. W. N. 37, 2 Weir 647.
 8. The mere fact that the Panchayat of the brotherhood condemned the wife's conduct is no ground for dismissing application for maintenance. 1881 A. W. N. 62, 1933 B. 21=34 Cr. L. J. 140.
 9. Desertion by wife without sufficient cause will only suspend the right of maintenance. A wife can at any time claim to be maintained after she returns. 48 I. C. 978=12 S. L. R. 90=20 Cr. L. J. 98.
 10. An order under S. 488 can be cancelled on proof of adultery subsequent to order and not on previous adultery. 5 A. 324, 8 B. H. C. R. 124.
 11. When adultery is set up by husband, the Magistrate must make inquiry. 36 P. R. 1902 Cr., 1882 A. W. N. 168.
 12. It is harsh to penalize a girl of fourteen because of single lapse. 1933 B. 21=34 Cr. L. J. 140.
- ## 2. Agreement. See—9.
1. Agreement by husband to pay some allowance in cash and something in kind and the Magistrate's order passed on that agreement is not a proper order. 57 I. C. 276=21 Cr. L. J. 612, 6 M. 283.
 2. Agreement between husband and wife regulating maintenance is not enforceable summarily under S. 488. 42 P. R. 1888 Cr., 12 P. R. 1893 Cr.
 3. When parties file a petition of compromise, it means wife abandons all claims for arrears due. 37 C. L. J. 180.
 4. Where the compromise contemplates the passing of order under S. 488, an order in terms of compromise can be passed. 1933 O. 119=34 Cr. L. J. 744, 1926 L. 469 and 1930 L. 524 Dist. 1931 L. 574=32 Cr. L. J. 993 and 1931 M. 185 Rel. on.
- ## 3. Alteration of allowance. S. 489, Cr. P. C.
1. Alteration of allowance can be ordered if circumstances of the husband change. 1928 B. 224=111 I. C. 668=29 Cr. L. J. 908=30 B. L. R. 617.
 2. If after the maintenance order a decree of civil Court granting restitution is passed the decree does not *ipso facto* cancel maintenance order. 3 R. 150=1925 R. 28=89 I. C. 317=27 Cr. L. J. 876, *Contra* 43 B. 885.
 3. Cancellation of the order granting maintenance also comes within the meaning of word alteration. 48 M. 503=1925 M. 491=86 I. C. 220=26 Cr. L. J. 782=1925 M. W. N. 67.
 4. If after the order for maintenance, husband divorces the wife the Magistrate must refuse to enforce the order. 63 I. C. 329=22 Cr. L. J. 633, 5 A. 226, 19 A. 50. *See* 21 P. R. 1894 Cr.

aintenance—(contd.)

5. The "change in circumstances" in S. 489 means not merely a temporary or accidental change, such as salary but a change in all the circumstances connected with the condition of the person. 19 A. 50, 1895 A. W. N. 32.
6. The growth of the child or birth of another child or the death of a child is a change in the circumstances. 14 M. 398, 12 C. 535.
7. The fact that the children were grown up and are able to maintain themselves amounts to a change in the circumstances. 19 Cr. L. J. 160.
8. Where a divorced Mohammadan wife has married again the fact that the second husband has undertaken to maintain her child by the first husband does not empower the Magistrate to cancel the order of maintenance passed against the first husband to maintain his child. 27 A. 11.
9. The mere fact that the wife might possibly be able to earn something by her own labour is not a ground on which husband may apply for reduction in the rate of allowance. 1837 A. W. N. 107.
10. If after the order parties make an agreement modifying its terms such agreement would amount to change in the circumstances and the party interested can apply under S. 489 and get the order modified. 25 A. 165.
11. An application for alteration of allowance is no ground for staying the execution of order of maintenance already granted. 22 C. 291.
12. When the application for alteration of allowance has been preferred, the Magistrate cannot enquire into the propriety or otherwise of the previous order of maintenance. 2 Weir 650.
13. Where an arbitrator has made an award, he cannot subsequently review it. 1934 A. 940.
14. The order reducing the rate of maintenance for months of which arrears were claimed retrospectively is improper specially where there had been no application by the husband under S. 489 for reduction of maintenance. 1935 L. 24=1935 Cr. C. 18.
15. When there is no decrease in husband's income, the mere fact that wife got a job of Rs 6 per mensem is not sufficient to reduce the rate of maintenance. 1935 L. 24
16. On change of circumstances of husband, the orders can be altered but not cancelled. 1933 L. 1026

4. Amount of—

1. Order directing maintenance at the rate of Rs. 150 p m. is in excess of Magistrate's jurisdiction. 1927 B. 46=99 I. C. 83=23 Cr. L. J. 51=28 B. L. R. 1299.
2. In determining the amount of maintenance no luxury should be allowed but only the necessity of life should be considered according to the station in life of the applicant and the means of respondent. 4 Bur. L. T. 269.
3. A prospective order providing for increase being made in the amount awarded for a child maintenance hereinafter as the child grows older is illegal. 2 N. W. P. H. C. R. 454, 12 C. 535, 14 M. 398.
4. The payment of maintenance must be in money. An order for payment of maintenance in grain is not in accordance with this Code. 82 I. C. 279, 2 Weir 626, 2 B. L. R. 186, 19 P. R. 1911 Cr., 3 P. R. 1887 Cr., 1932 N. 183
5. The order should specify the amount payable to wife and child separately. 9 L. B. R. 49
6. In the whole do not mean that Rs 100 is maximum limit for all dependants together 1923 C. 406=34 Cr. L. J. 590
7. Maintenance does not include more than appropriate food, clothing and lodging 1933 M. 688 (1)=56 M. 913.
8. Maintenance does not include cost of college education. 1933 L. 1026=147 I. C. 719, 1923 R. 45

5. Application for—

1. An application under S. 488 cannot be regarded as a proceeding of a civil nature

Maintenance—(contd.)

Failure to maintain a child is not a criminal offence. 1925 R. 140=76 I. C. 111=25 Cr. L. J. 111.

2. If application for maintenance is dismissed for default the subsequent application is not barred. 1927 R. 328=5 R. 697=28 Cr. L. J. 912=105 I. C. 240, 5 A. 24.
 3. An application under S. 483 though verified can be neither a substitute nor supplement to the applicant's examination on oath in the presence of her husband. Nor is it legal evidence against the husband. 76 I. C. 974=25 Cr. L. J. 302.
- 6. Arbitration in—case.** See Arbitration.
- 7. Award of—**
1. Magistrate cannot direct maintenance for the period prior to the order of maintenance. 1928 M. 899=108 I. C. 906=29 Cr. L. J. 458.
 2. Magistrate can increase maintenance and direct that the increased rate of maintenance be paid from the date of application asking for the increase. 1926 B. 419=96 I. C. 396=27 Cr. L. J. 940=28 B. L. R. 669.
 3. Order for maintenance prior to the date of application is illegal. 1926 L. 532=94 I. C. 354=27 Cr. L. J. 610=7 L. 365=27 P. L. R. 539, 5 P. R. 1870.
 4. Magistrate can award only one sum not exceeding Rs. 100 to be paid for the wife and for each of the children unable to maintain itself. 49 M. 891=90 I. C. 689=1926 M. 59=26 Cr. L. J. 1597.
 5. Only monthly cash allowance and not any grain can be ordered. 1925 L. 142=82 I. C. 279=25 Cr. L. J. 1771, 81 I. C. 613, 1924 B. 332, 19 P. R. 1911 Cr. 3 P. R. 1887, Cr. 1933 N. 3=34 Cr. L. J. 123.
 6. An order for maintenance passed on condition that the woman must reside in her husband's house or in a house provided by husband is illegal. 14 P. R. 1917 Cr.
 7. The payment order must be a monthly and not annual. 2 Weir 627, 21 Cr. L. J. 612.
 8. An order fixing the duration of the period for the maintenance to be paid is illegal. 2 Weir 634.
- 8. Cancellation of order.**
1. In case of *bona fide* re-union of husband and wife the order of maintenance becomes vacated. 8 R. 460=128 I. C. 353=1931 R. 89=32 Cr. L. J. 114.
 2. After the order of maintenance if wife returns to her husband the order remains enforced until husband gets it cancelled. 1927 M. 1148=99 I. C. 1037=28 Cr. L. J. 237, 1927 M. 376=50 M. 663=100 I. C. 239=28 Cr. L. J. 271=1927 M. W. N. 111.
 3. In case of wife returning to her husband the order becomes suspended. 50 M. 663=1927 M. 376=100 I. C. 239=28 Cr. L. J. 271, 1923 C. 456=75 I. C. 529=24 Cr. L. J. 945.
 4. If a wife obtains a decree for restitution of conjugal rights only to avoid maintenance cancelled. 1925 M. 1218=91 I. C. 62=27 Cr. L. J.
 5. If after the husband discovers the marriage to be void, the proper course for him is to approach Magistrate having matrimonial jurisdiction. 1927 B. 46=99 I. C. 83=28 Cr. L. J. 51=28 B. L. R. 1259.
 6. An allowance granted to a child cannot be cancelled though it might be altered under S. 489. 17 P. R. 1885 Cr.
 7. An order for maintenance of a divorced Mohammadan wife who has married again cannot be cancelled under S. 483, though it can be cancelled on the ground of change of circumstances mentioned under S. 489. 27 A. 11.
 8. An order granting maintenance to a wife can be cancelled upon proof that wife is living in adultery subsequent to the order. The adultery previous to the order is not admissible in evidence to cancel the order. 5 A. 224.

aintenance—(contd.)

9. The order for maintenance can be cancelled on the ground of divorce. 19 A. 50, 7 Bom. 180.
10. The apostasy dissolves marriage and wife is not entitled to maintenance after she changed religion. 9 L. B. R. 206.
11. On the marriage of the daughter the father can get the order of maintenance cancelled. 2 Weir 650.
12. The order for maintenance becomes untenable in case of Mohammadan wife on the expiry of the period of *iddat* if she is divorced after the order. 56 I. C. 663=21 Cr. L. J. 503.
13. The fact that the mother takes the minor child to the house of her husband, does not cancel the order of maintenance passed in favour of child. 1930 L. 1043=32 Cr. L. J. 217=32 P. L. R. 143=129 I. C. 216
14. On change of circumstances of husband the order can be altered but not cancelled. 1933 L. 1026=147 I. C. 719.
15. Magistrate can cancel order of maintenance if the wife is living in adultery. 8 Bom. H. C. (Cr. C.) 124.
16. The reasons given in S. 488 (5) for concellation are not exhaustive. 1935 A. 977.

9. Child.

1. Child under S. 488 means one who has not attained age of majority. 37 M. 565.
2. An illegitimate child is entitled to maintenance from the father 16 C. 781, 18 A. 107
3. Child means son or daughter of any age and can claim maintenance so long as he or she is unable to maintain himself or herself 28 P. W. R. 1910 Cr., 1933 L. 1026
4. Child means one who cannot enter into contract A person below the age of 18 is child. 1935 C. 488=62 C. 639=36 Cr. L. J. 114, 37 M. 565, 1 33 L. 1026=147 I. C. 719 Foll.

10. Compromise or consent order. See—2

1. S. 488 does not apply when a compromise is effected to pay maintenance. An order passed regarding such a compromise is without jurisdiction The proper remedy is by way of Civil Suit to enforce the compromise. 1926 L. 469=95 I. C. 315=27 Cr. L. J. 779, 42 P. R. 1888 Cr., 39 P. R. 1905 Cr., 1930 L. 524=127 I. C. 13=31 Cr. L. J. 1179, 1933 C. 776 (2)=147 I. C. 914.
2. When after the order for maintenance parties put in a compromise petition that the petitioner should pay his wife Rs 10 a month as long as she remains in the house of petitioner, the lady forfeits her rights to past maintenance up to the date of this petition. 1923 C. 456=75 I. C. 529=24 Cr. L. J. 945=37 C. L. J. 180.
3. Where wife denied the validity of deed of compromise the Magistrate should not cancel the order for maintenance until agreement had been declared by a competent tribunal to be binding on the wife 2 Weir 649.
4. A consent order under S. 488 is no bar to a suit for restitution of conjugal rights. 54 M. 558=1931 M. 482=131 I. C. 463=1931 M. W. N. 364=60 M. L. J. 433.
5. Merely because the parties agreed to the rate, does not mean that S. 488 is not applicable 132 I. C. 354=1931 L. 574=32 Cr. L. J. 993.
6. An order based on consent of parties is enforceable 131 I. C. 173=1931 M. 185=32 Cr. L. J. 688=1931 M. W. N. 327
7. A compromise before Court is sufficient proof that husband had been neglecting to maintain his wife. 33 P. L. R. 292=1932 L. 349=137 I. C. 364=33 Cr. L. J. 488.
8. If after the order, a compromise is effected, Court cannot enforce the compromise. 135 I. C. 198=1932 L. 115=33 Cr. L. J. 121=33 P. L. R. 927, 1931 M. 185.
9. It is only where the compromise between the husband and wife does not cover matters outside the purview of S. 488 that an order for maintenance can properly be passed by the criminal Court 1934 L. 864, 1932 L. 349=33 Cr. L. J. 488 Foll.
10. A compromise as to the amount of maintenance when no other terms or conditions are imposed, can be enforced under S. 488. 1935 A. 294=1935 Cr. C. 327, 1932 L. 349=33 Cr. L. J. 488=137 I. C. 364 Ref.
11. In case of compromise, even if changes in future are contemplated, still an order under S. 488 can be passed. 1936 N. 228.

Maintenance—(contd.)

10. Conditional order.

1. An order for maintenance of a wife passed on condition of her staying in her husband's house is illegal. 14 P. R. 1917 Cr. = 39 I. C. 496 = 18 Cr. L. J. 523, 113 I. C. 67 = 30 Cr. L. J. 51.
2. If a father offers to maintain her son on the condition that he lives with him the *Magistrate should give an opportunity of proving that the offer is made in good faith.* 41 I. C. 331 = 18 Cr. L. J. 811, 22 P. R. 1917 Cr., 18 P. R. 1894 Cr. See 19 M. 461, 27 I. C. 841, 25 M. L. J. 355, 115 P. L. R. 1914.
3. Order for separate maintenance with proviso that if husband lives with wife latter would not get maintenance is bad in law. 1929 L. 56 = 111 I. C. 575 = 29 Cr. L. J. 895.
4. The husband was ordered to take the wife away and maintain her, but, if he failed to do so and turned her out he would be liable to pay a fixed sum per mensem to her for maintenance. The order is illegal. 7 L. 313 = 1926 L. 480 = 93 I. C. 1032 = 27 P. L. R. 462.

11. Consent to live separate.

1. Husband and wife were living separately. Wife's house was washed away. He again offered to keep her in a separate house and she refused and claimed maintenance. Held, that the maintenance should be allowed. 52 Bom. 763 = 1923 B. 418 = 30 B. L. R. 958 = 29 Cr. L. J. 1049 = 112 I. C. 473.
2. Consent must be deliberate. A hasty rejoinder to a husband who in the course of a quarrel was manoeuvring for a consent from a wife cannot be considered to be such a consent. 1923 R. 100 = 1 Bur. L. J. 124.
3. An agreement to live separate cannot be given effect to by the Court. In such a case the wife should be directed to Civil Court. 33 P. L. R. 292 = 1932 L. 349 = 137 I. C. 364 = 33 Cr. L. J. 488.
4. Mere indifference by husband is not a sufficient reason for the wife to refuse to live with him. If each party finds it impossible to live amicably and comfortably with each other and each prefers to live separately, the separate living is by mutual consent. 1935 R. 359.

12. Costs. S. 488, (7), Cr. P. C.

If the husband fails, he must pay the cost of the applicant. 1933 B. 21 = 34 Cr. L. J. 140.

13. Decree for maintenance.

1. A mere decree of a Civil Court awarding maintenance which has become inexecutable owing to the pendency of insolvency proceedings against the husband is no bar to the Magistrate passing order under S. 488. 1930 B. 144 = 124 I. C. 127 = 31 Cr. L. J. 609 = 31 B. L. R. 1366.
2. Magistrate can pass order under S. 488 notwithstanding the decree for conjugal rights if wife is ill-treated. 46 A. 877 = 1924 A. 784 = 82 I. C. 174 = 22 A. L. J. 806 = 25 Cr. L. J. 1246.
3. A Civil Court decree is no answer to an application for enforcement of an order previously obtained by the wife under S. 488. 1923 P. 153 = 65 I. C. 576 = 23 Cr. L. J. 144 = 3 P. L. T. 51.
4. Decree of Civil Court cannot be ignored. 1932 A. 583 = 1932 A. L. J. 766.

14. Desertion by husband.

The fact that wife had been deserted by husband is a ground for awarding maintenance. 1932 L. 301 = 33 P. L. R. 230 = 137 I. C. 30 = 33 Cr. L. 447.

15. Divorce

1. Divorce does not completely destroy the relation of a husband and wife until after the expiry of period of *iddat*. A wife during *iddat* is entitled to an order for maintenance. 5 P. R. 1905 Cr., 20 M. L. J. 12 = 10 Cr. L. J. 502.
2. Wife is not entitled to maintenance after period of *iddat* 1930 B. 178 = 126 I. C. 893 = 31 Cr. L. J. 1110 = 32 B. L. R. 582, 19 A. 50, 8 C. 736 (dissented from), 56 I. C. 663 = 13 Bur. L. T. 43.

aintenance—(contd.)

3. Contracting "sagai" with a brother-in-law by a *Kahar's* wife does not dissolve marriage under the Hindu Law. 1925 A. 426=93 I. C. 1046=27 Cr. L. J. 550.
4. Plea of divorce is entertainable against enforcement of order of maintenance. 21 P. R. 184 Cr., 19 A. 50, 7 B. 180, 17 N. L. R. 92=63 I. C. 329=22 Cr. L. J. 633.
5. After a maintenance order is passed by the Magistrate a Mohammadan husband can divorce his wife, and after such a divorce the order cannot be enforced. 8 Bom. H. C. R. 95.
6. Special custom must be proved by a Hindu alleging divorce. 1933 B. 21.
6. Enforcement of an order.
 1. Court making order for maintenance cannot refuse to enforce it. 52 M. 77=1923 M. 1171=111 I. C. 852=29 Cr. L. J. 932=1923 M. W. N. 837.
 2. Magistrate is bound to consider judicially any objection to execution of maintenance order. 1925 M. 715=57 I. C. 105=25 Cr. L. J. 953.
 3. Execution of order directing maintenance to be charged on joint estate which was not appealed against cannot be refused. 49 Bom. 905=94 I. C. 604=1926 B. 103=27 Cr. L. J. 652.
 4. If the defaulter dies the order cannot be enforced against his estate. 41 C. 88.
 5. If the husband is adjudged insolvent the order of maintenance cannot be enforced so long as the order of adjudication stands and he cannot, therefore, be imprisoned for default of payment. 50 C. 867=1924 C. 230=25 Cr. L. J. 1088=81 I.C. 918.
 6. Where the wife after the order voluntarily resided with her husband the original order becomes ineffectual and if the husband again refuses to maintain her fresh proceedings must be instituted under S. 488. 1885 A. W. N. 217.
 7. The defendant's inability to pay is not a ground for Magistrate's refusal to enforce order of maintenance. 2 Weir 636.
 8. A person who has been sentenced to imprisonment for making default, cannot be sentenced a second time for the same amount. 10 R. 176=1932 R. 93.
 9. Warrant of attachment of property and sentencing the husband to six months' imprisonment for cumulative arrears is legal. 13 P. R. 1919 Cr., 20 M. 3, and 25 C. 291 Foll. 9 A. 240 Not foll.
 10. A person can be committed to prison for a term amounting to the whole or part of each month's allowance remaining unpaid after the execution of warrant. 1935 L. 758=36 P. L. R. 191. 20 M. 3, and 25 C. 291 Foll. 12 P. R. 1877 Dist.
 11. The Magistrate passing an order under S. 488 can enforce it. Residence of person liable to pay, outside the District, is immaterial. 1935 R. 407, 15 Cr. L. J. 701=26 I. C. 149 Foll.
 12. An order refusing to enforce maintenance order does not bar subsequent application for different period. 1933 R. 138=34 Cr. L. J. 815, 5 A. 224.
7. Ex-parte order.
 1. If the party is present in Court along with Pleador *ex-parte* order against him is not justified. 1930 L. 524=127 I. C. 13=31 Cr. L. J. 1179.
 2. If the husband did not refuse to take notice *ex-parte* proceedings are not justified, 1928 L. 853=110 I. C. 239=29 Cr. L. J. 687.
 3. If the order is passed *ex-parte*, the succeeding Magistrate has power to re-open the case. 1923 R. 159=75 I. C. 304=24 Cr. L. J. 928.
 4. Unless the defendant is wilfully avoiding service of summons or neglecting to attend Court, proceedings should not be taken *ex-parte*. 1 C. L. J. 102.
 5. If defendant's attendance has not been dispensed with, the Court can refuse to hear the Mukhtar by whom he is represented and Court should insist upon the presence of the defendant and should not proceed *ex-parte*. 2 Bom. L. R. 700.
8. Fresh application.
 1. Where there had been no adjudication on an application for maintenance, a dismissal of such application would not bar a fresh application. 1927 R. 328=5

*Maintenance—(contd.)***10. Conditional order.**

1. An order for maintenance of a wife passed on condition of her staying in her husband's house is illegal. 14 P. R. 1917 Cr. = 39 I. C. 496 = 18 Cr. L. J. 523, 113 I. C. 67 = 30 Cr. L. J. 51.
2. If a father offers to maintain her son on the condition that he lives with him the Magistrate should give an opportunity of proving that the offer is made in good faith. 41 I. C. 331 = 18 Cr. L. J. 811, 22 P. R. 1917 Cr. 18 P. R. 189† Cr. See 19 M. 461, 27 I. C. 841, 25 M. L. J. 355, 115 P. L. R. 1914.
3. Order for separate maintenance with proviso that if husband lives with wife latter would not get maintenance is bad in law. 1929 L. 56 = 111 I. C. 575 = 29 Cr. L. J. 895.
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1. Husband and wife were living separately. Wife's house was washed away. He again offered to keep her in a separate house and she refused and claimed maintenance. Held, that the maintenance should be allowed. 52 Bom. 763 = 1923 B. 418 = 30 B. L. R. 958 = 29 Cr. L. J. 1049 = 112 I. C. 473.
2. Consent must be deliberate. A hasty rejoinder to a husband who in the course of a quarrel was manœuvring for a consent from a wife cannot be considered to be such a consent. 1923 R. 100 = 1 Bur. L. J. 124.
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4. Mere indifference by husband is not a sufficient reason for the wife to refuse to live with him. If each party finds it impossible to live amicably and comfortably with each other and each prefers to live separately, the separate living is by mutual consent. 1935 R. 359.

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If the husband fails, he must pay the cost of the applicant. 1933 B. 21 = 34 Cr. L. J. 140.

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2. Magistrate can pass order under S. 488 notwithstanding the decree for conjugal rights if wife is ill-treated. 46 A. 877 = 1924 A. 784 = 82 I. C. 174 = 22 A. L. J. 806 = 25 Cr. L. J. 1246.
3. A Civil Court decree is no answer to an application for enforcement of an order previously obtained by the wife under S. 488. 1923 P. 153 = 65 I. C. 576 = 23 Cr. L. J. 144 = 3 P. L. T. 51.
4. Decree of Civil Court cannot be ignored. 1932 A. 583 = 1932 A. L. J. 766.

14. Desertion by husband.

The fact that wife had been deserted by husband is a ground for awarding maintenance. 1932 L. 301 = 33 P. L. R. 230 = 137 I. C. 30 = 33 Cr. L. 447.

15. Divorce.

1. Divorce does not completely destroy the relation of a husband and wife until after the expiry of period of *iddat*. A wife during *iddat* is entitled to an order for maintenance. 5 P. R. 1905 Cr., 20 M. L. J. 12 = 10 Cr. L. J. 502.
2. Wife is not entitled to maintenance after period of *iddat*. 1930 B. 178 = 126 I. C. 893 = 31 Cr. L. J. 1110 = 32 B. L. R. 582, 19 A. 50, 8 C. 736 (dissented from), 56 I. C. 663 = 13 Bur. L. T. 43.

Maintenance—(contd.)

R. 697=28 Cr. L. J. 912=105 I. C. 240, 54 I. C. 51=24 C. W. J. 3, 1935 R. 277.

19. Jurisdiction.

1. The Court within whose jurisdiction the husband or the father recognises of the complaint. 24 C. 638, 9 Bom. 40, 13 P. R. 185. 1893 Cr.
2. The words "last resided" include a temporary residence of two months in the house of her parent as "*Ghar Javat*" so as to confer jurisdiction on that place. 54 Bom. 548=1930 B. 348=32 B. L. R. 764=127 I. 1927 A. 291=49 A. 479, 1932 N. 85 (2)=140 I. C. 394=34 Cr. L. J. 3
3. A casual or temporary residence will not confer jurisdiction on the Court where the husband and wife have no fixed place or board and both are going from place to place casual or temporary residence at any particular time is sufficient to give that Court jurisdiction. 53 B. 781=1929 B. 410=122 I. C. 59=31 Cr. L. J. 331, 46 C. 964, 1921 B. 211, 32 A. 303, 95 I. C. 596=1926 O. 268. See 2 W. N. 872=40 I. C. 705, 1932 N. 85 (2).
4. If the proceedings are taken in a wrong district the final order is not vitiated, if Magistrate is otherwise competent. 1929 C. 336=115 I. C. 602=30 Cr. L. J. 49 C. L. J. 205.
5. Where a wife brought a suit for arrears and for future maintenance and got decree for arrears but owing to non-payment of Court-fee, her suit for future maintenance was dismissed. Held, that she could apply under S. 488. 36 C. W. N. 571=1 C. 698=138 I. C. 613=33 Cr. L. J. 634.
6. If the husband visits his wife in her parent's house, wife's petition for maintenance in a Court where she resides can be entertained. 1928 L. 853=110 I. C. 239=30 Cr. L. J. 687, *Contra* 63 I. C. 870=22 Cr. L. J. 710=24 O. C. 249.
7. The mere fact that the marriage of the party took place in a district does not confer jurisdiction under S. 488 (8), 1926 L. 663=96 I. C. 865=27 Cr. L. J. 1009.
8. Even if the wife is ex-communicated from caste, the Magistrate's discretion is not affected. 1933 B. 21=34 Cr. L. J. 140, 31 M. 185 Ref.
9. Court in the place of permanent residence of parties has jurisdiction. 1933 O. 268=34 Cr. L. J. 744.
10. It is residence of husband and not of his father that gives jurisdiction to Court. 1933 L. 387 (1).
11. Temporary residence of about two months is sufficient to confer jurisdiction. 1932 N. 85 (2), 54 B. 548=1930 B. 348; 49 A. 479=1927 A. 291, 18 Cr. L. J. 706=105 I. C. 706 Rel. on. 1926 O. 268 and 53 B. 781=1929 B. 410 Diss. from.

20. Liability of other persons.

1. An order cannot be passed against the father of husband for the maintenance of wife. 1931 L. 532=134 I. C. 488=32 P. L. R. 346=32 Cr. L. J. 1175.
2. Where a husband made default in paying maintenance, the Court could not direct mortgage from the husband to pay it out of income of property. 1931 C. 644=105 I. C. 1199=35 C. W. N. 692=33 Cr. L. J. 93.

21. Maintenance of child.

1. If daughter is married after maintenance order, the order should continue if she is unable to maintain herself even then. 48 M. 503=1925 M. 491=86 I. C. 220=1925 M. W. N. 67=26 Cr. L. J. 732.
2. A Mohammadan infant daughter lived with her legal guardian—the mother. She filed an application under S. 488 but the father said that he was willing to maintain the child if given into his custody. Held, order of maintenance cannot be refused. 933 B. 303=1928 L. 543=112 I. C. 476=29 Cr. L. J. 1052=29 P. L. R. 401, 22 P. 1917 Cr., 18 P. R. 184 Cr. Dist.
3. Daughters under 10 years of age are entitled to separate allowance. 52 B. 763=1925 B. 418=112 I. C. 473=30 B. L. R. 958=29 Cr. L. J. 1049.

Maintenance—(contd.)

28. Personal Law of Parties.

- S. 488 provides statutory right and cannot be affected by personal law. Non-payment of prompt dower may be a good and sufficient reason under Mohammdan Law for a woman to withhold her person but is not sufficient ground for passing decree under S. 488. 1935 O. 285=154 I. C. 561=36 Cr. L. J. 524, 6 P. R. 1888 Cr.

29. Period for which—can be recovered. S. 488 (3), Cr. P. C.

First application was made within 4 months of the order but husband could not be traced and was dismissed. The second application was made 15 months after the order. Held, that warrant could be issued for the whole period. 1935 R. 407.

30. Procedure. See 21.

1. Persons aggrieved by the order under S. 488 should go to the Civil Courts. 1926 M. 346=92 I. C. 862=27 Cr. L. J. 350=1926 M. W. N. 146.
2. After examination of parties, the Court is bound to ask them if they wish to adduce evidence. 31 Cr. L. J. 110=1930 N. 59=120 I. C. 416.
3. It is not competent for a Magistrate to hold a second enquiry into the same allegations which have once been enquired into and dismissed by a competent Court. 24 P. R. 1916 Cr.
4. A Magistrate can entertain subsequent application for fresh cause shown. 2 Weir 633.
5. Application under S. 488 should be adjourned when divorce proceedings are pending, 1932 S. 210.
6. If the previous application has been dismissed for default of appearance and there was no adjudication regarding the merits, second application is entertainable. 24 C. W. N. 32.
7. District Magistrate cannot order further enquiry under S. 436 against an order refusing maintenance. 25 A. 545.
8. The wife does not lose her right of maintenance because she has delayed in making the application. 2 Weir 616.
9. When a *prima facie* case is made out for wife's maintenance the Magistrate must record evidence of both parties. 1932 L. 301=137 I. C. 30=33 Cr. L. J. 447=33 P. L. R. 230.
10. The question of marriage must be decided by the Court itself, and should not be referred to the Civil Court. 137 I. C. 30 (1)=1932 L. 301=33 Cr. L. J. 447, 11 P. R. 1881.
11. A Presidency Magistrate need not take down the evidence under S. 488. 137 I. C. 27=1932 B. 179=34 B. L. R. 276=33 Cr. L. J. 461.
12. Wife need not be examined before issue of process. 1934 L. 946.

31. Refusal to live with her husband.

1. Court should consider grounds of refusal and pass order for maintenance in respect of just grounds. 1930 L. 464=31 P. L. R. 664=130 I. C. 51.
2. If husband ill treats his wife, e. g., drives her out with blows, she is justified in refusing to live with him. 46 A. 877=1924 A. 784=22 A. L. J. 806=25 Cr. L. J. 1246=82 I. C. 174.
3. Adultery on the part of husband may constitute sufficient cause for the wife living separately from her husband and enable her to claim maintenance under this section. 20 M. 470, 13 A. 341.
4. Where the husband is living with a mistress in a house at the time of application wife is entitled to refuse to live with him and subsequent offer made by the husband in Court to give up his mistress does not deprive the wife of her right or refusal to live with her husband. 14 Bur. L. R. 240.
5. If the community to which the husband belongs does not completely disapprove of concubinage and tolerates it, the wife is not entitled to claim separate maintenance. 20 M. 470, 17 M. 260, 2 Weir 641.

Maintenance—(contd.)

5. Proceedings under S. 488 are of a criminal nature and come within the meaning of S. 528. District Magistrate can withdraw a case from the file of the 1st Class Magistrate on his own file. 5 P. R. 1905 Cr.
 6. Even if S. 342, Cr. P. C., applies to S. 488, the absence of the accused on the date and his non-examination is immaterial, when the matter is decided *ex-parte*. 35 C. W. N. 380=1932 C. 488 (2)=138 I. C. 629=33 Cr. L. J. 640.
 7. Proceedings under S. 488 are of summary nature. Court need not go deeply into the relation of parties. If parties are not pleased, they can go to Civil Court to settle their disputes. 1935 R. 192=146 I. C. 968.
 8. Parties were absent on the date of hearing. Application for exemption from personal appearance. Held, that order under S. 247 should be quashed and inquiry continued. 1934 L. 195.
- 26. Neglect or refusal to maintain.**
1. Neglect or refusal to maintain is first essential under S. 488. 1930 L. 586=129 I. C. 37=31 P. L. R. 876, 83 I. C. 688=1925 O. 294=26 Cr. L. J. 128.
 2. A mere offer to maintain does not amount to absence of neglect to maintain. 49 M. 591=1926 M. 59=90 I. C. 669=26 Cr. L. J. 1597.
 3. Insolvency of husband disproves wilful neglect. 50 C. 867=1924 C. 230=81 I. C. 912.
 4. If the father denies paternity, the Court can infer neglect to maintain. 6 S. L. R. 208
 5. A father offering to maintain his children if they reside with him, cannot be said to refuse to maintain them. 18 P. R. 1894 Cr., 22 P. R. 1917 Cr.
 6. Minor daughter of a Mahomedan was in the custody of divorced wife. Demand by father of custody of children as condition for maintaining them amounts to refusal within meaning of S. 488. 1933 L. 969=14 L. 770, 9 L. 313=1923 L. 543; 1930 L. 1043 and 6 Bom. L. R. 536 Foll. 18 P. R. 1894, 22 P. R. 1917 and 1927 L. 430 Dist.
- 27. Offer at the trial.—Reunion.**
1. Offer at trial to maintain is of no avail. 1924, M. 624, 49 B. 562.
 2. The offer must be a *bona fide* one and not with the object of escaping obligation. 13 Cr. L. J. 55, 1932 N. 183.
 3. The fact that in the past husband has neglected to maintain should be considered sufficient by itself to lead to the presumption that the offer is not made in good faith. 22 P. R. 1917 Cr.
 4. The offer must be to maintain wife as wife and not as dependent or servant. 17 M. 260, 2 Weir 641.
 5. If the husband expresses his willingness to take his wife back, although she left him of her own will and was of a bad character it is incumbent on the Magistrate to ask the wife whether she was willing to return to her husband before proceeding further. 1930 L. 665=125 I. C. 637=31 Cr. L. J. 876.
 6. A Hindu husband offered an amount of grain and residence to his wife and refused to live with her. Held, it was no offer. 6 M. 371.
 7. When husband is willing to maintain his wife proviso to sub-section 3 must be complied with. 96 I. C. 394=27 Cr. L. J. 938.
 8. If the wife was ill-treated and the offer by husband to take her back was disingenuous and made only to resist her claim, maintenance should be allowed. 1933 N. 3=34 Cr. L. J. 123.
 9. When there is offer by husband to take back wife or child, the order granting maintenance is illegal, unless there is a finding as to *mala fide* of offer or sufficiency of reason for wife not going back to husband. 1934 L. 946.
 10. Reunion does not automatically vacate order. The parties may contemplate permanent reunion and yet quarrel and separate again. 1936 N. 228, 1933 R. 138 Rel. on.

*Malicious Prosecution***MALICIOUS PROSECUTION.**

If a complaint is dismissed under S. 203, there is no prosecution and person complained against cannot maintain a suit to recover damages for malicious prosecution 1931 A. 665=53 A. 771=1931 A. L. J. 611.

MANAGER OF A FIRM.

1. Breach of trust by—. See Breach of trust—17.
2. Whether person in authority. See Confession by inducement—10.

MANIPULATION IN EVIDENCE.

When the manipulation in the personnel of the actors in a crime is extremely easy and it is extremely difficult to refute, the question of motive is of great importance. 27 Cr. L. J. 529=1926 O. 120=93 I. C. 1025.

MAPS AND PLANS.

1. The person who prepares a map for use in Criminal case ought not to put upon it anything more than what he sees himself. Particulars derived from witnesses should not be noted on the body of the map but on a separate sheet of paper, annexed to the map as an index thereto, the spots being marked A, B, C, etc. 1924 C. 1029=84 I. C. 654=52 C. 172, 1925 C. 99=89 I. C. 242, 1926 C. 550, 1936 P. 11.
2. Where the trial was characterized by grave irregularities in procedure and a map prepared by the investigating officer had been rejected as not drawn to scale, a retrial was ordered. 64 I. C. 65=25 C. W. N. 609=23 Cr. L. J. 41.
3. There are certain kind of indices which are regarded as inadmissible but legitimate index should be exhibited on the map 1936 P. 11, 52 C. 172.
4. A map prepared by Police on information is inadmissible in evidence. 1925 C. 959.

MARGINAL NOTES. See Interpretation of Statute—12.**MARK OF INJURY.****1. Absence of—**

1. Absence of mark of injury of *lathi* is immaterial if it struck on some elastic part. 2 P. 309=1923 P. 413=24 Cr. L. J. 801.
2. The absence of external marks of injury is not necessarily destructive of the case that the injury was caused by brick blow in the abdomen is less likely to leave a mark than one on a less elastic part of the body. 1923 P. 413=24 Cr. L. J. 801.

2. Explanation of—

1. Where an accused was charged under S. 307, I. P. C., and the Magistrate in convicting him relied on the fact that some abrasions were found on his person. Held, that unless an incriminating circumstance is proved by the prosecution, he should not be called upon to explain away its existence. 1929 N. 350=31 Cr. L. J. 15.
2. Where prosecution witnesses are not impartial and story put forward by them is false which does not explain injuries caused to the accused, conviction should be set aside. 95 I. C. 597=27 Cr. L. J. 821=8 L. J. 183.
3. Where accused had number of injuries on his leg and accused did not explain them, but there was no other evidence against accused. Held, his complicity in crime is not proved. 1933 L. 871=35 Cr. L. J. 137.
4. Accused who was recently wounded was unable to give satisfactory explanation of injury. He was conveyed to a place of hiding. This fact has corroborative value but is capable of explanation. 1934 Pesh. 53.

3. In cases of rioting and murder See Rioting.

1. Persons who do not bear any injury on their persons, should not be convicted for rioting except on very cogent evidence. 107 P. L. R. 1916=43 P. W. R. 1916 Cr.
2. In a rioting case when the evidence is perjured and the motive cannot be ascertained the sure grounds upon which the Judge can proceed, is by the marks of injury upon the persons of accused. 1931 A. 439, 1931 A. 712, 1934 A. 881.

Maintenance—(contd.)

6. If the breach between the parties is irreconcilable and it is quite impossible for the wife to return without leading to fresh trouble, she is entitled to maintenance. 25 P. W. R. 1914 Cr.
7. The fact that the husband has married again does not entitle the first wife to separate maintenance. 7 M. 187, 27 P. R. 18-0 Cr., 23 Cr. L. J. 433, 66 P. R. 1877 Cr., 2 P. R. 1878 Cr., 12 P. R. 1911 Cr.
8. The existence of a co-wife with whom the complainant had quarrel or the husband's want of affection for the complainant is not a valid ground of wife's refusal to live with her husband. 14 P. R. 1901 Cr., 1927 L. 163-00 I. C. 1636, 1929 L. 333-27 Cr. L. J. 507-93 I. C. 971.
9. If the husband is willing to maintain his wife, the fact that the prompt dowry is not paid, is not a ground for separate maintenance and residence. 6 P. R. 1885 Cr., 15 P. R. 1880 Cr.
10. If the wife declines to go with her husband and live with him in her house, she cannot demand maintenance. 117 I. C. 973-30 Cr. L. J. 801-30 P. L. R. 357.
11. Husband becoming Jew is not ground for Christian wife to live separate, but husband bringing another woman to live in the house with a view to marry her is sufficient ground. 1929 S. 278-97 I. C. 80-27 Cr. L. J. 1177-19 S. L. R. 128.
12. Decree for restitution of conjugal rights is a good answer to an application under S. 488, when wife refuses to live with her husband. 133 I. C. 96 (1)-1931 R. 111.
13. If the wife refuses to return to husband's house on ground of ill-treatment, she need not prove habitual ill treatment. 1935 R. 192-155 I. C. 968.
14. Before awarding maintenance Magistrate should inquire whether wife had been turned out or whether wife had good reasons for not living with him. 1933 Pesh. 101 (1)-147 I. C. 772.

32. Restitution of conjugal rights.

1. A decree for restitution of conjugal rights is a good answer to an application under S. 488, when the wife refuses to live with her husband. 133 I. C. 96 (1)-1931 R. 111, 1931 R. 39-35 Cr. L. J. 613.
2. A consent order under S. 488 is no bar to a suit for restitution of conjugal rights. 54 M. 558-1931 M. 482-131 I. C. 463.

33. Security from husband against ill-treatment.**34. Sufficient cause.**

1. If the child attains majority and maintains itself, there is a sufficient cause for refusing to maintain. 10 R. 194-1932 R. 94-137 I. C. 439-33 Cr. L. J. 495.
2. Order of discharge of an insolvent does not release him from liability to pay maintenance. 1935 L. 758-30 P. L. R. 191. See 50 C. 267.
3. Sufficient cause should not be interpreted in a narrow sense. 1936 N. 228.

35. Varying amount of— S. 489, Cr. P. C. See—3.

A Magistrate can vary the amount fixed not only by himself but by his predecessor-in-office, and more so to vary his own order which has been corrected on revision. 1932 S. 59.

36. Wife living with husband after the order.

If the wife after an order under S. 488 goes to live with her husband for some time and then separates, the order is not cancelled but only suspended for that period. 1935 A. 977, 50 M. 663-1927 M. 376 and 21 Cr. L. J. 945-1923 C. 456 Foll. 1888 A. W. N. 217 Dist.

MAKING FACES.

It is insulting to make faces at another or to make bad and indecent gesture in the presence of a female. 1 Weir 622.

MALICIOUS ORDER BY PUBLIC SERVANT. S. 219, I. P. C. See Public servant—29.

Martial Law—(concl'd.)

4. A summary Court appointed under martial law ordinance has no jurisdiction to try offences committed outside the martial law area, nor can it hold its Court outside the area. 45 M. 14, 45 M. 922.
5. That the ordinance was not invalidated by depriving British subject in India of the right to be tried in the ordinary Courts by established Courts of law. 1 L. 325 (P. C.)

MASTER AND SERVANT. See Servant.

1. Abetment of offence by—. See Abetment—16.

2. Act of servant for the benefit of master.

If riot is committed by the servant for the benefit of master, the latter is not guilty. 1925 N. 372=88 I. C. 13=26 Cr. L. J. 1059.

3. Breach of license.

1. Master is liable for breach of condition of excise license by a servant. 9 P. R. 1897 Cr., 19 P. R. 1878 Cr., 4 P. R. 1882 Cr.
2. A licensee or other persons permitted to fell trees in a forest in contravention of the conditions of license is criminally liable. 44 I. C. 347.

4. Breach of peace. Master's liability. See Breach of Peace—15.**5. Breach of trust by servant. See Breach of trust—27.****6. Complaint by—.**

1. Complaint by master for assault on servant is not competent. 24 P. R. 1869 Cr.
2. If a servant filed a complaint on behalf of his master, another complainant cannot be substituted if he dies. 1926 B. 178=93 I. C. 891=27 Cr. L. J. 491, 18 C. W. N. 1211.

7. Criminal responsibility or offences by—.

1. A forest contractor is not criminally responsible for damage to forest resulting from negligence of servants. 11 P. R. 1834 Cr.
2. Master causing the death of servant with a stick for refusal to obey orders is guilty under S. 304-A, where servant had an enlarged spleen. 7 P. R. 1877 Cr.
3. Where a particular intent or state of mind is not the essence of an offence, a master can be criminally liable for his servant's acts, if an act is expressly prohibited. 51 C. 948=1924 C. 985=25 Cr. L. J. 1209=82 I. C. 137.
4. If the criminal act is facilitated by the negligent act of the master, the master is liable. 1928 C. 491=112 I. C. 303=32 C. W. N. 805.
5. Where a servant was given money to pay it in a Bank and returned saying that he left it on the counter and lost it, he is liable to repay it unless he proves that it was stolen. 98 I. C. 367=1926 B. 320.
6. A master is not criminally responsible for the acts of his servants unless he expressly commands or personally co-operates with them or unless the criminal liability is imposed by statute. 16 Cr. L. J. 485.
7. The employer is not criminally liable for the damage caused to his neighbour as a result of a contractor's negligence in omitting to prop the neighbour's wall. 50 I. C. 347.
8. Master is generally not liable for his servant's act in criminal law. 46 C. 515.
9. If the servant does anything within the scope of employment, the master will be criminally liable. 39 C. 344.
10. The owner is responsible for the negligence of his servant driving the car. A general injunction to chauffeur never to drive the car beyond the regulation speed is not sufficient to get rid of owner's responsibility. 38 C. 415.
11. Where two persons are convicted one for offences under Ss 280 and 304-A., I. P. C., and the other of abetment and it was found that former was only a servant acting under the directions of the latter. Held, he is not guilty, for he was not negligent. 12 Cr. L. J. 495=12 I. C. 215.

Mark of Injury—(concl'd.)

3. Where there is doubt as to the manner of death, the nature of injuries afford material aid. 10 L. 876, 1930 L. 259=31 Cr. L. J. 348=31 P. L. R. 115=122 I. C. 97.
4. In Rape cases, See Rape.
5. Making note of—
A Police Officer on making a search of arrested persons should take note of marks of injuries and if called as witness may depose to such marks. 1931 C. 601=35 C. W. N. 1212=134 I. C. 1053=33 Cr. L. J. 11.
6. Medical Examination of the accused.

1. Wounds or marks of violence upon accused should be specially examined. These may have been produced in a struggle with the deceased and accused may not be able to give any consistent account of the time or mode of their production. His statement may be wholly irreconcilable with the appearance of the injury. *Taylor's Med. Jur.* 1928, P. 420.
2. It is very common, but erroneous idea that no person can commit a murder in which blood is effused without having his person and clothes more or less covered with blood. It is obvious that the throat of a person while standing, sitting or kneeling may be cut by a murderer from behind and the clothes of the murderer may escape being stained with blood. The presence of spots of blood on the articles of clothing, knives, etc., may be quite consistent with the innocence of the accused.
3. Wounds or marks of violence upon the accused should be specially examined. These may have been produced in a struggle with the deceased and the accused may not be able to give any consistent account of the time or mode of their production. In a case the identity of the assailant was established by the form of ecchymosis on his face. In that case the prosecutor in his defence struck the accused violently with the key of his door.
4. A wound may be found on the accused which he may pretend to account for by some accident, or in order to evade suspicion. His statement may, however, be wholly irreconcilable with the appearance of the injury. The kind of weapon used and the period at which wound was inflicted, may sometimes be inferred from a simple examination and prove that the prisoner's story is false. *Taylor's Med. Jur.* 1928, pp. 418—420.

7. Whether sufficient to give benefit of right of private defence.

Accused stabbed a man to death by knife. He had injuries on his persons. He was held to have acted in self defence and was acquitted. 33 P. L. R. 287.

MARKED COINS.

1. Finding of marked coins on the accused and opium on the informer are circumstances from which it can be inferred that accused sold the opium. 12 Cr. L. J. 479=12 I. C. 87.
2. Persons supplying marked money for detection of crime are not accomplices but only detectives or spies. 19 B. 363, 15 B. 661, 35 B. 401, 131 P. L. R. 1905, 44 A. 226.

MARRIAGE. See Bigamy—15, Adultery 10, Enticing away married woman—19.**MARRIAGE REGISTER (FORGERY OF)—** See Forgery—19.**MARTIAL LAW.**

1. The High Court has jurisdiction, after the restoration of normal conditions, to decide how far the martial law was justified. The High Court can enquire whether there was emergency or not under S. 72. Government of India Act. 55 B. 263=1931 B. 57, 1930 L. 781=31 Cr. L. J. 987.
2. The question whether martial law was properly declared did not arise, since the effect of S. 11 of the Ordinance was to validate all sentences properly or improperly passed. 55 B. 263.
3. Martial law is incorrectly known as law and can be justified only when there is a state of war and armed rebellion or insurrection and not merely a state of riot. 55 B. 263=1931 Bom. 57=32 Cr. L. J. 403.

Martial Law—(concl'd.)

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9. If the servant does anything within the scope of employment, the master will be criminally liable. 39 C. 344.
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8. Evidence of—.

Where the word of a respectable witness is against the word of a witness, who is only a servant and not what might be called a respectable witness, the statement of the master is to be preferred. It would be very unsafe to accept the evidence of servant without corroboration. 1922 P. 88.

9. Falsification of account by servant. See Falsification of account—2

10. Liability of master for mischief by servant. See—7.

11. Liability of master under Cattle Trespass Act. See Cattle Trespass Act.

12. Liability of master under Forest Act. See Forest Act, S. 26.

13. Liability of master under Motor Vehicles Act. See Motor Vehicles Act, S. 5.

14. Misappropriation by—. See Criminal misappropriation—8.

15. Rash driving by servant. See Rash or negligent driving—6.

16. Theft by servant. See Theft—7.

17. Trespass by master. See Criminal trespass—12.

18. Trespass by servant. See Criminal trespass—14.

MASTER OF VESSEL. See Confession by inducement—10.

MEANS.

When in a statute the word 'means' is used it is intended to exhaust the significance of the word interpreted. 2 M. 5, 40 A. 393.

MEDICAL DEGREES ACT, VII OF 1916.

Styling oneself M. D. B. *i.e.*, Doctor of Biochemic Medicines or L.M. H. *i.e.*, Licentiate of Homœopathic Medicines does not by itself constitute an offence. 1925 S. 71=81 I. C. 197=25 Cr. L. J. 709.

MEDICAL CERTIFICATE. See Doctor's certificate. See Defence witness—1.

MEDICAL EVIDENCE. See Evidence—23.

MEDICAL EXAMINATION.

1. In defamation case based on allegation that a woman had illicit pregnancy, she cannot be compelled to submit to a medical examination against her consent and her refusal to do so is not evidence against her. 1930 L. 159=123 I. C. 841=31 Cr. L. J. 584=12 L. L. J. 5.
2. The examination of an arrested person in hospital by doctor not for the benefit of his health but simply by way of second search is not permissible by the Code without his consent. It amounts to assault. 1931 C. 601=134 I. C. 1053=35 Cr. W. N. 1212.
3. In a charge of rape, the fact that woman did not offer herself for medical examination cannot weigh against her. 1935 N. 69.

MEDICAL OPINION. See Opinion—16, Whipping—3. Murder—63.

MEDICAL PERSON. See Civil Surgeon, witness—68.

MEDICAL TREATMENT.

1. Death by negligent—. See Culpable homicide—34, Death by negligence.
2. Neglect to get—. See Murder—78, culpable homicide.
3. Not from a Civil Hospital. See Police Act, S. 29.
4. Unskilful. See Rash and Negligent Act—13.

MELTING STOLEN PROPERTY. See Assisting in concealment of property—5.

MERCHANDISE MARKS ACT (1889). See Trade mark.

The word offence in S. 15 does not mean only first offence but also repetition of it. 1932 S. 94.

MERCY OF COURT. See Sentence—10.

Where an accused does not formally plead guilty, the fact that he throws himself at the mercy of the Court should not prejudice him. 12 C. W. N. 140.

Mercury.

MERCURY—POISONING BY—. See Poison—10.

MINOR. See Child.

1. Age of—. See Age.
2. Buying and selling—for prostitution. See Prostitution—2.
3. Consent of—. See Kidnapping—7.
4. Custody of—. See Habeas Corpus.
5. Evidence of—. See Witness—15.
6. Misrepresenting age.

A minor misrepresenting himself to be major and borrowing money is guilty of cheating. 58 I. C. 253=71 Cr. L. J. 749.

7. Sending of—to reformatory. See Reformatory Schools Act.

8. Sentence on—. See Murder—75 (B).

MINOR OFFENCE. See S. 238, Cr. P. C.

1. Minor offence is not defined in the Code and should be understood in its ordinary and not in any technical sense. 22 C. 1006.
2. The test of major or minor offence is not the gravity of punishment, but it refers to number of particulars constituting offence. 1936 B. 193.
3. Court can convict an accused of minor offence if charged with major offence, but not *vice versa*. 1 Bom. L. R. 513.

MISCHIEF. S. 425 to S. 440, Penal Code.

1. *Bona fide* claim.

1. Cutting a tree by a tenant under *bona fide* claim of right is not mischief. 58 I. C. 828, 1923 A. 428=71 I. C. 645, 46 I. C. 409, 62 I. C. 331=22 Cr. L. J. 507.
2. Cutting a tree under *bona fide* dispute is not mischief. 23 Cr. L. J. 504.
3. The accused broke open the lock of the graveyard to which they were entitled and buried the deceased. They are not guilty, (1890) 1 Weir 489.
4. While there is nothing wrong in the owner exercising the ordinary rights of property, his act becomes wrongful if he infringes the right of another. 56 I. C. 510, 39 M. 57.
5. A knowing that his property has been sold in satisfaction of a public demand, destroys the fruits on the land, is guilty of mischief when he knows that the sale becomes absolute after sixty days. 12 C. 660.
6. In order to exculpate accused there should be a *bona fide* mistake or dispute. 2 A. 101, 7 C. W. N. 859, 1925 A. 291=85 I. C. 36=26 Cr. L. J. 660.
7. Where a servant of the landlord *bona fide* claimed and therefore cut a dead jack fruit tree standing on the homestead of a tenant and removed it, he is not guilty. 1924 C. 805=83 I. C. 898=25 Cr. L. J. 194=28 C. W. N. 736.
8. A mortgagor cutting a tree to repair another part of mortgaged property is not guilty of mischief. 23 I. C. 498=15 Cr. L. J. 290.
9. Ploughing *bona fide* on widowed daughter's husband's land is not mischief unless it is with an intent to commit offence, or annoy or insult. 8 M. L. T. 246=11 Cr. L. J. 623.
10. A *bona fide* dispute between the parties ousts the jurisdiction of a Magistrate to take cognizance of a charge of mischief. 68 I. C. 40.
11. Accused pulling out some stones from the party wall under a *bona fide* claim is not guilty. 9 Mys. L. J. 140, 26 Bom. L. R. 978.
12. If the obstruction is removed under *bona fide* claim of right, no offence is committed. 1932 M. 676=33 Cr. L. J. 655.

2. Branches of tree—cutting off.

1. It is not in all cases that a person is entitled in India to cut away branches which

Mischief—(contd.)

overhang his house. 1934 P. 221=35 Cr. L. J. 1304, 1923 R. 205=76 I. C. 812, 31 C. 944, 19 B. 420.

2. Where land is leased subject to the landlord's trees remaining intact and the house was built under the tree and branches cut, the accused was held guilty. 1934 P. 221.

3. By altering or destroying land marks. S. 434, I. P. C.

1. Land mark must have been fixed by the lawful authority of the public servant. 27 A. 300.
2. Where the Municipality placed a barricade to demarcate land which was for sale and which interfered with the accused's ingress and egress and he removed it, he is not guilty. (1895) B. U. C. 745.
3. A Magistrate is not empowered to lay down the boundary marks of the property in dispute under S. 145 and hence its removal is no offence. 27 A. 300.
4. Where surveyor under the Survey and Boundaries Marks Act put some marks and entered land not included in the notification the removal was an offence under S. 434. 31 M. L. J. 305.

4. By causing damage above 50 Rupees. S. 427, I. P. C.

1. Where the complainant alleged the damage to be Rs. 250 and a 3rd Class Magistrate tried the case and found the damage to be Rs. 140. Held, that he could not try the case. 47 A. 64.
2. The complainant need not prove his ownership when he is in possession of the property in respect of which mischief is done. 1927 A. 724=25 A. L. J. 1010.
3. Rupees fifty must be the value of the actual injury and not of prospective or resultant loss to the owner. 8 B. H. C. R. 63.
4. No order under S. 106, Cr. P. C., can be passed on a conviction under S. 427, I. P. C. 1927 A. 136=99 I. C. 348=28 Cr. L. J. 140.

5. By causing inundation of public drainage. S. 432, I. P. C.

1. The accused erected a dam across a river which they claimed to do under an ancient custom. There was no evidence that it was likely to cause injury. He is not guilty. 4 M. H. C. R. (App.) 15.
2. Accused cut a portion of the top of bund, to extend a mango garden and the Magistrate apprehended an inundation of the Town. Held, he was not guilty, as the damage anticipated was too remote. 25 W. R. 69.

6. By diminution of water supply. S. 430, I. P. C.

1. In a complaint under S. 430 regarding cutting off a supply of water, the matter is pre-eminently for a Civil Court. 1927 A. 112=98 I. C. 474=27 Cr. L. J. 1354.
2. The mischief consists not in breaking the bund, or in opening the sluice but in flooding or withering up the complainant's crops. 1927 S. 39=98 I. C. 49=27 Cr. L. J. 1233.
3. Accused cut a bund which did not belong to the complainant. Accused had been getting permit for diverting the water in previous years. Held, he was not guilty. 54 I. C. 617.
4. Taking excess quantity of water from Government Canal for a period exceeding that allotted to him is no offence under S. 430. 14 P. R. 1909 Cr. See 1911 M. W. N. 349.
5. The cutting of bund to deprive a person of the use of water is an offence under S. 430. 44 I. C. 582, 34 A. 210, 44 I. C. 58.
6. Diminishing supply of water for agricultural purpose is an offence under S. 430. 41 A. 599.
7. Intention to cause wrongful loss is the essential element of an offence under S. 430. 29 I. C. 670=16 Cr. L. J. 542, 1925 M. 577=18 I. C. 188, 52 I. C. 276.
8. Taking more water than one is entitled to, against an order as to turns and to cause diminution of supply to others is not punishable under S. 430. 11 P. R. 1909 Cr., *Contra* 12 Cr. L. J. 551=12 I. C. 527.

schief—(contd.)

9. Where the accused banded up a channel carrying water to the complainant's field. Held, no offence is committed unless it is shown that he had some right to carry water to his fields and there was an intention on the part of the accused to cause wrongful loss. 1923 M. 141=69 I. C. 95=32 Cr. L. J. 55.
10. It must be proved that there had been unlawful and intentional interference by the accused with the admitted or proved rights of complainant. 61 I. C. 655=32 C. L. J. 476=22 Cr. L. J. 415.
11. Before a landlord can be convicted under S. 430 for interfering with water supply of tenant, it must be proved that landlord had no such right. 1930 C. 318=34 C. W. N. 86=50 C. L. J. 589=125 I. C. 849=31 Cr. L. J. 940.
12. Intentionally obstructing channel or diminishing supply of water is an offence under S. 430. 1924 M. 175=74 I. C. 802, 60 I. C. 670, 1924 P. 704=84 I. C. 322.
13. Diminishing the supply of water used for flushing the gutters of a city for cleaning is an offence under S. 430. 8 C. W. N. 370, 35 C. 437, 3 A. L. J. 42.
14. If there is no evidence of diminution of water, the conviction should be under S. 426, 34 A. 210.
15. Where the accused cut the dam erected by complainant to irrigate his own crop, in order to save their crop from submersion. Held, they were not guilty. 8 C. W. N. 370, 69 I. C. 59=23 Cr. L. J. 655.
16. A Zamindar stopping a water channel, running over his land, on the complainant refusing to pay rent is not guilty. 3 A. L. J. 142.
17. If the cutting is without any sort of right and the result is diminution of water supply, the offence under S. 430 is complete. 136 I. C. 552=1932 P. 224.
18. Cutting of *bandh* of the complainant to save one's field from inundation is an offence if it diminishes water supply. 136 I. C. 592=33 Cr. L. J. 313=1932 P. 224.
19. If accused charged under S. 430 for cutting *bandh* is acquitted, he must also be acquitted under Ss. 143 and 144, I. P. C. 1934 P. 505, 38 C. 559 Ref.
7. **By fire or Explosive.** Ss. 435-436, Penal Code.
 1. It is necessary to prove a charge of arson under Ss. 436-449, I. P. C., that accused were actuated by common motive to set fire to the house. Mere presence does not raise a presumption against them. 60 I. C. 667=22 Cr. L. J. 267.
 2. Accused set fire to a heap of rubbish in his field near a Government forest, which caught fire. Held, he was not guilty. 8 Bom. L. R. 851.
 3. Gun or pistol, firing an explosive, is itself not an explosive substance. (1885) 1 Weir 235.
 4. The evidence of previous fires unconnected with the accused is inadmissible. 35 I. C. 981=20 C. W. N. 1267=17 Cr. L. J. 421.
 5. A sentence of ten years' imprisonment is a wholly disproportionate sentence under S. 436. 1924 A. 781=82 I. C. 54=25 Cr. L. J. 1190.
 6. An additional punishment of whipping cannot be passed when an adequate sentence has been passed under S. 436. 1928 O. 111=110 I. C. 218=29 Cr. L. J. 666.
 7. Fire to thatched wall near residential huts is mischief. 7 P. R. 1903 Cr.
 8. Arson in an Indian village should be punished very heavily as it causes incalculable harm to innocent persons. A sentence of 5 years' rigorous imprisonment was confirmed. 131 I. C. 436=32 Cr. L. J. 694=1931 O. 116.
8. **By injury to public road or bridge.** S. 431, I. P. C.
 1. Accused cut timber some miles above the bridge. Two of these pieces came floating in a flood and coming in contact with the bridge destroyed it. Held, he was not guilty, as there was no proof of intention or knowledge. (1883) 1 Weir 510.
 2. Accused who dug a trench on a waste land alongside a public road, is not guilty. (1888) 1 Weir 511.

*Mischief—(contd.)***9. By killing or maiming animal.** S. 428, I. P. C.

1. Cutting the ears of the asses clean off their base is "maiming of animals" within S. 428, I. P. C. 39 I. C. 958=18 Cr. L. J. 620, 35 M. 594.
2. Where nearly half of the ear is cut, without impairing its sense of hearing, it is not "maiming". 18 Bom. L. R. 289=34 I. C. 973.
3. Mere wounding an animal is not sufficient. Maiming implies permanent injury. 7 P. R. 1891 Cr., 33 P. R. 1881 Cr.
4. Cutting a scar on the animal's forehead is not maiming it. 33 P. R. 1881 Cr.
5. Accused threw a stone to drive out a young buffalo and killed it. Held, he was not guilty, as there was nothing to show that loss was the likely result. 1 Weir 502.
6. But if missile was a heavy stone and hurled with violence and broke the animal's leg, the accused would be guilty. 12 N. L. R. 188, 1 Weir 497.

10. By killing or maiming domestic animal S. 429, I. P. C.

1. Killing a calf belonging to another for skin or flesh is an offence under S. 429, irrespective of its value. 22 C. 457.
2. A person killing a bull set at large by its owner in accordance with religious usage is not mischief. 8 A. 51, 9 A. 348, 17 C. 852. See 11 M. 145.
3. Where after thief has stolen and slaughtered animal, another person joins him in skinning the dead body, the latter is not guilty under S. 379 or S. 429. 3 P. 804 1925 P. 34=84 I. C. 341=26 Cr. L. J. 277.
4. Killing a stolen animal for eating cannot add another offence. 3 P. 804.
5. Domestic animals mentioned in S. 429 include their young ones. 22 C. 457.

11. "Change in property." S. 425, I. P. C.

1. The word change in S. 426 means physical change in composition or form. 1928 S. 49=105 I. C. 672=28 Cr. L. J. 960.
2. Mere omission to give light to a house by failing to switch on the light does not involve change in the property, even though it may diminish its value or utility. 1928 S. 49=105 I. C. 672=28 Cr. L. J. 960.
3. Where the accused threw a shoe in front of diners in a caste dinner, which made the dinner ritually impure, he was not guilty of mischief. 24 A. 155.
4. Cutting the crops of another, when they are mature for harvesting is no mischief 13 Bur. L. R. 126, 18 W. R. 10.
5. Cutting unripe crop amounts to mischief. 7 C. W. N. 713 (714).
6. Where the graziers by allowing their goats to graze did no more than put the grass to its normal use, it is not mischief. 52 M. 151, 1 Weir 492 Dist.

12. Charge.

1. It is open to an appellate Court to add a charge under S. 143 to one under Ss. 426 and 451, as it would have the effect of imposing a constructive responsibility for individual act of all persons forming an assembly. 31 I. C. 337, 1924 M. 478=76 I. C. 708.
2. A person who has been charged with theft cannot be separately charged and convicted of mischief for the subsequent act of killing an animal. (1902) 1 Weir 497, 3 P. 804.
3. Accused charged under S. 379 can be convicted under S. 426, without framing a separate charge. 1934 P. 221=35 Cr. L. J. 1304.

13. Civil dispute.

1. Accused took some earth from a Zamindar's land and pleaded that he was only following the custom. Held, that Criminal Courts are not meant to decide questions of civil nature. 1923 A. 544=73 I. C. 805=24 Cr. L. J. 693.
2. Where there was a longstanding dispute about a wall and the accused pulled it down and constructed a new wall in its place. Held, that the dispute was one for settlement by the Civil Court. (1892) 1 Weir 490, (1839) B. U. C. 465.

mischief—(contd.)

3. The owner of a dead bullock buried it, to prevent its being skinned by the village Mehar who claimed a right to it. Held, it was a civil dispute. 8 B. 295.
4. Where the stoppage or the removal of the watercourse did not injure complainant in any way, it is a civil dispute. 1923 L. 92=77 I. C. 989=4 L. L. J. 482.
5. Where the mortgagee cut a few trees to repair another part of the mortgaged property, the dispute is of a Civil nature. 23 I. C. 498.
6. The provisions of S. 425 are frequently resorted to as a mode of deciding civil disputes. 12 W. R. 59, 73 I. C. 805, 23 C. W. N. 736.
7. Person raising his low land and causing overflow of rain water into other lands is not guilty of any offence. It is a civil dispute. 1933 C. 150=34 Cr. L. J. 679, 36 A. 209.
8. A person putting up oil engine on his property and working it is not guilty of mischief although it causes damage to another's property. It is a civil matter. 1935 B. 164=59 B. 177.

14. Damaging one's own property.

1. An accused who knows that serious mental annoyance must be caused to the complainant in breaking open his own house, is presumed to intend the inevitable consequences of his act. 9 Cr. L. J. 196.
2. Accused entered a vacant land and broke down his own wall and rebuilt it, he is not guilty. 11 Cr. L. J. 533=7 I. C. 855.
3. A got a decree for possession of land with mesne profits and took out execution which was struck off for want of notice. He took out fresh execution. In the meanwhile judgment debtor raised crop which the servants of decree-holder cut and removed it. Held, they are not guilty. 1926 P. 244=93 I. C. 40=27 Cr. L. J. 392.
4. No person can commit mischief in respect of his own property. 1924 O. 132=72 I. C. 833, 66 I. C. 817.
5. No offence under S. 426 is committed when the accused removed a few bricks from a wall, which he believed to be his own. 1927 L. 145=99 I. C. 414=28 Cr. L. J. 158.
6. Throwing earth on one's own land is not mischief. 1930 M. W. N. 909.
7. If an auction purchaser destroys the property, he purchased, he is not guilty of mischief. 1922 P. 197=66 I. C. 817.

15. Easement.

1. Property under S. 425 means tangible property and not easement. 1930 M. W. N. 909.
2. It is not unlawful to remove lateral support and cause damage unless the right to support has been acquired by prescription for 20 years. 1921 M. 322=68 I. C. 831.
3. If the accused removes the dams of the complainant, although he got injunctions against the complainant, he is guilty of mischief. 51 B. 487=1927 B. 363=101 I. C. 604=28 Cr. L. J. 476.
4. Accused built house on his own land and thereby neighbour's surplus water remained stagnant in his house and damage was caused to his building. No right of easement was acquired to let out surplus water. Held, accused were not guilty. 1934 P. 191 (2)=147 I. C. 538.

16. Employer's liability for employee's negligence.

The employer is not criminally liable for the damage caused to his neighbour as a result of contractor's negligence in omitting to prop the neighbour's wall. 50 I. C. 347=20 Cr. L. J. 299=17 A. L. J. 343.

17. Essentials and Evidence. S. 425, I. P. C.

1. Intention to cause wrongful loss or damage is essential for mischief. 8 R. 13=1930 R. 158=125 I. C. 271=31 Cr. L. J. 799.
3. Over the *chabutra* of mosque there was an image of Hindu God. A Hindu widened the doorway in the wall belonging to the Mohamadans. Held, he is guilty of mischief. 1926 A. 704=96 I. C. 210=27 Cr. L. J. 895.

Mischief—(contd.)

3. Where there was a *bona fide* claim of right by the accused to the wall in dispute and accused entered the complainant's house and pulled down the addition in his absence. Held, that offence of mischief or house trespass was not made out. 1924 B. 486=84 I. C. 254=25 Bom. L. R. 978=25 Cr. L. J. 254.
4. A bull liberated according to Hindu custom is moveable property capable of being subject of the offence of mischief. 34 P. R. 1888 Cr., 32 P. R. 1889 Cr.
5. Cutting trees for public purpose by some municipal commissioners against the order of the Municipal Committee is not mischief. 9 P. R. 1878 Cr.
6. Destruction of postal receipt on receiving delivery of a registered article is not mischief. 24 P. R. 1905 Cr.
7. Abstraction of document from a judicial record is mischief and theft. 112 P. R. 1866 Cr.
8. If bricks are taken out of a wall which is partly under the house of the accused there is no mischief. 21 P. R. 1890 Cr.
9. In case of collision resulting in damage to the carriage of the complainant, the offence falls under S. 279 and not S. 423. 13 P. R. 1900 Cr., 15 I. C. 803.
10. A person allowing his cattle, habitually and intentionally to graze on the crops of others is guilty under S. 427 for mischief. 50 I. C. 995=21 Bom. L. R. 247. See 23 P. R. 1904 Cr.
11. Where the accused is only guilty of negligence, he is not liable for mischief, for that offence imports that the act was done wilfully. 15 I. C. 803=13 Cr. L. J. 536, 9 B. 173.
12. Where the branches of complainant's trees were cut at the instance of the accused with the knowledge it was likely to cause wrongful loss to the complainant, the offence of mischief is complete. 1927 A. 610.
13. Where a person cut his tree and allowed it to fall on another's tree to protect his own tree in spite of protest, he is guilty of mischief. 98 I. C. 181=27 Cr. L. J. 1235.
14. The complainant held the land of the accused even after expiry of the lease. In fact he was a trespasser. The accused snatched his ropes used for watering the field and threw them in the well. Held, he was guilty of mischief. 7 Bom. L. R. 86.
15. A and B were joint owners of land. A erected edifice without the consent of B who got a decree for its demolition. B's servants pulled it down. Held, they were not guilty of mischief. 3 C. 573.
16. A person cannot be convicted of mischief for demolishing a wall which another erected on his land. 1887 A. W. N. 101.
17. The accused dug up some graves and removed stones to extend cultivation. He was held guilty. 1 Weir 496. But the case would have been different if the graves had been discarded ones and had stood on accused's land. 4 Bom. L. R. 463, (1912) 1 Weir 496.
18. Where land is leased subject to landlord's trees remaining intact and the lessee builds the house under the tree and cuts off branches, he is guilty. 1934 P. 221=35 Cr. L. 1304.
19. Cutting ripe crops is not mischief. 1934 O. 182=35 Cr. L. J. 797, 1929 M. 5, 1918 P. 323, 7 C. W. N. 713 Rel. on.
20. Cutting and removing Government trees without leave. 2 Bom. H. C. R. 392.
18. Liability of master for the negligence of servant. See Master and Servant—7.
19. Negligence is not—
 1. Accused set fire to rubbish in his field and gust of wind carried the flame to an adjacent forest and burnt it. Held, he was not guilty. 8 Bom. L. R. 351.
 2. Accused while driving his bullock cart pulled the bullock in the wrong direction and dashed the pole of his yoke against foot-board of the complainant's carriage and caused damage. Held, he was not guilty. (1885) 1 Weir 495.
20. Oil Engine—Nuisance.

If a person installs an oil engine on his own property and the working causes damage to

mischief—(concl'd.)

another's property, the accused is liable for damages and not guilty of mischief. 1935 B. 164=59 B. 177.

21. Party wall. *See*—1.

22. Procedure.

1. Accused cannot be tried on the same facts both for mischief and theft. (1902) 1 Weir 497, 3 P. 804, 2 B. H. C. 392.
2. The cases in which the defence of *bona fide* claim of right is put forward, should not be tried in a summary trial. 25 W. R. 65, 10 C. 408.
3. A person was charged and convicted under S. 426. His conviction cannot be altered to one under S. 352. 1936 P. 535.
4. It is not open to any appellate Court to add a charge under S. 143 to one under S. 426, as it would have the effect of imposing constructive responsibility for individual acts of all the members of the assembly. 31 I. C. 337.

23. Pulling down encroachment.

Persons cannot take law into their own hands or pull down terraces on encroached area to abate nuisance. They are guilty of rioting and mischief 57 M. 351=1934 M. 95, 39 M. 57 Diss. from 1923 M. 523 and 1927 B. 363 Rel. on.

24. Stolen animal—killing of—.

1. Killing a stolen animal for eating does not add another offence. 3 P. 804=1925 P. 34.
2. Stealing a calf and subsequently killing it are two distinct offences. Separate sentences are legal. 1936 B. 172=37 Cr. L. J. 553, 3 P. 804, 5 Bom. L. R. 460 and (1866) 6 W. R. Cr. 5 Diss. from.

25. Straying of cattle.

1. In the case of mischief done by straying of cattle, mere neglect or carelessness on the part of the owner of cattle to keep them from straying into the fields of others is not sufficient. 6 B. H. C. App. 36.
2. To warrant a conviction under S. 425 it must be proved that an owner of cattle wilfully caused the cattle to enter the field of the other to cause damage. 9 B. 173, 29 A. 565, 7 B. 126, 5 S. L. R. 263
3. Where the accused grazed their cattle on waste lands on which the Government had prohibited the public from grazing cattle, and a provision for grazing was made elsewhere, he was guilty under S. 425 (1886) 1 Weir 492, 2 L. B. R. 158
4. But when the grass was not meant to be sold for profits and accused grazed his goats without permit, he was held not guilty. 52 M. 151
5. Where in the absence of the accused, his cattle entered into Government garden, he was not guilty of mischief. 23 P. R. 1904 Cr. *See* 8 Bom. L. R. 549

MISCONDUCT.

1. In Election. *See* Election.

2. In Public by a Drunken man. S. 510, I. P. C.

The accused a village Magistrate, arrested a man who was very drunk and who had torn the sacred thread of a person and had hit the accused in the foot. The accused was convicted for wrongful restraint. Held that there was ample justification for the accused as private citizen to arrest and to put restraint on a drunken and disorderly man, who was a danger to the public 44 M. 913.

3. Of Legal Practitioner. *See* Legal Practitioners Act, S. 13

MISGUIDING PEOPLE.

Misguiding people and then making off with their property is an offence under S. 379, I. P. C. and not under S. 420. 1932 C. 865=33 Cr. L. J. 825.

MISREPRESENTATION. *See* Cheating—4, 5.

1. As to age. *See* Minor—6.

2. As to caste. *See* Cheating by Personation—4.

3. As to position in life. *See* Cheating by Personation—5.

*Mistake of Fact***MISTAKE OF FACT.** Ss. 76-79, I. P. C. See Arrest.**1. Act justified, or justifiable act.**

1. The act of mother-in-law in abducting her daughter-in-law and compelling her to marry against her will which falls under S. 366, Penal Code, is not one which she is justified by law in doing and S. 79 can afford no protection to her. 1929 L. 713=30 P. L. R. 573.
2. A school master inflicted corporal punishment necessary for school discipline to a child under 12. He is protected under Ss. 79-89, Penal Code. 3 R. 659=1926 R. 107=91 I. C. 412=27 Cr. L. J. 636.
3. There is no justification within S. 79, for a husband to use force or restraint to compel his wife to leave him. The forcible removal of the woman amounts to an offence. Conviction under Ss. 147-448 is proper. 47 I. C. 807=19 Cr. L. J. 955.

2. Good faith. See Good faith.

1. Where there is no good faith S. 79 does not apply. 1922 A. 264=65 I. C. 433.
2. Plea of good faith cannot succeed under S. 79 when it has failed under S. 499, Exception 9. 50 C. 518=1923 C. 470=71 I. C. 792.
3. Mistake of fact about the first marriage is no defence under S. 79 in a case of bigamy. 45 M. 986.

3. Mistake.

1. Accused assaulted a man believing him to be a ghost and killed him. He is not guilty. 1926 L. 554=99 I. C. 71=28 Cr. L. J. 39, 11 P. R. 1888 Cr. Expl.
2. Police Officer arresting a person under a mistake of fact by virtue of a warrant is protected under S. 76. 1924 B. 333=81 I. C. 317=25 Cr. L. J. 797, 47 C. 818.
3. A constable saw a person dressed in ragged clothes carrying three bundles of cloth. Suspecting it as stolen property he questioned him and was told that the cloth was made in England. The constable noticed Gujrati Mark on the cloth and therefore arrested him who was subsequently released. Held, that the constable made an honest mistake and therefore is protected under S. 76. 12 B. 377.
4. Complainant was arrested on suspicion at 10 P. M. with a bundle the contents of which he did not know. The constable is protected by S. 76. 20 B. 348, 12 B. 377 (397).
5. A person who kills another on jealous suspicion of wife however strong or where a number of persons seize hold of a woman believing her to be a witch and do her to death cannot plead mistake. 29 B. 215.
6. A person who knowingly obeys an illegal order, abets the illegal act of his superior. He cannot plead justification. 20 B. 394, 17 P. R. 1883 Cr.
7. Accused, a Public Works contractor, received permission from his department to quarry stones from a place which turned out to be protected forest whereupon he was convicted. 38 M. 773 *Contra* 14 Bom. L. R. 365.
8. In case of kidnapping, the accused's belief that the girl is over 16 years is immaterial. 1929 P. 651.
9. When a person arresting believes in good faith by reason of a mistake of fact that a non-bailable offence had been committed, he is protected by S. 79. 54 I. C. 997.
10. Where a process-server intercepted a *Palki*, which he suspected to contain one M who was evading arrest. Held, he was protected under S. 79. 24 C. 885.

MISTRESS. See Possession of wife or servant. S. 27, I. P. C.

1. If a son is prohibited from carrying away things to his mistress, she is not guilty of abetment, if the son carries away things from the house. 11 P. R. 1869 Cr.
2. Selling married woman as mistress falls under S. 372, I. P. C. as this is an immoral purpose. 1934 A. 324=35 Cr. L. J. 571.

MODE OF TRIAL (IRREGULAR). See Irregularities.**MORAL CONVICTION.**

1. However morally convinced a judge may feel as to the truth of a particular fact, unless there is legal proof of its existence, he cannot take it as proved. 25 W. R. 43, 37 C. 467.

Moral Conviction—(concl'd.)

2. The proof of moral conviction of guilt must amount to "such a moral certainty as is beyond all reasonable doubts." When there is no such moral certainty the benefit of doubt must go to accused. 22 C. 313 (323).

MORTGAGOR—BREACH OF TRUST BY—. See Breach of trust—18.**MOTIVE.****1. Absence of—**

1. Want of any proof of motive does not justify rejection of reliable evidence. 11 Cr. L. J. 498=7 I. C. 601.
2. The absence of all motive for a crime, when corroborated by independent evidence of the accused's previous insanity is not without weight. 34 C. 686. See 112 I. C. 222=29 Cr. L. J. 1006.
3. The absence of motive for commission of crime and its being committed under circumstances which renders detection inevitable are important points to be considered. 1929 C. 1=115 I. C. 561=30 Cr. L. J. 494.
4. Where the motive for premeditated murder is absent, capital sentence should not be passed. 1924 L. 654=84 I. C. 653=26 Cr. L. J. 349.
5. When motive against one of the accused is proved and against others, it is not proved, High Court can uphold conviction without assigning motive. 35 I. C. 818.
6. Where the motive for premeditated murder is absent and accused killed his wife and child, while taking them to a neighbouring village, capital sentence should not be passed. 1924 L. 654=84 I. C. 653.
7. The absence of motive does not admit of any positive evidence. When people of neighbourhood cannot say what the motive for murder was, it is safe to accept that there was no motive. 1932 A. 233.
8. If the crime of accused is brought home to him on evidence, motive is of secondary importance. 1935 O. 354=36 Cr. L. J. 767=155 I. C. 527, 1934 S. 6=35 Cr. L. J. 736
9. " officer can often remember to good purpose for the woman at the bottom of it." *Ed. 1906, P. 13.*
10. The fact that a horrible murder is committed with no apparent motive does not necessarily show that the accused was mad at the time. 1929 C. 1=115 I. C. 561.
11. Question of motive is immaterial when murder is proved beyond doubt. If the eye witnesses are accessories after fact motive is necessary to be proved. 1936 O. 413.

2. Adequacy—

1. It is not necessary for the prosecution to prove the adequacy of motive. 1928 L. 657=108 I. C. 370=29 Cr. L. J. 378.
2. If the prosecution fails to elicit the motive for assault, it is not a fatal defect in the prosecution case. 1930 L. 490=126 I. C. 572=31 Cr. L. J. 1059.
3. If the Court is satisfied as to the fact of murder, the adequacy or inadequacy of the motive is not important. 1929 M. W. N. 592
4. Atrocious crimes have been committed from very slight motives, not merely from impulse or revenge but to gain a small pecuniary advantage and to drive off for a time pressing difficulties". *Will's Cr. Ev., 6th Ed. pp. 63-64.*

3. Affecting sentence.

Motive may be taken into consideration as regards the question of sentence. 1932 C. 651=36 C. W. N. 585, 1924 L. 654=26 Cr. L. J. 349.

4. As corroborative evidence.

1. The proof of a motive for crime is not corroboration of the evidence of an eye witness. 131 I. C. 439=32 Cr. L. J. 97=1931 O. 119 *Contra* 7 L. 84.
2. Where there is other evidence of guilt of accused, the existence of motive is a circumstance corroborative of the case against him. 1926 L. 86=7 L. 184.

Motive—(contd.)

5. Bad—

If an officer has got power the fact of his using that power from a bad motive, does not invalidate the exercise of that power. 52 M. 238.

6. Definition of—

A motive is that which moves a man to act. Whether the belief which produces the state of mind is true or false, the motive remains the same and the truth or falsity of the belief is not really in question. 22 Cr. L. J. 529=62 I. C. 545.

7. Enmity. See Enmity.

Enmity is a double-edged weapon. What would be reason for murder might also be reason for falsification of the case. 1933 O. 457=147 I. C. 111.

8. Evidence and value of—

1. However strong and convincing the evidence of an adequate motive may be, that evidence can never counteract the harm, done by the reception of inadmissible evidence. 36 M. 501.
2. A Judge's personal knowledge about motive should not be imported into evidence. 50 I. C. 337.
3. Motive for a crime, while it is always a good corroboration when the evidence is convincing, can never supply the want of direct or circumstantial evidence of the crime. 7 L. 84, 1927 L. 74, 1932 L. 195, 1933 A. 394.
4. The fact that the previous murders have been committed by accused does not constitute a motive. 62 I. C. 545.
5. The crown cannot impute ignorance of law as motive for the crime. 59 M. L. J. 114.
6. If the evidence of eye witnesses is trustworthy, motive need not be proved. 61 I. C. 705, 1925 L. 328=86 I. C. 406, 1928 L. 657, 126 I. C. 449.
7. Prosecution cannot be discredited merely because the evidence of motive is not clear. 49 C. 358.
8. The existence of motive, in the absence of other evidence cannot form the basis of conviction. 1930 L. 545=125 I. C. 324, 1932 L. 195.
9. If the facts are clear, the motive is irrelevant, but if the facts are not clear, motive may explain what otherwise would be difficult of explanation. 1929 C. 1=115 I. C. 561, 1929 M. W. N. 946.
10. When the manipulation in the personnel of the actors is extremely easy and extremely difficult to refute, the question of motive is of extreme importance. 1926 O. 120=93 I. C. 1025=27 Cr. L. J. 529.
11. Motive, though immaterial for bringing the offence of murder home to the accused, is relevant or important on the question of intention. 1928 C. 430=109 I. C. 482=32 C. W. N. 345.
12. The motive for the crime should be considered in inflicting sentence. 1923 O. 180.
13. Proof of motive of crime is no corroboration of the evidence of eye witnesses. 1931 O. 119=131 I. C. 439=32 Cr. L. J. 697.
14. Motive for a crime can only be proved by admissible evidence and not by hearsay evidence. 1931 M. 689=134 I. C. 1143=33 Cr. L. J. 51=54 M. 931.
15. Where the deceased prior to her death made a statement which made reference to the motive of the accused, it is not admissible under S. 8, Evidence Act, where it is not shown to have accompanied or explained any act of accused. 54 M. 931.
16. Evidence of bad character to prove motive for crime is not excluded. 93 I. C. 824, 47 C. 671, 1923 B. 71.
17. Motive is a fact which is only within the knowledge of the person doing the act and "which no human being but the party himself can divine." 1928 C. 430=109 I. C. 482. Will's Cr. Ev., 6th Ed. 60.
18. When any crime is proved, it is unnecessary to consider the question of motive. 1935 O. 253=154 I. C. 570.

Motive—(concluded.)

19. Failure to discover motive for an offence does not signify its non-existence, and failure to produce evidence of motive, though it may constitute a weakness in the whole body of proof, is not fatal in law. 1928 C. 430=109 I. C. 482. Wignore S. 118, 1923 C. 1=115 I. C. 561, 1925 L. 328=76 Cr. L. J. 774.
20. Where direct evidence as to commission of crime breaks down, it is not necessary to discuss the evidence of motive. 1923 O. 295=34 Cr. L. J. 1009=145 I. C. 470.
21. The existence or absence of motive may explain facts which would otherwise be difficult of explanation. 1925 C. 1=115 I. C. 561.
22. Motive is important on the question of intention. 1923 C. 430.
23. Prosecution cannot prove that on two previous occasions, accused committed murder, but had falsely charged and got convicted other persons. 62 I. C. 545=22 Cr. L. J. 529.
24. The fact that the accused was financially embarrassed is relevant as motive in a case of obtaining money by forgery. 1925 R. 122=26 Cr. L. J. 492=3 R. 11.
25. Mere evidence of slight motive is not sufficient corroboration. 1934 L. 8=35 Cr. L. J. 623.
26. To begin case with evidence of motive is to begin at the wrong end. If crime is proved absence of motive is immaterial. 1934 S. 6=35 Cr. L. J. 736.
27. In a trial for murder proof of adequate motive is not necessary. 1934 L. 363.
28. Prosecution is not bound to prove motive. 1934 O. 405=35 Cr. L. J. 1113.
29. Existence of motive does not lead to inference of commission of offence. 1934 Pesh. 129.

9. Honourable.

When an offence is committed, the fact that it was committed with honourable motive is an extenuating circumstance. 6 P. 471=1928 P. 159=104 I. C. 436=28 Cr. L. J. 820.

10. To implicate accused.

1. Where there is an apparent grudge against a party and there is a motive to implicate an accused person, the evidence must be examined with caution. 1929 P. 705=123 I. C. 705=31 Cr. L. J. 468.
2. Where the witnesses in a murder case implicate the accused only when they are faced with the necessity of exculpating themselves, their evidence is open to grave suspicion. 1930 P. 338=123 I. C. 666.

MOTOR CAR See Lorry

MOTOR VEHICLES ACT (VIII OF 1914.)

General.

S. 562, Cr. P. C., does not apply to an offence under Motor Vehicles Act. 1926 B. 230

S 4.

1. The accidents which come within the provisions of the section are those which result in some injuries, annoyance or danger to the public. 1928 M. 364.
2. The person in charge of the car, though he may not be owner, to whose order the driver is submitting at the time of accident, or immediately thereafter, is amenable to this section. 1928 A. 261=108 I. C. 230=29 Cr. L. J. 357.
3. Police Officer stopping vehicle need not be one engaged in regulating traffic. 1930 M. 445=31 Cr. L. J. 639.
4. Driver is bound to obey the signal to slow down. A. L. R. 1933 N. 413.

S. 5.

1. If the car is going on a very wide road and even if the driver did go slightly over the middle line, the cars coming in the opposite direction are to give way. 1929 R. 14=115 I. C. 900=30 Cr. L. J. 539.

Motor Vehicles Act—(contd.)

2. In determining whether the manner of driving was dangerous to the public or not, regard must be had to all the circumstances of the case and the amount of traffic which actually was at the time in the place. 1925 B. 364=97 I. C. 973=27 Cr. L. J. 1213.
3. Where an accused saw another car approaching him on its proper side of the road and where he ought to have drawn behind the water cart passing in the same direction but attempted to force his way, he is guilty under S. 5. 1925 A. 793=88 I. C. 998=26 Cr. L. J. 1254.
4. Where an accused has been driving car for about 13 years and had obtained a large number of good certificates, his license should not be cancelled. 83 I. C. 998.
5. The owner of a motor car is not criminally liable for the negligence of driver in driving the car without proper lights. 1924 R. 63=25 Cr. L. J. 196.
6. An absent master is not criminally liable for fast driving where he had cautioned the driver not to exceed the regulation speed. 1924 C. 955=51 C. 948.
7. If the servant does something outside the scope of his employment the master would not be criminally liable. 34 A. 146.
8. Engaging in conversation whilst driving on a road under repair is not necessarily rash or negligent act. 1926 C. 360=36 C. W. N. 66.
9. Where a master driver left the car in charge of cleaner with instructions not to drive and went to a neighbouring workshop and the cleaner started the car and broke the corporation post, held, that the master was not liable merely on the ground that the cleaner was his servant, for the reason that driving the car, lay outside the scope of cleaner's employment. 29 C. W. N. 815.
10. If the offence was under S. 5, Motor Vehicles Act, and charge mentioned Ss. 16-17 and fully stated the facts, the charge was not defective. 59 C. 113.
11. The accused arraigned with negligence cannot claim the benefit of error of judgment when he exercised none. 1925 S. 233=92 I. C. 433.
12. If the offence comes equally under S. 5 of the Act and also under S. 279, I. P. C. there can be no question of prejudice to the accused if the conviction is under one or the other. 1925 B. 526=90 I. C. 320=26 Cr. L. J. 1536.
13. A person cannot be punished both under the special Act and I. P. C. for the same offence. 1928 B. 231=29 Cr. L. J. 981=112 I. C. 101=1931 M. W. N. 397.
14. Accused cannot plead contributory negligence. 32 Cr. L. J. 1061.
15. Fine should be proportionate to the means of the accused. The best way to stop dangerous driving by professional drivers is to cancel or suspend the license under S. 18. 1925 A. 798=88 I. C. 998=26 Cr. L. J. 1254.
16. Summons under the Act is to be in the prescribed form under S. 68, Cr. P. C. 1928 A. 261=108 I. C. 230=29 Cr. L. J. 357.
17. Contributory negligence is no defence for cases of hurt by rash driving. 1931 A. 708.
18. An error of judgment is not sufficient to convict a man. 59 C. 113.
19. If the driver cannot stop the car without violent application of brakes so as to result in a skid, he is driving recklessly. A. L. R. 1933 N. 413.
20. Test of negligence is whether accident could have been avoided by accused, just like a prudent man. 1934 N. 65.

S. 6.

1. Owner is not liable if the motor is driven without his knowledge by an unlicensed driver or where the unlicensed driver is permitted by the licensed driver. 1923 C. 410=110 I. C. 326=29 Cr. L. J. 694.
2. A motor bus owner allowing his driver to drive his omnibus without a license cannot plead in defence that the expiry of driver's license was not known to him. 1927 M. 1080=105 I. C. 674=28 Cr. L. J. 962.

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1. The driver is bound to produce the license at once when the demand is made. 43 A. 123.
2. It is only the Police Officers who can demand the license and an order requiring the driver to attend a Magistrate's house or Court with a license is illegal. 1927 A. 478=101 I. C. 668, 28 Cr. L. J. 492.
3. A Police Officer can ask the driver for his license in the private grounds of a person and it is not necessary that the car should be actually being driven on a public road. 1926 P. 446=97 I. C. 48=27 Cr. L. J. 1072.
4. Failure of a driver of a vehicle to produce on demand a permit issued to him under rule 24 of U. P. Motor Vehicles Rules is not an offence. 50 A. 876.
5. An offence under S. 8 is a technical one. Fine of a rupee or even less would meet the end of justice. 1922 N. 71=65 I. C. 425=23 Cr. L. J. 73.
6. Offence under S. 8 is a technical one and does not merit a prosecution. 1926 P. 444=97 I. C. 48.
7. Mere non-carrying of licence is no offence but the failure to produce on demand by Police Officer is an offence. 33 P. L. R. 278.

S. 11.

1. If the injury is caused to no other person except those in the car as a result of car jumping over a culvert the incident is not an accident. 51 M. 504.
2. Omission to blow horn at a turning when a car goes from right side to the wrong side of the road is a contravention of rule 18 of Madras Motor Vehicles Rules. 1923. 13 Cr. L. J. 487=15 I. C. 487.
3. The person responsible for fixing the number plate or board is the owner and not the user of the car. 1926 P. 446=97 I. C. 48=27 Cr. L. J. 1072.

S. 16.

1. There is no such thing as an offence under S. 16 at all. It is a penalty clause. The summons issued to the accused charging with an offence under S. 16 is invalid. 1928 A. 261=108 I. C. 230.
2. The fact that an unlicensed person was charged with driving motor-car without license and pleaded guilty to that charge is not sufficient to convict the motor driver of having allowed him to drive, where he was not specifically charged under S. 16. 1930 S. 64=119 I. C. 536=30 Cr. L. J. 1077.
3. Omission in summons to specify the sections of this Act or rules made thereunder for breach of which a person was being prosecuted is a serious defect. 50 A. 876, 1934 O. 370=35 Cr. L. J. 1161 (2).
4. A motor-car which carries mail and also passengers is not exempt from the operation of ordinary rules of license for driver and those restricting the number of passengers. 1927 B. 154=100 I. C. 1053=28 Cr. L. J. 397.
5. Suspension of a permit for an offence of over-loading a motor-car vehicle cannot be permitted. 1929 P. 64=110 I. C. 803=29 Cr. L. J. 771.
6. The time at which car was found driven without proper lights must be accurately proved. 1926 P. 446=97 I. C. 48.
7. Municipalities outside Calcutta cannot tax motor vehicles plying for hire. 1925 C. 1026=88 I. C. 1045=26 Cr. L. J. 1269.
8. When acquittal of the accused under S. 338, I. P. C., remains in force, S. 403, Cr. P. C., bars the trial for an offence under S. 16 of the Motor Vehicles Act. 1921 P. 22.
9. Owner is guilty of the offence even though not present in case of breach of rules of road certificate. 1930 L. 865=127 I. C. 211=31 Cr. L. J. 1185.
10. S. 562, Cr. P. C., does not apply to an offence under this Act. 1926 B. 230=93 I. C. 992=27 Cr. L. J. 528.
11. Where the offence with which accused was charged was under S. 5, Motor Vehicles

Motor Vehicles Act—(contd.)

2. In determining whether the manner of driving was dangerous to the public or not, regard must be had to all the circumstances of the case and the amount of traffic which actually was at the time in the place. 1926 B. 564=97 I. C. 973=27 Cr. L. J. 1213.
 3. Where an accused saw another car approaching him on its proper side of the road and where he ought to have drawn behind the water cart passing in the same direction but attempted to force his way, he is guilty under S. 5. 1925 A. 793=88 I. C. 998=26 Cr. L. J. 1254.
 4. Where an accused has been driving car for about 13 years and had obtained a large number of good certificates, his license should not be cancelled. 83 I. C. 998.
 5. The owner of a motor car is not criminally liable for the negligence of driver in driving the car without proper lights. 1924 R. 63=25 Cr. L. J. 196.
 6. An absent master is not criminally liable for fast driving where he had cautioned the driver not to exceed the regulation speed. 1924 C. 985=51 C. 948.
 7. If the servant does something outside the scope of his employment the master would not be criminally liable. 34 A. 146.
 8. Engaging in conversation whilst driving on a road under repair is not necessarily rash or negligent act. 1926 C. 300=36 C. W. N. 66.
 9. Where a master driver left the car in charge of cleaner with instructions not to drive and went to a neighbouring workshop and the cleaner started the car and broke the corporation post, held, that the master was not liable merely on the ground that the cleaner was his servant, for the reason that driving the car, lay outside the scope of cleaner's employment. 29 C. W. N. 815.
 10. If the offence was under S. 5, Motor Vehicles Act, and charge mentioned Ss. 16-17 and fully stated the facts, the charge was not defective. 59 C. 113.
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Motor Vehicles Act—(concl'd.)

Act, but charges mentioned under Ss. 16 and 17 and fully stated the facts, the accused was not prejudiced because he knew the charge he had to meet. 39 C. 113.

12. If license is suspended and fine imposed and no appeal is filed, the order cannot be revised. 1933 R. 329.
 13. If accused was convicted under S. 16, without reference to the rule, the breach of which was punishable, conviction is invalid. 1934 O. 370.
- S. 18.**
1. The best way to stop dangerous driving is for the Court, on conviction of the offender, to cancel or suspend his license. 1925 B. 526=90 I. C. 320=26 Cr. L. J. 1536.
 2. The order of suspension of license under S. 18 (2) along with fine, if any, is a part of the sentence and appellate Court can interfere with the order of fine as well as that of suspension of license. 1922 N. 71=75 I. C. 425.

MOVABLE PROPERTY. S. 22, I. P. C.**1. Land or things attached to earth.**

1. Earth, that is soil and all component parts of the soil, inclusive of stones and minerals when severed from earth or land becomes movable property and is capable of theft 15 B. 702.
2. Sand, stones or clay or any other component part of the earth when severed from the earth is movable property. 27 M. 531, overruling 10 M. 255.

2. Letter.

A letter addressed to W was handed by postman to W, who was living with H in the same room. W read the letter and placed it on the table H took the letter and attempted to file it in Court. Held, that H could not be convicted of dishonest misappropriation of property with respect to the detention of letter. 40 A. 119.

3. Mortgage bond.

Simple mortgage bond is movable property for the purpose of procedure for attachment. 46 A. 917, 37 M. 51, 15 A. 134, 18 P. R. 1909 Cr., 50 I. C. 157, 26 B. 305.

4. Paper of a record.

Paper forming part of a record of a case is movable property. (1882) 1 Weir 28, 7 L. L. J. 118.

5. Salt.

Salt produced on a swamp is movable property. 4 M. 228.

6. Standing tree.

Standing tree is immovable property but it becomes movable when severed from earth. 8 R. 13=1930 R. 158=31 Cr. L. J. 799.

MURDER. See Culpable homicide. Grievous hurt, Wound.**1. Abduction with intent to— S. 364, I. P. C. See Abduction—23.****2. Abetment of. See Acts in furtherance of common intention.**

1. A confederate accompanying the murderer on his murderous errand armed with a weapon to meet all eventualities is responsible for the murder as his associate, though he does not actually inflict any injury on the deceased. 1929 L. 791=116 I. C. 613=30 Cr. L. J. 637, 52 C. 197.
2. Persons who are present at murder and thereby give moral support to the same, are equally guilty as murderer. 47 A. 276, 8 P. R. 1868 Cr.
3. If there is conspiracy to kill and poison is sent to be administered and is administered by another accused all would be guilty. 92 P. R. 1866 Cr.
4. Accused ordered his men to beat the other party and in consequence of that order the other party was beaten and some men were killed, that person is guilty of abetment of murder. 1928 C. 752=116 I. C. 372=30 Cr. L. J. 621, 1928 P. 100.

Murder—(contd.)

5. Approver and two accused conspired to commit theft and to kill H in order to facilitate theft but there was no direct evidence as to who gave the fatal blow, the accused were guilty of abetment of murder. 1930 P. 164=127 I. C 566=32 Cr. L. J. 5.
6. A attacked D with *lathis* and hit him on the head and then asked B to press his mouth with a cloth. B did as she was asked. Medical evidence showed that death was due to *lathi* blows. Held, B was not guilty of murder. 1930 A. 45=120 I. C. 468=31 Cr. L. J. 37.
7. Accused gave aconite to a girl to administer it to her husband. She gave it to him and to her father-in-law in food and the latter died. Held, that accused was guilty under Ss. 302—115 though not under Ss 302—109, I. P. C. 58 C. 1228.
8. Where wife was fully cognizant of the plan to murder her husband, and she was a consenting party to the crime on the part of lover and others, she was an "accomplice" regard being had to S. 44, Cr. P. C and S. 107, I. P. C. 20 P. R. 1919 Cr.
9. Person instigating a raider or leader of a raid is guilty of abetment of murder. 1934 C. 221=147 I. C. 32.

3. Accused and deceased last seen together.

1. Accompanying murderers with the deceased and returning the next day without the deceased and subsequent disappearance of accused, are not sufficient to prove accused's complicity in the crime of murder 1922 L. 171, 1932 L. 243=137 I. C. 59=33 P. L. R. 236.
2. When accused and deceased were last seen together at 8 P. M. and the dead body was discovered the next morning and the accused did not give any explanation as to the death, it is not sufficient to fix the guilt on the accused. 67 I. C. 724=1922 A. 340=20 A. L. J. 564
3. Accused was offered a bullock by deceased on a fair and next day the body was discovered 3 miles from the place of fair, the fact that accused was found in possession of bullock next day was not sufficient to convict him for murder. 1923 L. 429=75 I. C. 762=25 Cr. L. J. 58.
4. Accused gave the deceased a melon and took him away on the promise of giving more. They were seen together near the canal bank by one witness and after that the deceased was never seen alive. Melon seeds were found in the *post-mortem* examination, the shoes of the deceased were hidden near the canal bridge and three ornaments which the deceased was wearing, were missing and accused had knowledge of the place where ornaments were concealed. Held, that the evidence was insufficient to convict him of murder. 1924 L. 109=77 I. C. 433=25 Cr. L. J. 385=4 L. 373.
5. When accused and deceased were last seen together and he set up a palpably false defence that he did not know the deceased and was never in her company. Held, that he was guilty of murder. 1930 L. 265=120 I. C. 529=31 Cr. L. J. 138.
6. Accused were seen in the company of the deceased on a previous night and next morning they were found in possession of clothes and other articles belonging to him. Held, that they were guilty under Ss. 411 or 379 only. 1929 L. 61=112 I. C. 212=29 Cr. L. J. 996.
7. Accused was last seen with a child, whose body was pointed out in a well and accused stripped her of ornaments and sold them. Held, he was guilty of murder. 16 P. W. R. 1915 Cr.
8. The fact that the accused was last seen with the accused along with another and that he pointed out the spot where dead body was ultimately found, are not sufficient to prove that accused was one of the actual murderers. 1927 L. 541=103 I. C. 97=28 Cr. L. J. 641.
9. Accused visited the village of the deceased and was at the shop of the deceased on the night of murder and both slept on cots in front of the shop. In the morning the person was found murdered and accused disappeared. Accused was in possession of stolen property and blood stains were found on his shirt. Held, he was guilty of murder 1929 S. 129, 1926 B. 513.
10. Where the evidence against the accused consisted of confession by co accused and

the evidence of approver that deceased and accused were last seen. Held, that confession and corroboration should not be acted upon. 12 Cr. L. J. 562.

11. Two persons were seen together and soon after one was found to have been murdered. Held, that no onus rests on survivor to explain how deceased met his death. 1932 L. 243=33 Cr. L. J. 411=137 I. C. 59.
12. Prosecution must prove every link in the chain of evidence against accused. 1932 L. 243=33 Cr. L. J. 411.
13. Deceased was seen with accused selling ornaments on deceased's person the same day. If accused is not examined on this point, the conviction is bad. 1936 M. 629=59 M. 631 (n). 1933 P. C. 144 Foll.
4. **Acts done in furtherance of common intention.** S. 34, I. P. C. See Acts done in furtherance of common intention.
5. **Acts done in prosecution of common object.** S. 149, I. P. C. See Unlawful assembly—1.
6. **Age of accused—** See Sentence—2.
7. **Aim at one, another killed—** See—59.
 1. Where the blow aimed at one person alights upon another and kills him the offence committed by the assailant is the same as it would have been if blow had struck the intended victim. 1928 L. 344=107 I. C. 764=29 Cr. L. J. 280.
 2. Where a blow was given to a woman trying to close the door and it fell on the child, which she was carrying and the child died, the accused was guilty under S. 325, I. P. C. 71 I. C. 52=24 Cr. L. J. 4, 28 P. R. 1888 Cr.
8. **Approver.** See Approver, accomplice.
9. **Arsenic poisoning.** See—23, Poison—2.
10. **Attack by several persons.** See Ss. 34—149, I. P. C.
 1. Four men armed with deadly weapons pursued the deceased and killed him, they were all guilty of murder. 1924 L. 415=69 I. C. 449.
 2. If the common intention of the unlawful assembly was to cause grievous hurt but death is actually caused, the accused are guilty under S. 304—149, I. P. C. 60 I. C. 679=22 Cr. L. J. 279.
 3. Three persons attacked a person with *lathis* directed on the head, and killed him, they were guilty under S. 302. 60 I. C. 676=22 Cr. L. J. 276.
 4. Several persons attacked A and B but killed only B, whether their object was to get at A more than B or whether they get at B by mistake, they shall be taken to have intended to kill B and there can be no question of B's death being accidental. 62 I. C. 545=22 Cr. L. J. 529=22 Bom. L. R. 1274.
 5. Accused and his son made a joint attack and killed A. They were guilty of murder. 27 Cr. L. J. 827=95 I. C. 603.
 6. A number of men armed with *lathis* made a concerted attack upon A and practically killed him on the spot, they were all guilty of murder. 45 A. 130, 4 L. L. J. 276, 48 I. C. 502, 35 A. 560, 64 I. C. 838.
 7. Where it cannot be found as to who gave the fatal blow, all are guilty of murder. 35 A. 329, 118 I. C. 473, 45 A. 727, 3 P. R. 1919 Cr.
 8. Where it was not proved that the common intention of the accused was to commit murder and there is no evidence as to who gave the fatal blow, none of them can be convicted of murder. 1 R. 390=76 I. C. 705=1923 R. 268, 58 I. C. 942, 17 A. L. J. 1095, 40 A. 103, 14 Cr. L. J. 396, 25 Cr. L. J. 241.
 9. Where five persons armed with deadly weapons collected at water head to take water by force and ready to strike and vanquish any body that came to resist them. Held, they were all responsible for fatal injury caused by one of them. 1926 L. 4=92 I. C. 217=27 Cr. L. J. 233=7 L. L. J. 576.
 10. Where two assailants bearing dangerous weapons assaulted the deceased and all the blows were aimed at head and two injuries were caused which in their nature were such that they could not be caused by one and the same instrument, both

Murder—(contd.)

were guilty of murder. 1929 N. 125=118 I. C. 50=30 Cr. L. J. 870, 29 A. 232, 40 A. 103 and 36 C. 659. Dist.

11. Accused went to commit robbery and to kill any body who should obstruct them in their object and killed one person in the prosecution of such intention. Held, all were guilty constructively, although punishment of death was not justified. 1929 L. 292=120 I. C. 180=31 Cr. L. J. 41.
 12. Two persons on receiving provocation attacked the deceased. It was not known as to who gave the fatal blow. Held, both were guilty under S. 325. 2 P. W. R. 1920 Cr.=54 I. C. 51.
 13. Four persons gave beating to the deceased. Two gave fatal blows and the rest only struck him on the body and it was not shown whether they realized that they were committing murder. Held, they were guilty under S. 323 only. 220 P. L. R. 1915=41 P. W. R. 1914 Cr.
 14. If there is no common intention to cause hurt to the deceased and fatal blow was given by one without premeditation, others are not constructively liable. 12 L. 442.
 15. Where several persons armed with *dang* joined in beating another regardless of consequences and caused his death and it was shown that there was enmity between the parties for over two years and the attack did not take place on a sudden quarrel, they were all guilty of murder. 1931 L. 536=131 I. C. 122=32 P. L. R. 414, 45 A. 727.
 16. Several persons with lethal weapons attacked a single person. No fatal blow was given by any person. Held, they were all guilty under Ss. 302—149. 1935 O. 110=153 I. C. 81.
 17. Where the common intention is to cause grievous hurt and *chhavi* blow is given on the head by one of the accused causing death, they are guilty under S. 325 read with S. 34. 1935 L. 97.
 18. If the intention of the unlawful assembly is to give beating and one of them thrusts a spear, others who are armed with *lathi* and spears are not guilty of murder. 1935 O. 52=153 I. C. 96=36 Cr. L. J. 268, 20 W. R. 5 Cr. and 6 A. 121 Ref.
 19. When five persons assaulted two men and grievous hurts are caused, one of them dies after 5 days, offence under Ss. 325—149 is committed. 1934 L. 486.
- 11. Attack on an unarmed man.**
1. Where accused took undue advantage of the victim who was lying on *charpoy*, when he was attacked with a formidable weapon, was not armed and not in a position to defend himself, he was guilty of murder although it was without premeditation and in the heat of passion. 1927 L. 808=101 I. C. 191=28 Cr. L. J. 415.
 2. Accused attacked an unarmed man from behind, while he was ploughing, and cut him with a most savage blow. Held, that he should be sentenced to death, though he was a mere youth. 9 R. 81=1931 R. 171=132 I. C. 716=32 Cr. L. J. 941.
 3. The number of wounds is not the criterion but the position of the combatants with regard to their arms should be considered. Causing grievous hurt to an unarmed man amounts to murder. 1935 Pesh. 59=1935 Cr. C. 357.
- 12. Attack on an old man.**
1. If a party of men deliberately and without provocation attack an old man of 70 years and intending or knowing that they are likely to cause grievous hurt, cover him with bruises and break his thigh so that he dies, it is murder. 1931 M. W. N. 132.
 2. In case of assault on an old man causing several fractures, knowledge that death would be caused must be presumed. 1923 L. 516=77 I. C. 459=25 Cr. L. J. 409.
 3. Accused, in a fit of temper, hit an old man on turbaned head with a stick and fractured his brittle skull and he died. Accused had no intention to cause more than a hurt to the old man. Held, he was guilty under S. 323. 1931 M. W. N. 1152.

Murder—(contd.)

4. Death of an old man was caused by a single *dang* blow on the head in a sudden quarrel. He had enlarged spleen as well. Held, accused was guilty under S. 304. 1934 L. 467.
13. Attempt to—. S. 307, I. P. C. See Attempt to murder.
14. Benefit of doubt. See Benefit of doubt.
 1. Where the body was not identified, when it was discovered and the prosecution evidence was inconsistent with the medical evidence, the accused was given the benefit of doubt. 1924 L. 168=76 I. C. 397=25 Cr. L. J. 173. See 18 P. R. 1917 Cr.
 2. Where the prosecution story in a murder case was built on the opinion of the Doctor, whom the accused had no proper opportunity to cross-examine but who subsequently modified his opinion, the accused was given the benefit of doubt. 1923 L. 189.
 3. Wife administered arsenic in *Haltwa* to her husband and father-in-law, believing it to be a charm, she was given the benefit of doubt. 1922 L. 55=4 L. L. J. 445.
 4. When it was not certain whether wife or some body else gave poison to the deceased, the mere fact that arsenic particles adhered to the utensils does not fix the responsibility on the wife. She was given ben. fit of doubt. 77 I. C. 600=1923 L. 537.
 5. Accused set up a right of private defence and there was some doubt about its truth, he was entitled to the benefit of doubt. 131 P. L. R. 1915.
 6. Where there are great discrepancies between the first information report and subsequent evidence, the accused get the benefit of doubt. 172 P. L. R. 1914.
 7. An accused is entitled to benefit of doubt in the matter of sentence as in the matter of conviction. 1 R. 751.
 8. Where the salient facts proved and the confession of accused can be reconciled, conviction for murder cannot be upheld. 133 I. C. 593=32 Cr. L. J. 1052=1931 A. 609.
 9. Where the circumstantial evidence is capable of two constructions, one in favour and the other against accused, the accused must get benefit of doubt 54 M. 931.
 10. If the prosecution does not present true facts as to how the man was killed, accused need not set up right of private defence. 1925 P. 175=26 Cr. L. J. 647.
 11. If the case is on border line of murder and culpable homicide, accused is entitled to benefit of doubt. 1934 R. 110=35 Cr. L. J. 1112.
 12. Deceased denouncing accused as assailant long after attack but just before death and there being no corroboratory evidence, the accused must be given the benefit of doubt. 1933 R. 95=34 Cr. L. J. 747.
15. Body not found.
 1. When a Court is convinced that a man is dead, it can convict a man of murder, although body is not found. 93 I. C. 252=1926 O. 234=27 Cr. L. J. 460, 1931 L. 25=130 I. C. 331, 23 A. L. J. 821.
 2. The mere fact that body is not found, is no ground for refusing to convict the accused of murder, otherwise in many cases the administration of justice would become impossible. 3 A. 383, 1 A. W. N. 112, 2 A. W. N. 160.
 3. When the body of the murdered person is not forthcoming, the strongest possible evidence as to the fact of murder should be insisted before an accused is convicted. 11 I. C. 635, 1934 S. 139.
 4. The absence of dead body makes the *onus* on the prosecution heavier than in ordinary cases. 9 P. L. T. 449.
 5. Where the circumstances are such as to make it morally certain that a crime has been committed, the interference that it was so committed is as safe as any other such inference. 6 P. R. 1886 Cr., 15 P. R. 1890 Cr.
 6. A Judge exercises a sound discretion in not passing a sentence of death in a case in which the dead body has not been found. (1869) 11 W. R. 20 Cr., 12 W. R. 49 Cr.

Murder—(contd.)

7. Where dead body does not appear and conviction is based on retracted confession, a sentence of transportation is proper. 26 Cr. L. J. 1431=1925 A. 627=89 I.C. 903, 1924 A. 662=25 Cr. L. J. 900.
8. A man was brutally beaten with *lathis* into unconsciousness by the accused who dragged him to a river, leaving traces of blood on the ground and Railway line. The man had never been seen since and the body was not produced. Held, he could not be convicted of murder but was guilty of attempt to murder. 22 A. L. J. 346=25 Cr. L. J. 900=1924 A. 662.
9. The question of sentence should be determined upon the gravity of the offence irrespective of the circumstance whether the body has or has not been discovered. 3 O. W. N. 204.
10. If the accused confesses his guilt, the finding of dead body is not essential for conviction. (1865) 4 W. R. 19 Cr.
11. When prisoners confess in the most circumstantial manner to having committed a murder, the finding of body is not absolutely essential to conviction (1869) 11 W. R. 20.
12. It is essential to establish that the person with whose murder the accused is charged is dead. Identification of the corpse is not necessary. 1935 L. 80.
16. **By life convict.** S. 303, I. P. C.

Where a convict under sentence of transportation for life commits murder, the only sentence that can be passed is death. (1873) 19 W. R. 45 Cr.

17. Causing death of a person believed to be dead.

Accused struck his wife on the head with a ploughshare which rendered her senseless. Believing her to be dead, he hanged her in order to lay the false foundation of suicide, which resulted in her death. Held, that accused was not guilty of murder. 42 M 547, 18 C. W. N. 1279=15 Cr. L. J 709, 15 B. 194 Dist.

18 Charge.

1. The charge should follow the language of S. 300. 2 O W N. 862
2. The intent or knowledge necessary to constitute murder should be set out in the charge. (1877) P. J. L B. 328.

19. Child in the mother's womb

It must be proved not only that the child breathed but that it breathed after it had wholly or partially emerged from its mother's womb. 29 P R 1915 Cr

20 Circumstantial evidence. See Circumstantial evidence.

- 1 Daughter gave birth to a child and her mother only attended her. The infant while in their custody died of poisoning soon after birth. Both of them must be presumed to have administered poison. The fact of their taking no steps towards saving the infant's life is evidence of intention. 43 P W. R. 1910 Cr.
- 2 Where the person admittedly knew that his wife was murdered at night, yet he made no report to Police, nor made any attempt to find out as to who killed his wife, his conduct was unnatural, he must be taken to be the murderer. 116 I. C. 193=30 Cr L. J 567=1929 O. 190
- 3 Accused and deceased slept together on cots in front of deceased's shop. In the morning the deceased was found murdered and accused disappeared. Accused was found in possession of stolen property belonging to accused and blood stains were found on his shirt. Held, that he was guilty of murder 1929 S. 179, 1926 B. 513=97 I. C. 660=27 Cr. L J 1140
4. The deceased used to live in accused's house until he disappeared. Accused made no report about the sudden disappearance and he admitted his guilt to a friend and produced property worth 4,000 rupees belonging to the deceased. Held, he was guilty of murder. 1926 N. 119=89 I. C. 516=26 Cr. L. J. 1480.
5. Where the circumstantial evidence bears palpable signs of concoction and does not fit in with the conduct of rational persons, conviction would be bad. 31 Cr. L. J. 438=122 I. C. 587=1931 P. 169.

Murder—(contd.)

- 6 Accused had unnatural intimacy with the deceased who was murdered by sharp weapon, he was last seen with the deceased and pointed out a place where weapon was found. Held, this was sufficient proof of guilt. 98 P. L. R. 1918=50 I. C. 481.
- 7 A conviction on circumstantial evidence is bad when the identification is very unsatisfactory. 221 P. L. R. 1915.
8. Where the only reliable circumstantial evidence was that he had a motive to commit murder and that he was seen running away near the place of occurrence at or about the time of murder, the accused was not guilty. 59 I. C. 858.
9. Where there is no eye witness of murder, circumstantial evidence requires careful scrutiny. 1934 L. 10=35 Cr. L. J. 615.
21. Conduct of accused. See Conduct.
22. Consent of deceased. See—47.
23. Death by arsenic. See Poison—2.
1. A wife administered arsenic in *Halwa* to her husband believing it to be a charmed thing, to induce him to divorce her. There was evidence to show that she did not know that it contained arsenic. Held, she was not guilty. 1922 L. 55=4 L. L. J. 445.
2. When it is not certain whether wife or some body else gave arsenic to the deceased, the mere fact that particles of arsenic were found on some utensils is not sufficient to convict the wife. 1923 L. 537=77 I. C. 600=25 Cr. L. J. 424.
3. Accused administered arsenic to a boy of 9 years with the object of preventing the father of the boy from appearing as witness against him in Criminal case, but in such a quantity that the boy died in the course of 3 days, it was held, that he was guilty of murder, though his intention might not have been to cause death 40 A. 360, 28 Bom. L. R. 1003.
4. The accused sent sweetmeats poisoned with arsenic to A with the intention of causing her death, but A, B and C partook of it and they all became seriously ill but recovered. Held, he was guilty of attempting to murder B and C as well. 3 L. L. J. 191.
5. Wife administering arsenic to her husband in milk is guilty of murder. 1930 O. 502=128 I. C. 282.
6. In cases of arsenic poisoning mere examination of the vomit or nightsoil is totally insufficient and it is extremely dangerous to rely upon some traces of arsenic found in either of these two things. The proper examination consists in the careful examination of viscera of body. 1930 A. 532=125 I. C. 585=31 Cr. L. J. 862
7. Where the evidence that accused had arsenic or gave anything to eat to the deceased is not given, the conviction for murder is bad. 32 I. C. 838=17 Cr. L. J. 102.
8. It must be proved that deceased died of arsenic poisoning and that accused administered arsenic. Evidence of *Post-mortem* Doctor that from appearance of stomach and intestine his opinion was that death was due to arsenic is not sufficient. 1933 A. 837=146 I. C. 1089.
24. Death by beating with *lathi*. See Culpable homicide.
1. Accused a young woman of 15 years of age being roused to frenzy by ill-treatment of her husband, seized a stick lying by and made a murderous attack on her stepson in order to avenge herself against her husband, and caused death of the infant son. Held, she was guilty of murder. 1926 L. 144=89 I. C. 461=26 Cr. L. J. 1373.
2. The accused lost his temper as his melons were not purchased and gave a dangerous blow on the uncovered head of the deceased, who died. Held, he was guilty under S. 325 and not under S. 302. 1929 L. 863.
3. Accused gave one blow with a club and knew that it must in all probability would cause death. Held, he was guilty of murder but should be given transportation for life. 74 I. C. 257=24 Cr. L. J. 753=1923 A. 355.

Murder—(contd.)

4. A person delivering a violent blow with a lethal weapon like a *lathi* on a vulnerable part of the body such as the head must be deemed to have intended to cause such bodily injury as he knew was likely to cause death. 31 Cr. L. J. 1069=126 I. C. 572=1930 L. 490, 26 P. L. R. 363, 103 I. C. 843, 1928 L. 93 (5 P. R. 1893 Cr. and 9 S. L. R. 99 Dist.)
5. Where men fight with *lathis* and death is caused, it must be presumed that they were doing an act so eminently dangerous that it must in all probability cause such bodily injury as is likely to cause death. 1929 A. 160=116 I. C. 19=30 Cr. L. J. 559.
6. Owing to quarrel with the deceased, the accused gave him one blow on the head with an iron shod stick. Held, he was guilty under S. 304. 41 B. 27, 26 P. L. R. 430, 8 P. L. T. 594.
7. A man who has hacked a fellow creature in a most merciless fashion or has practically pounded him to death, cannot escape conviction of murder by urging that he was careful to avoid injuring a vital part. 14 P. R. 1911 Cr.
8. Accused caused the death of another person by giving him unmerciful thrashing with sticks by smashing both bones of fore-arm, the right elbow and knee cap and the skull, he was guilty of murder. 3 P. R. 1919 Cr., 2 P. W. R. 1908, 1 P. W. R. 1913, 7 P. L. R. 1911, 40 A. 103, 32 I. C. 833 Dist. 37 C. 315 App.
9. Accused committed an unprovoked and cowardly assault on a person by striking him one *lathi* blow on the head, which fractured his skull from temple to temple, he was guilty of murder. 3 O. W. N. 451, 4 O. W. N. 445.
10. Accused killed a person by striking him one blow on the head with a long and heavy bamboo. The nature of injury showed that very great force was used. Held, he was guilty of murder, although the weapon used was not one that would of necessity cause fatal injury. 11 L. B. R. 115.
11. In a case of riot if the accused attacked with a dangerous weapon, they must be intended to have caused death. 37 M. 119.
12. Where the accused did not lift his *lathi* above his head but gave a side way blow with it which ruptured the deceased's liver and caused his death. Held, he was guilty under S. 325, I. P. C. 81 I. C. 969.
13. Accused gave *lathi* blow on the head and after the deceased fell down, he gave more blows and caused his death. Held, he was guilty of murder. 113 I. C. 481=30 Cr. L. J. 173=1928 O. 282.
14. A person inflicting a violent blow on the head with an iron shod *daug* must be presumed to intend to cause his death, unless the presumption is rebutted by circumstances. 1932 L. 244=33 Cr. L. J. 378.
15. If two men repeatedly strike another with *lathis* and break his skull, they are guilty of murder. 32 P. L. R. 401=134 I. C. 205=32 Cr. L. J. 1127, 130 I. C. 847.
16. During a scuffle between two parties the deceased was hit on thigh with axe by D and fell down. The other accused gave him *lathi* blows and fractured his skull. Held, that D should be convicted under S. 325, though others were liable for murder. 32 P. L. R. 401=134 I. C. 205.
17. Where the attack on deceased with sticks resulted in several contusions on the head, of which three were fatal, the offence fell under S. 302. 1930 L. 606=33 P. L. R. 718.
18. Where the majority of injuries are slight and there is no motive, the offence falls under S. 325 and not S. 302. 1926 L. 419=27 Cr. L. J. 547.
19. Striking with a formidable *lathi* on the head and fracturing the skull amounts to murder. 1933 L. 930=35 Cr. L. J. 101.
20. Accused gave a *daug* blow on the head and fractured the skull while others gave one blow each. Held, accused was guilty under S. 302 while others under S. 304 (2). 1933 L. 930=35 Cr. L. J. 101.
25. Death by blood poisoning. See—Wound—15.
 1. Accused savagely attacked and wounded their cousin with a hatchet, who was lai

Murder—(contd.)

up with fever in consequence of the wounds for about 48 days and died of blood poisoning. Held, that they were guilty of murder. 7 S. L. R. 83=15 Cr. L. J. 376.

2. Accused lived two months after assault and then died from blood poisoning which was only an indirect consequence of his wounds. Held, that accused was guilty under S. 325, when the injury was in itself insufficient to cause death. 1928 O. 36 (37)=28 Cr. L. J. 401.

26. Death by continuous acts.

If the death is due to continuous acts and it is impossible to resolve the different incidents into wholly separate actions, inspired by different motives, the persons who did the act, must be deemed to have done it with the intention of causing death. 1931 L. 27=130 I. C. 321=32 Cr. L. J. 483, 15 B. 194 and 42 M. 547 Dist.

27. Death by dagger. See—41.

28. Death by Dhatura. See Poison—5, Hurt by Poison—2.

1. Where the intention of the accused was primarily to stupefy the victim by *Dhatura* and then rob him but poisoning was fatal. Held, he was guilty of murder. 1927 A. 104=98 I. C. 712=27 Cr. L. J. 1400, 28 Bom. L. R. 1003, 31 A. 148, 45 A. 557, 32 P. L. R. 1911. See 19 P. R. 1919 Cr. and 30 A. 568.
2. A young woman administered *Dhatura* to three members of her family who ultimately recovered. Held, she was guilty of attempt to murder. 20 A. 143, 60 I. C. 50.
3. Where a large quantity of *Dhatura* is administered, the offender shall be intended to cause the death of the victim for the successful termination of the crime. 55 C. 479=21 Cr. L. J. 319=3 P. W. R. 1920 Cr.
4. Accused administered *Dhatura* in *sherbat* to a boy of 10 years of age, in order that his mother would bring him for treatment and they would be under his influence. The boy died after three days. Held, he was guilty of murder, but death sentence should not be passed. 1930 L. 90=120 I. C. 534=31 Cr. L. J. 140.

29. Death by erysipelas supervening. See Wound—15.

The deceased was not killed outright but survived for 11 days. The doctor was doubtful whether deceased would have died if erysipelas had not supervened. The deceased was struck with blunt side and not the sharp edge of the *chhavi*. Held, that the accused were guilty of grievous hurt only. 1923 L. 441

30. Death by gun shot. See Wound—12.

A Sessions Judge found that shortly after murder N and L were seen at the scene of occurrence each with a gun in his hand and that either N or L fired the shot. Held that it was no finding and the accused should be acquitted, when there was no evidence of common intention. 11 C. W. N. 1085.

31. Death by kicks.

A several times kicked B, who fell down senseless after a severe beating and caused his death. A was guilty of murder. (1865) 3 W. R. 22 Cr.

32. Death by Gangrene. See Culpable Homicide—13.

32-A. Death by not giving nourishment to child

Accused neglected to give nourishment to child although repeatedly warned, he is guilty of murder. 5 N. W. P. H. C. R. 44.

32-B. Death by overfeeding a child.

If a mother intentionally overfeeds a child to death she will be guilty of murder. 1 N. W. P. H. C. R. 38.

33. Death by love potion. See Death by Negligence.—6.

34. Death by pneumonia supervening. See Culpable Homicide.—21.

1. If a person receives grievous injuries and is detained in Hospital and as a result of those injuries pneumonia supervenes and the victim dies, the accused are guilty of murder. 1925 L. 851=101 I. C. 230=29 Cr. L. J. 678, 7 S. L. R. 83.
2. Deceased fell down on account of two serious blows given by the accused and was taken to Hospital but left it when he was progressing well. After a month and a

der—(cont.)

half he died of pneumonia. Medical evidence did not show that death was due to injury, the accused was not guilty of offence under S. 302 or S. 304. 1524 A. 441 = 81 I. C. 181 = 25 Cr. L. J. 493.

Death by poison. See—23. See Poison.

1. Accused prepared sweets containing poison with the intention of giving it to her husband, who ate it along with others. One of the guests died in consequence of it. Held, she was guilty of murder. 39 A. 161, 22 M. L. J. 333, 45 A. 537.
2. Daughter gave birth to a child and her mother only attended her. The infant soon after died of poisoning. Held, both would be presumed to have administered it and the fact that they took no step to save the life of the infant is evidence of intention. 43 P. W. R. 1910 Cr.
3. When the poison was administered by the accused as a drug which would bring the deceased under her control and that she did not know it was poison, she was not guilty. 14 Cr. L. J. 586 = 21 I. C. 378.
4. The Civil Surgeon was unable to say what poison was administered and there was no evidence on the record as to what poison was administered, accused was not guilty. 85 I. C. 817 = 26 Cr. L. J. 593 = 1923 L. 325.
5. In a case of poisoning the evidence should be complete as to the history of articles containing poison and it should be shown that they were kept in proper custody throughout if they are to be relied on as supporting a conviction. 7 Bom. L. R. 640.
6. Where accused was proved to have put some powder in the food, which was found by Chemical Examiner to contain poison, but there was no evidence of the quantity of poison found in the food or the probable effect on any one who might have eaten it. Held, that the accused could not be held to have intended to cause anything more than hurt and he was guilty of attempt to commit an offence under S. 323. 5 L. B. R. 79
7. Accused gave poisoned rice water to an old woman who drank part of it herself and gave the other part to a girl who died of poisoning. Held, he was guilty of murder. (1869) 12 W. R. (Cr. L.) 2, 39 A. 161, 22 M. L. J. 333, 27 Cr. L. J. 1400.
8. On a charge of murdering his mistress the only evidence led was that two pieces of ropes stained with blood and to which were adhering human hair and also baira cakes containing arsenic were found but there was no evidence that she was poisoned. Held, he was not guilty. 66 I. C. 422 = 23 Cr. L. J. 278
9. A violent presumption arises when a man dies of poison in his own house surrounded by his own family and after eating food prepared by his wife and no explanation is coming forth from the occupants of the house as to what happened and when an attempt is made to hide the corpse and there is persistent lying in an attempt to account for his absence, and presumption becomes certainty. 97 I. C. 44 = 1926 A. 737 = 27 Cr. L. J. 1068 = 49 A. 57.
10. Accused who was greatly displeased with the wife of his brother came to get her child from her. He took the child but was over persuaded by others to let the child remain. He gave the child some sweets, who died of poison. Held, he was guilty of murder. 1929 O. 516 = 119 I. C. 870 = 30 Cr. L. J. 1118.
11. Mere evidence that deceased drank milk offered by accused and died soon after exhibiting symptoms of poisoning is insufficient for conviction. 25 P. W. R. 1911 Cr. = 241 P. L. R. 1911.
12. Accused gave accnite to a girl to administer it to her husband, in order to gain his love. She gave it in food to her husband and father-in-law, and the latter died. Held, that accused was guilty under Ss 302—115 though not under Ss 302—102, 1, P. C. 1931 C. 757 = 134 I. C. 856 = 33 Cr. L. J. 79 = 55 C. 1228.
13. Accused contracted illicit intimacy with another and became pregnant. She was alone at the time of birth and had every motive to do away with the child. She admitted, she had opium four days before the occurrence. The death of child was due to opium. Held, that the only inference was that accused administered opium and committed murder. 1932 L. 279 = 137 I. C. 259.
14. In a case of poisoning, death from poison and administration of poison by accused should be proved. 1934 O. 62 = 145 I. C. 600.

Murder—(contd.)

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13. Accused contracted illicit intimacy with another and became pregnant. She was alone at the time of birth and had every motive to do away with the child. She admitted, she had opium four days before the occurrence. The death of child was due to opium. Held, that the only inference was that accused administered opium and committed murder. 1932 L. 279 = 137 I. C. 259.
14. In a case of poisoning, death from poison and administration of poison by accused should be proved. 1934 O. 62 = 148 I. C. 600.

Murder—(contd.)

15. In a case of poisoning by wife, voluntary confession though retracted along with recovery of various articles stained with poison in house and discovery of poison in viscera and vomits is sufficient corroboration. 1934 L. 150 (2)=15 L. 310.
16. In case of murder by poison three things are to be proved : firstly, did the deceased die of poison in question ; secondly, had the accused got the poison in question ; and thirdly, had the accused opportunity to administer the poison to deceased. The question of motive is of subsidiary importance. 1933 A. 394=34 Cr. L. J. 754.
17. Evidence that accused poisoned other persons with *Dhatara* before or after the act charged is admissible to show that the act was intentional and not accidental. 32 P. L. R. 1911, 1923 N. 245=24 Cr. L. J. 566.
18. Where no motive is proved, though the conduct of accused is suspicious and the evidence of poison vendor is not convincing, the circumstantial evidence is not sufficient. 1936 P. 486=164 I. C. 1079.
36. Death by Rape. See Culpable Homicide—22. Rape—10.
37. Death by Rash driving. See Rash or negligent driving.
38. Death by shock. See Wound—38.
 1. Three accused injured a person and fractured his ribs. None of these injuries in itself was fatal and he died of shock from multiple injuries. Held, they were guilty under S. 325 only. 1929 L. 456=114 I. C. 704=30 Cr. L. J. 368.
 2. Accused gave two blows one of which completely perforated the heart and the other penetrated the abdomen and divided the intestine and death was due to shock and hemorrhage. Held, he was guilty of murder. 1926 L. 143=92 I. C. 222=27 Cr. L. J. 238.
39. Death by snake-bite. See Culpable Homicide—26.
40. Death by spear.

Accused had a quarrel over the enticement of the sister of deceased and gave him a blow with spear, he was guilty of murder. 1923 L. 195.
41. Death by stabbing.
 1. The natural result of plunging a knife into a man's stomach is death or such bodily injury as is likely to cause death. 1928 C. 430=109 I. C. 482=29 Cr. L. J. 546
 2. A person who inflicts fatal wounds with a knife intends nothing short of death and so the offence, in the absence of extenuating circumstances, is murder. 1930 M. W. N. 681, 1913 M. W. N. 556.
 3. If a person stabs another in the stomach, he must be held to have intended to cause injury sufficient in the ordinary course of nature to cause death. 1 R. 436, 27 M. 119, 1922 A. 487 Dis.
 4. In a case where as a result of a mere boyish quarrel, the accused stabbed the deceased with a pen-knife four inches in length, he was guilty under S. 326 only. 1922 L. 26=63 I. C. 450=22 Cr. L. J. 658.
 5. If a person stabs another against whom he has a grudge and stabs him in the vital part, he is guilty of murder. 1930 L. 534=129 I. C. 289=32 Cr. L. J. 290.
 6. Accused stabbed the deceased with a dagger in the back. The wound was healed up in a week but then tetanus supervened and he died the following day. Held that tetanus was the result of the wound and the accused was guilty of murder. 10 Bur. L. R. 171.
 7. Accused stabbed the deceased in the upper part of the stomach causing rupture of it and of the peritoneum. Held, he was guilty of murder. 2 L. B. R. 63.
 8. In the course of drunken brawl accused was struck by the deceased and knocked down, whereupon the accused struck the deceased with a knife in the throat and caused his death. Held, he was guilty under S. 302. 8 P. 911=1930 P. 163=121 I. C. 452=31 Cr. L. J. 243.
 9. Accused suspected his wife of infidelity and stabbed her four times, who ran for protection to her aunt who was also stabbed by knife in the back, which caused her death. Held, he was guilty of murder although he did not intend to cause the death of the aunt. 13 Cr. L. J. 129.

Murder—(contd)

10. A person plunging knife in the vital part of the body is guilty of murder. 1932 L. 254 (2)=137 I. C. 65=32 Cr. L. J. 375.
 11. If a man stabs another over the heart deliberately with a knife capable of causing death, he is guilty of murder. But he was acquitted, as he had injuries on his person and so he was held to have acted in self defence. 33 P. L. R. 287.
 12. If the death is caused by stabbing with *chhuri* the offence is murder and not culpable homicide. 1932 L. 302=33 P. L. R. 154.
 13. If a person exceeds the right of private defence of property and stabs the trespasser to death, he may be convicted under S. 236, I. P. C. 1932 M. W. N. 67.
 14. A stab wound which penetrates the wall of abdominal cavity is one which is sufficient to cause death in the ordinary course of nature. 1935 R. 408.
 15. Deceased who was a notorious bully attached accused with fists, who drew a knife and stabbed him. Held that right of private defence was exceeded and was convicted under S. 304 (2). 1933 L. 227.
 16. When accused thrust a knife in the abdomen of the deceased in a party fight, he was guilty under S. 302 and was sentenced to transportation for life. 1933 L. 434=34 Cr. L. J. 711.
 17. Stabbing in chest or abdomen with sufficient force to penetrate such structures is murder. 1933 P. 508, 1936 R. 60=37 Cr. L. J. 418, 1936 R. 71.
 18. Stabbing in heat of passion and on sudden quarrel and taking undue advantage is murder. 1933 P. 508.
- 42. Death by stone throwing** See Culpable Homicide—34.
1. Accused asked his wife for a *jan* (beetle) and she threw dirty rice water. He being enraged threw a stone at her head and killed her. Held, he was guilty under S. 304, 30 Cr. L. J. 720=1929 P. 201=117 I. C. 164.
 2. In a sudden and premeditated fight the accused threw stone not deliberately, which caused death. Held, he was guilty under S. 325 and sentence was reduced to 4 years. 1934 L. 111=151 I. C. 968.
- 43. Death by strangulation.** See Strangulation, Hanging—Culpable homicide—30.
1. Causing death by placing a bamboo on the neck till suffocation is murder. (1873) 19 W. R. 35 Cr., 28 C. 571.
 2. Double knotted ligature round the neck of the deceased was held to be a clear indication of the fact, that his death had been caused by some other person than himself by strangulation. 1926 N. 119=89 I. C. 516=26 Cr. L. J. 1380.
 3. Accused gave beating to his wife who became unconscious and thinking her to be dead, he hung her to give an appearance of suicide, but she died of hanging. Held, he was guilty under S. 325, 18 C. W. N. 1279, 42 M. 547.
 4. A hit D on head with *lathi* and asked B to put cloth in his mouth. He died of injuries on the head. Held, B was not guilty. 120 I. C. 268 (deadly weapon)=1930 A. 45=31 Cr. L. J. 37.
 5. A theory of the cause of death should not precede but succeed the collection of evidence which may be made to fit in with the theory. When there are scratches on the throat such as would be produced by nails of the hands, one should be cautious as the effect of poplexy, etc., might be mistaken for those of manual strangulation. 13 C. W. N. 622.
- 44. Death by Takwa or Chhavi or Gandasa or chopper or axe.**
1. A *Takwa* is a deadly weapon and a person who strikes a blow on the head with such a force as to cut through the skull, is guilty of murder. 1925 L. 373=88 I. C. 995=7 L. L. J. 175, 1923 L. 68=69 I. C. 439.
 2. A person striking axe on the head of a person and causing death by breaking it is guilty of murder. 32 P. L. R. 810.
 3. Striking three or four blows on stomach with a heavy chopper or *Gandasa* is murder. 1934 O. 405=35 Cr. L. J. 1113.

order—contd.)

3. Accused struck deceased two or three times on the head, threw him in a pool of water containing few inches of water, and removed money. Later on he threw it into canal. Held, he was guilty of murder and not under Ss. 323—379, I. P. C., as his action was continuous. 1931 L. 27=32 Cr. L. J. 453.
4. Accused struck the deceased on head with the intention of killing him. Believing him to be dead, he set fire to the hut in which he was lying. Held, he was guilty of attempt to murder. 15 B. 194. *Contra* 26 I. C. 157=15 Cr. L. J. 709, 1931 L. 27, 1933 M. 798.

2. Demeanour of accused. See Demeanour.

It is not safe to base a conviction of murder only on the evidence of accused's demeanour. 99 I. C. 324=25 P. L. R. 27.

9-A Deposition before Committing Magistrate. Transfer of S. 238, Cr. P. C. See Deposition.

1. A conviction based solely on evidence given by the witnesses before Committing Magistrate and retracted by them at the trial is unsustainable. 17 P. R. 1919 Cr., 51 P. R. 1837, 21 A. 111 and 23 A. 633, unless corroborated by independent evidence. 5 L. 321 (323), 12 M. 123, 27 C. 295, 1925 P. 440=91 I. C. 258.
2. For other cases see Deposition.—1.

50 Distinction between culpable homicide and—.

1. All murder is culpable homicide but not *vice versa*. Every act falling within S. 299 and not falling under S. 300 is culpable homicide not amounting to murder. 11 Cr. L. J. 295.
2. Culpable homicide may not amount to murder where notwithstanding that the mental state is sufficient to constitute murder, still one of the exceptions to S. 300 applies or where the mental state though within the description of S. 299, is not of special degree of criminality required by S. 300. 30 I. C. 113=16 Cr. L. J. 561=19 C. W. N. 653.
3. The distinction between the intention to cause injury sufficient in the ordinary course of nature to cause death and the intention to cause injury likely to cause death, depends upon the degree of probability of death resulting from the act committed. 10 Cr. L. J. 359.
4. When the intention to cause death or to cause such bodily injury as is likely to cause death co-exists with knowledge described in Ss. 299 or 300, the knowledge merges in the intention and a higher degree of guilt is imputable. 32 P. R. 1887, 27 P. R. 1283, Cr.
5. All acts of killing done with the intention of killing or to inflict bodily injury likely to cause death or with the knowledge that death must be the most probable result are *prima facie* murder, while those committed with the knowledge that death will be likely result fall under S. 304. 3 A. 776, 30 Cr. L. J. 141.
6. Where it is difficult to find whether the offence falls under S. 302 or S. 304, the accused should be convicted under S. 304. (1889) S. J. L. B. 459.

51. Drunken Brawl.

When only one blow was given in a drunken brawl in the accused's house, no offence under S. 302, or S. 304 but one under S. 326 was committed. 1934 L. 477.

52. Events leading up to assault.

Events leading to and preceding the assault on deceased must be considered. 1934 R. 44=35 Cr. L. J. 855=148 I. C. 1069.

53. Evidence. See—20. See Eye witness.

1. Although the evidence of admission of guilt to villagers is sufficient to justify the conviction, such evidence must be closely scrutinized. 117 I. C. 737=30 Cr. L. J. 829=1929 O. 271.
2. When the only account of what happened on the night of murder is given by accused himself and it is his admission contained in that statement, it should be accepted in its entirety and if it establishes any mitigating circumstances, the accused should

Murder—(contd.)

- be given the benefit of it. 1930 L. 269=121 I. C. 178=31 P. L. R. 35=31 Cr. L. J. 226.
3. Where the person admittedly knew that his wife had been murdered shortly after midnight and yet he made no report to Police station, nor made any attempt to find out as to who killed his wife, his conduct was unnatural and may lead to the conclusion that he was the real murderer. 116 I. C. 193=1929 O. 190=30 Cr. L. J. 567.
 4. In a murder case there was no counter story worth believing on behalf of the accused. The motive was evident and he confessed his guilt to his uncle. His subsequent conduct showed that he knew the truth but put forth numerous falsehoods. Held, he was guilty of murder. 30 Cr. L. J. 829=1929 O. 272.
 5. The mere fact that accused pointed out dead body is not sufficient to convict him of murder. 1929 L. 558=114 I. C. 719=30 Cr. L. J. 375.
 6. If the facts point either to murder or to suicide, the accused is not guilty. 52 M. 529=1929 M. 487=121 I. C. 157=31 Cr. L. J. 223.
 7. Where death has been caused, it is no defence that the deceased was suffering from a complaint which would have caused death in any event. 44 I. C. 338.
 8. Where a person causes the death of another person, it is for him to show that his act was removed from the category of murder by one of the exceptions to the section. 17 A. L. J. 866.
 9. Accused visited the deceased's shop. They slept together on cots in front of the shop and in the morning the deceased was found murdered and accused disappeared. Some stolen property was recovered from him and his shirt was blood stained. Held, he was guilty of murder. 1929 S. 179, 1926 B. 513.
 10. Accused knew where the bodies of murdered men were and he confessed his guilt to Lambardar of the village. Held, it was not safe to rely upon the confession to Lambardar, and he was guilty under S. 201 only. 1928 L. 858=111 I. C. 449=29 P. L. R. 486=29 Cr. L. J. 865.
 11. Where it is doubtful whether confession was made before or after discovery and there is no other evidence, the accused should be acquitted. 68 I. C. 17=23 Cr. L. J. 481.
 12. Where the prosecution witnesses are untruthful as to the greater part of their evidence, it is dangerous to convict on the residue without corroboration. 1930 O. 460=128 I. C. 211=32 Cr. L. J. 94.
 13. Where there is no sufficient corroboration of approver's story conviction is bad. 1922 L. 311.
 14. Where real murderers were concealed being public favourites or deceased was unpopular and no evidence was forthcoming, the accused should be acquitted. 1929 P. 527.
 15. Where assessors find only some of the accused guilty and evidence is the same, a conviction under S. 302 is improper when truth is kept back. Dying declaration in Punjab is generally of no weight. 30 P. L. R. 536.
 16. The mere fact that accused pointed out a heap of *Turi* belonging to a Zamindar from which blood stained weapon was recovered and accused had some injuries on his person is not sufficient to convict him of murder. 1928 L. 335=10 L. L. J. 58.
 17. Where the only evidence against the accused was the evidence of motive and his production of dead body from his fields, conviction under S. 302 was not sound. 107 I. C. 482=29 Cr. L. J. 252, 1927 L. 541, 1926 L. 88.
 18. The mere fact that accused has knowledge where corpse is buried, does not prove that he was the murderer. 6 L. L. J. 54=75 I. C. 693, 18 P. R. 1917 Cr., 1926 L. 138=89 I. C. 901.
 19. The mere fact that property belonging to deceased is recovered from a place pointed out by the accused is not sufficient to convict him of murder. 96 I. C. 849=27 Cr. L. J. 993.

Murder—(contd.)

20. Going with a *Toka* on the day of murder is insignificant as many zamindars carry *Tokas* for their agricultural work. 77 I. C. 602.
21. The mere pointing out of body of the person murdered would not by itself be sufficient evidence for a conviction of murder, but if the appellant has never explained how he came by his knowledge of the place where the dead body lay, it may be sufficient. 68 I. C. 841=23 Cr. L. J. 617=1922 L. 189.
22. Where the accused committed an unprovoked and cowardly assault on a person and fractured his skull and took him by surprise, he was guilty of murder. 27 Cr. L. J. 766=95 I. C. 286.
23. Conviction of murder on the statement of a person found to be unreliable cannot be supported. 100 I. C. 359=1927 M. 1112=28 Cr. L. J. 279.
24. Where a witness sees a murder committed and gives no information his evidence is no better than that of an accomplice. 76 I. C. 824=25 Cr. L. J. 254.
25. Where the dying man pointed to the accused as the person inflicting injury, and the confession of the accused that he committed murder is sufficient to convict him of murder when there was other evidence of struggle between the accused and the deceased. 49 C. 600.
26. Suspicious circumstances alone are not sufficient. 9 L. 671.
27. After the report of gun N. and L. were found at the scene of occurrence each with a gun in his hand and it was not proved who fired the shot, none of them was guilty of murder when there was no evidence of common intention. 11 C. W. N. 1085.
28. It is unsafe to rely upon evidence of witnesses who have resiled from their previous statements. 1925 M. 879=88 I. C. 91=1925 M. W. N. 319.
29. The failure to record the statement of the first informant and his non-production before the Sessions Judge, makes the case suspicious. The recording of the statement of the second informant does not make him the first informant. 1 P. 401=71 I. C. 353=24 Cr. L. J. 129.
30. Chemical Examiner's negative report regarding absence of traces of blood in the earth, leaves and grass taken from the alleged place of occurrence will not displace strong direct evidence of the place of murder. 1924 C. 625=26 Cr. L. J. 5.
31. Observations by investigating officer made on the spot require the same sort of corroboration by independent witnesses as in the case of inquest report. 15 A. L. J. 340.
32. The fact that blood stained garments are found in a house is insufficient to convict an occupant of murder. 26 P. R 1916 Cr.
33. Withholding of evidence is certainly a flaw in prosecution, still each case depends upon its own facts. 1932 L. 500=137 I. C. 691=33 Cr. L. J. 497.
34. It was found that a child was murdered by one or other of the two accused. Both were convicted under S. 201, I. P. C., only. 1932 M. 748=33 Cr. L. J. 814=139 I. C. 725.
35. Where in a murder case there is only one eye-witness and he is disbelieved on several points, it is unsafe to convict on his evidence, when there is no motive. 1934 O. 373.
36. In ordinary murder cases unconnected with faction feuds there is no reason to suspect the evidence of relatives. 1934 L. 870.
37. Deceased denounced accused long after attack and just before death. There was no other corroboratory evidence. Accused must be given the benefit of doubt. 1933 R. 95=34 Cr. L. J. 747.
38. In a charge of murder or attempt to murder the fact of accused being member of terrorist association is irrelevant. 1936 L. 341=37 Cr. L. J. 504.
39. Concerted attack by two accused armed with deadly weapons amounts to murder. It does not matter which of them attacked with the weapon. 1936 L. 341=37 Cr. L. J. 504.

Murder—(contd.)

54. Exceeding right of private defence. See Right of private defence—19.

55. Exceptions—onus—. See Burden of Proof—3.

If accused wants to have the benefit of any exception, the onus is on him to prove it. But when ignorant or ill-defended person is being tried, the Court may examine the facts to see if some exception applies. But there must be a plea based on exception by the accused. 1931 M. W. N. 873.

56. Explanation by accused—. See Defence—.

1. The mere pointing of dead body in a field is insufficient for conviction, but if the appellant has never explained how he came by his knowledge of the place where body lay, it may be sufficient. 68 I. C. 841=1922 L. 189=23 Cr. L. J. 617.
2. Accused confessed his guilt to his uncle and there was motive for murder. His subsequent conduct showed that he knew the truth but put forth numerous falsehoods. Held, he was guilty of murder. 30 Cr. L. J. 829=1929 O. 272.
3. Where the only account of what happened on the night of murder is given by the accused himself and it is his admission contained in that statement, it should be accepted in its entirety and if it establishes any mitigating circumstances, the accused should be given the benefit of it. 1930 L. 259=121 I. C. 178=31 Cr. L. J. 226.
4. If a person is poisoned shortly after eating food which must have been prepared by his wife and no explanation is coming forth as to what happened, there is a violent presumption that he was poisoned by the members of his family. But where in addition to it there is an attempt at persistent lying to account for his absence and corpse was hidden by them, the presumption becomes certainty. 49 A. 57=1926 A. 737=27 Cr. L. J. 1068=97 I. C. 44.
5. The accused on his trial is merely on the defensive and owes no duty to any one but himself. He cannot be convicted because he has not tried to explain to the Court how a death has occurred or by what means. (1894) Unrep. Cr. C. 686, 1930 M. W. N. 1211.
6. If prosecution does not present true facts, as to how a man was killed, it is not necessary for accused to plead right of private defence. 1925 P. 175=26 Cr. L. J. 647.
7. Proof of case must depend on prosecution evidence rather than on absence of explanation by accused. 1936 C. 73=37 Cr. L. J. 394.
8. If accused is involved by evidence in a state of considerable suspicion, he must for his own safety, prove facts to prove innocence. 1936 C. 73=37 Cr. L. J. 394.

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Accused assaulted a man believing him to be ghost and assault proved fatal. Held, he was not guilty under Ss. 302, 304 or 304-A. 1926 L. 554=99 I. C. 71.

59. Hurt to companions of deceased.

1. Accused were sent up for trial under Ss. 302—149 and acquitted, they can be convicted under S. 323 for having caused hurt to the companions of accused in the same transaction, provided the offence is clearly brought out by the evidence. The omission of charge under S. 323 would not render the conviction illegal. 1931 L. 566, 34 C. 325 and 34 C. 698 Dist.
2. Sessions Judge can add charges under S. 326, I. P. C., for causing injuries to the prosecution witnesses, when the original charge was for murder. 1924 L. 413=71 I. C. 593, 9 S. L. R. 37 Foll. 32 C. 22 and 4 I. C. 903 Dist.

60. Injuries sufficient to cause death See—51.

Accused attacked his father-in-law, an old man of fifty when the latter was asleep and caused many injuries with a *lathi*, as a result of which he died. Held, that injuries were sufficient in the ordinary course of nature to cause death and was guilty of murder. 1932 O. 185=9 O. W. N. 235.

61. Intention—. See Motive—weapon.

1. A person giving a violent blow on the neck must be presumed to have the intention of killing. 97 I. C. 93=23 Cr. L. J. 61.

Murder—(contd.)

2. A person giving a *lathi* blow on the head must be presumed to have the intention of causing such bodily injury as is likely to cause death. But it does not necessarily follow that a *lathi* blow on the head is sufficient to cause death. 7 P. 638, 1930 L. 490, 1928 L. 93.
3. Where there is nothing more than a fatal result to indicate an intention to cause death and no weapon is used, it is unsafe to convict him of murder. (1881) 1 Weir 229, 13 Cr. L. J. 145.
4. Intention is a question of fact to be decided on the circumstances of each particular case. 44 I. C. 679.
5. A person striking another on a vital part must be presumed to have the necessary intention. 24 I. C. 601.
6. A person who inflicts injury on another which ends fatally, which he knew was likely to cause death, is guilty of murder though he had no wish or motive to cause death. In such a case the law will presume an intention to cause death and the burden is on the accused to show that he had no such intention. 18 I. C. 675 = 14 Cr. L. J. 115.
7. A brutal assault with *lathi* causing death is not ordinarily murder, unless the accused intended to cause death or to cause such bodily injury as is sufficient to cause death. 30 I. C. 998, 7 S. L. R. 29. See 37 C. 315, 35 A. 560.
8. Daughter gave birth to a child and only her mother attended her. The infant died soon after of poisoning. Held, both would be presumed to have administered it and the fact that no step was taken to save the infant's life was evidence of intention. 43 P. W. R. 1910 Cr.
9. If accused brutally beat a defenceless person against whom they had grudge and kill him without any intention to kill, they are guilty of murder unless they show that they are protected by one of the provisos to S. 300. 53 I. C. 495.
10. A person is taken to have intended the natural consequences of his act though he is drunk. 12 Cr. L. J. 524.
11. Persons making a violent attack resulting in 16 wounds, rupture of spleen and death are guilty of murder, whether they attacked with the intention to cause death or in a brutal manner regardless of consequences 37 C. 315, 3 P. R. 1919 Cr.
12. The fact that a person is killed by repeated blows negatives the plea that there was no intention to kill the accused. 157 P. L. R. 1911 = 56 P. W. R. 1911 Cr = 12 Cr. L. J. 214.
13. If there is a previous grudge, the stabbing at vital part shows an intention to cause fatal injury 1930 L. 534 = 129 I. C. 289 = 32 Cr. L. J. 290.
14. If blows perforated heart and divided the intestine the intention is proved. 92 I. C. 222.
15. A man who cuts another even on leg with ferocity and with a weapon that the deceased died within a few hours, he must be presumed to intend to cause injury sufficient in the ordinary course of nature to cause death and if death results, he is guilty of murder. 76 I. C. 575 = 1923 R. 247 = 25 Cr. L. J. 207.
16. In case of plunging a knife into the stomach, the intention to cause death will be presumed 1928 C. 430 = 109 I. C. 452.
17. Striking a blow with a deadly weapon like *Takra* on the head with such a violence as to cut through the skull establishes an intention under S. 302. 1925 L. 373 = 88 I. C. 995 = 26 Cr. L. J. 1251.
18. Where four accused deliberately lay in wait for the deceased intending to beat him with *lathis* on account of enmity and broke six ribs and numerous other injuries. Held, that the intention of the accused must have been to cause death or such injuries as would in the ordinary course of nature cause death. 1929 A. 707 = 118 I. C. 190 = 30 Cr. L. J. 890.
19. K seized the accused in the act of stealing, but the accused escaped from him. K convened a Panchayat consisting of several members including J. Accused admitted his offence and J. insisted that matter should be reported to Police. On hearing

Murder—(contd.)

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6. A person who inflicts injury on another which ends fatally, which he knew was likely to cause death, is guilty of murder though he had no wish or motive to cause death. In such a case the law will presume an intention to cause death and the burden is on the accused to show that he had no such intention. 15 I. C. 673=14 Cr. L. J. 115.
7. A brutal assault with *lathi* causing death is not ordinarily murder, unless the accused intended to cause death or to cause such bodily injury as is sufficient to cause death. 30 I. C. 998, 7 S. L. R. 29. See 37 C. 315, 35 A. 560.
8. Daughter gave birth to a child and only her mother attended her. The infant died soon after of poisoning. Held, both would be presumed to have administered it and the fact that no step was taken to save the infant's life was evidence of intention. 43 P. W. R. 1910 Cr.
9. If accused brutally beat a defenceless person against whom they had grudge and kill him without any intention to kill, they are guilty of murder unless they show that they are protected by one of the provisos to S. 300. 53 I. C. 495.
10. A person is taken to have intended the natural consequences of his act though he is drunk. 12 Cr. L. J. 324.
11. Persons making a violent attack resulting in 16 wounds, rupture of spleen and death are guilty of murder, whether they attacked with the intention to cause death or in a brutal manner regardless of consequences. 37 C. 315, 3 P. R. 1919 Cr.
12. The fact that a person is killed by repeated blows negatives the plea that there was no intention to kill the accused. 157 P. L. R. 1911=56 P. W. R. 1911 Cr = 12 Cr. L. J. 214.
13. If there is a previous grudge, the stabbing at vital part shows an intention to cause fatal injury. 1930 L. 534=129 I. C. 289=32 Cr. L. J. 290.
14. If blows perforated heart and divided the intestine the intention is proved. 92 I. C. 222.
15. A man who cuts another even on leg with ferocity and with a weapon that the deceased died within a few hours, he must be presumed to intend to cause injury sufficient in the ordinary course of nature to cause death and if death results, he is guilty of murder. 76 I. C. 575=1923 R. 247=25 Cr. L. J. 207.
16. In case of plunging a knife into the stomach, the intention to cause death will be presumed. 1928 C. 430=109 I. C. 452.
17. Striking a blow with a deadly weapon like *Takua* on the head with such a violence as to cut through the skull establishes an intention under S. 302. 1925 L. 373=88 I. C. 995=26 Cr. L. J. 1251.
18. Where four accused deliberately lay in wait for the deceased intending to beat him with *lathis* on account of enmity and broke six ribs and caused serious other injuries. Held, that the intention was to cause death or such other injury. 1929 A. 707=118
19. K seized the accused in the act of stealing, but the accused escaped from him. K convened a Panchayat consisting of several members including J. Accused admitted his offence and insisted that matter should be reported to Police. On hearing

Murder—(contd.)

this accused struck J a heavy blow with a chopper and caused his death. Held, he was guilty of murder. 1930 L. 60=120 I. C. 274=31 Cr. L. J. 79.

20. Accused a young woman of 15 years of age, in order to avenge herself of the ill-treatment of her husband made a murderous attack on her step-son with a stick and caused the death of the infant. Held, that her intention was to cause death and she was guilty of murder. 1926 L. 144=89 I. C. 461=26 Cr. L. J. 1373.
21. Accused enticed away the sister of the deceased, who demanded her back. Accused gave him a spear blow and caused his death. Held, he was guilty of murder. 1923 L. 195.
22. Where a person gives a club wound sufficient in the ordinary course of nature to cause death, he is guilty of murder irrespective of intention to cause death. 90 I. C. 147=26 Cr. L. J. 1491=1926 O. 184.
23. Where the weapon used, and part of the body aimed at and pierced and the violence with which it is struck lead to inference that accused intended to cause such bodily injury as is likely to cause death, he is guilty of murder, even though he did not intend to cause death. 1930 L. 154=124 I. C. 680=31 Cr. L. J. 731.
24. Accused asked his father not to return the bulls but he refused and thereupon he hit him on the head and killed him. Held, that as there was no intention to kill, the accused was guilty under S. 324 only. 1911 M. W. N. 765.
25. Intention to cause death depends on the way in which weapon is used and part of body selected. Nature of weapon is no consideration. The use of pocket knife in a sudden fight does not necessarily mean that accused intended to cause death. 1935 Pesh. 155=1935 Cr. C. 1120.
26. If the pocket knife is used on a vital part, it would imply the knowledge that the act committed was so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death. 1935 Pesh. 155.
27. When a deadly weapon is thrust into the chest of the victim causing instantaneous death, intention is only of murder. 1934 L. 741.
28. In case of fracture of skull intention to cause death is presumed. 1936 R. 46=37 Cr. L. J. 290.

62. Intention to murder some one other than deceased S. 301, I. P. C.

1. Accused prepared sweets containing poison with the intention of giving it to her husband, who ate it along with other guests. One of the guests died. Held, she was guilty of murder, as the intention of causing death does not mean the death of any particular person. 39 A. 161, 22 M. L. J. 333, 27 Cr. L. J. 1400, 45 A. 557.
2. It is not necessary that the person charged with murder should intend to cause the death of any particular person. 11 Cr. L. J. 222=20 M. L. J. 657.
3. Where accused suspected his wife of infidelity and stabbed her four times. She ran for protection to her aunt. Accused plunged a knife into the aunt's back which killed her. Held, he was guilty of murder. 13 Cr. L. J. 129=13 I. C. 817.
4. Where accused intending to kill B, killed A by a blow with a highly lethal weapon whom he had no intention of killing, he was guilty of murder. (1867) 8 W. R. 78 Cr., 29 Cr. L. J. 280.
5. Accused gave poisoned rice water to an old woman who drank part of it herself and gave part of it to a girl who died from the effect of poison. Held, he was guilty of murder. (1869) 12 W. R. (Cr. L.) 2.
6. If five men are charged with plotting to murder D and it is found that they never plotted to murder D at all. Two of them cannot be held constructively guilty of murder, because they had an object in their mind to murder S, when they were not charged with such a common object. 1930 M. W. N. 1254.

63. Intoxication. See Drunkenness.

1. Where the accused under the influence of liquor assaulted deceased and literally beat him to death without any direct motive, they were guilty of murder, but it was held that drunkenness afforded a sufficient excuse for not exacting the extreme penalty of the law. 35 P. W. R. 1917 Cr.

Murder—(contd.)

2. A person is taken to have intended the natural consequences of his act though he is drunk. 12 Cr. L. J. 524.

64. Joint attack. See Acts done in furtherance of common intention—8.

Where several accused brutally attacked the deceased with *lathis* inflicting several injuries on head and other parts, they are guilty of murder, when they practically killed him on the spot. 9 O. W. N. 250, 33 P. L. R. 1=137 I. C. 82.

65. Killing under Officer's orders.

1. A Police party with six prisoners went to a village and demanded water and food and when they did not receive attention, they struck one of the villagers, other villagers joined him. The Head Constable asked one Constable to fire, who fired and killed a villager. Held, they were both guilty. The shooting under illegal orders of a superior is no excuse. 1924 S. 33=83 I. C. 702=25 Cr. L. J. 142.
2. A caused crops to be sown on the land which was claimed by B. On a dispute the Police came and ordered the reapers to disperse and on their not obeying the order, the Station House Officer ordered constables to fire. A Constable killed one of the reapers. Held, that the Station House Officer and the Constable were guilty of murder. 21 M. 249, 17 S. L. R. 182.

66. Medical opinion.— See Opinion—17.

1. A Medical Officer's opinion that injuries were not serious, the opinion being based upon a misconception of facts, is of no weight, when the evidence shows that injuries inflicted were one inch deep and they pierced the pleura which in the ordinary course of events is sufficient to cause death. 16 Cr. L. J. 543=29 I. C. 671.
2. Where medical evidence does not support that deceased met with violent death, there can be no conviction for murder. 1934 O. 286=35 Cr. L. J. 992.

67. Motive. See Motive.

1. When there is no motive and majority of injuries are slight, it is not murder, but a case of grievous hurt. 1926 L. 419=27 Cr. L. J. 547.
2. In a murder case the Court should not first consider the evidence of motive but of the commission of the crime. The motive may never be discovered and possibly a wrong motive suggested may lead the Court astray. 131 I. C. 439=1931 O. 119=32 Cr. L. J. 697.
3. Murder of member of one's own family is committed to fasten a charge on an enemy. The victim is usually an old infirm person or a child. *Lyon's Med Jur. Ed 1901, pp. 22-23.*
4. A murder is sometimes committed to please paramour. *Ibid, P. 21.*

68. Murder or hurt.

1. Accused hitting with hockey stick in return for injuries received the previous day and causing death is guilty of grievous hurt only when death is the result of internal bleeding and clotting of blood on the surface of brain. 1925 L. 559=88 I. C. 236=7 L. L. J. 573.
2. Where the quarrel arose out of quarrel among young boys and ended in death. *Lathi* wounds were found on the deceased. Held, that accused was guilty of grievous hurt only. 1925 O. 284=83 I. C. 636=26 Cr. L. J. 76.
3. When blow was aimed at a woman trying to close the door and it fell on the child which she was carrying and it died. Held, that the accused was guilty under S. 325 only. 71 I. C. 52=24 Cr. L. J. 4.
4. Where a drunken man fired at the deceased at point blank range and caused a wound which was not sufficient to cause death but wound became septic and he died. Held, he was guilty under S. 325 only. 120 I. C. 183=1929 L. 433=31 Cr. L. J. 44.

69. Omission to interfere to prevent—.

An omission to interfere in order to prevent a murder being done before one's very eye is a criminal act. 95 I. C. 603=27 Cr. L. J. 827.

*Murder—(contd.)***70 Plea of guilty.** See Plea of guilty. S. 271, Cr. P. C.

1. If the accused in answer to a charge of murder states that he committed the offence but alleges provocation, it is not a plea of guilty. He must be put on his trial. 14 B. 564, 11 C. 410, 73 I. C. 266.
2. 'Murder' is a technical word and unless it is explained as directed by S. 300, the plea of guilty should not be accepted. 9 M. 61.
3. In capital cases where there is any doubt as to whether accused understands the effect of plea of guilty, the Court should take evidence rather than convict on the plea of guilty. 19 A. 119, 3 U. B. R. 137.
4. It is not safe to accept plea of guilty in a case where the consequence is a sentence of death. 8 Bom. L. R. 240, 20 A. L. J. 326—569, 54 P. R. 1905 Cr. 19 Bom. L. R. 356, 115 I. C. 582.
5. Before a plea of guilty is accepted in a case of murder, the record should show that accused understood and admitted facts bringing the case under the definition of murder. 51 I. C. 780=20 Cr. L. J. 540.
6. An accused does not plead to a section of Criminal statute. He pleads guilty or not guilty to the facts disclosing an offence. The plea of guilt, therefore, amounts to an admission of facts alleged against him and is not an admission of guilt. 33 P. L. R. 278, 7 L. 359.
7. It is not illegal to convict an accused on plea of guilty. 73 I. C. 266.
8. Where accused is represented by Pleader and trial is not claimed, and his answer amounts to plea of guilty, he can be convicted on his plea. 24 Cr. L. J. 570.
9. Under S. 271 if an accused pleads guilty he may be convicted upon his plea. Evidence should be taken if the offence appears to be murder. 1934 S. 204.
10. One accused was charged with murder and two as abettors. Counsel is entitled to challenge evidence implicating accused charged with murder, although that accused has pleaded guilty. 1936 P. C. 242.

71. Pointing out dead body or weapon.

1. Accused was not mentioned in the first information report and the only eye witness could not identify him. The only evidence consisted in the production of blood stained shirt from a house where he and his brother resided and pointed out a blood stained knife from a bush. Held, that the evidence was insufficient. 22 P. W. R. 1916 Cr.
2. Child was found in a well pointed by the accused who was last seen with the child and accused stripped her of the ornaments and sold them. Held, he was guilty of murder. 16 P. W. R. 1915 Cr.
3. Pointing out a heap of *Turi* from which a blood stained hatchet and a *dang* were recovered is not sufficient evidence of murder. 1928 L. 335=10 L. L. J. 68.
4. Mere pointing out place where corpse is buried is insufficient. 18 P. R. 1917 Cr. 89 I. C. 901, 1923 L. 315=75 I. C. 693.
5. Mere pointing out of body is not sufficient for a charge of murder, but where the accused never explained how he came to know the place where body lay, may be sufficient. 68 I. C. 841=4 L. L. J. 225=23 Cr. L. J. 617.

72. Pre-meditation.

1. Accused gave a single blow on the head from behind. His act was pre-meditated having been the result of provocation. Held, he was guilty of murder. 1932 L. 308=33 P. L. R. 279.
2. If a man took a spear and ran straight to deceased and gave him a fatal stab, it is a deliberate murder. 1930 M. W. N. 1211.
3. Accused was overcome with passion for insults heaped upon him by his brother. He procured a *Dao* and concealed it. After a couple of hours he killed him. Held, that offence committed was murder, yet the provocation was enough to inflict lesser penalty than death. 1935 C. 591=36 Cr. L. J. 1254=158 I. C. 67.

Murder—(contd.)

73. Post mortem. See *Post-mortem*.

74. Presence at the murder. S. 34. See act done in furtherance of common intention—9.

Mere presence at the spot at the time of murder is not *per se* culpable. 1933 O. 225—34 Cr. L. J. 935.

75. Presumption about—

1. A person able to point out several spots connected with murder is presumed to be concerned in it. 18 P. R. 1917 Cr.
2. A violent presumption that deceased was poisoned by the members of his family arises, when he ate food which must have been prepared by his wife and he dies of poisoning in his house and no explanation is offered by them. It becomes a certainty when they were giving false account about his absence and the body was hidden by them. 49 A. 57=91 I. C. 44=27 Cr. L. J. 1068.
3. There is a presumption of murder, when ornaments worn by the deceased are found with the accused soon after. 127 I. C. 557=31 Cr. L. J. 1229=1930 C. 379, 17 C. W. N. 1077.
4. If a large body of persons go to assault one man with *dangas*, it may be held that death is likely to ensue. The presumption does not apply with the same force where a large number of people are assaulting a similarly large number of men though some of them are armed with sticks. 1931 L. 513=132 I. C. 381=32 Cr. L. J. 868.
5. If a person knowing of his wife's murder, makes no report to Police nor tries to find out murderer, his conduct may lead to the conclusion that he was murderer. 116 I. C. 193=1929 O. 190=30 Cr. L. J. 567.
6. A murderer of a person running away from the scene of robbery cannot be said to be in furtherance of common intention of dacoits. 1929 L. 338=115 I. C. 1.
7. Criminals who assault and kill public officers who interfere with them in commission of felony are guilty of murder. 1934 P. 603.

76. Provocation.

A. Abusive words.

1. Mere abuse cannot be viewed as grave provocation. 1932 L. 369=136 I. C. 715=33 Cr. L. J. 338, 25 Cr. L. J. 298, 1930 L. 545.
2. Accused struck the deceased a hasty though fatal blow with a stick for abusing his mother, he was guilty under S. 304. 12 P. R. 1866 Cr., (1864) 1 W. R. 23 Cr.
3. Accused exchanged abuses with his wife and gave her a hammer blow on the side of the head, which he picked up at the spur of the moment from the effects of which she died, he was guilty under S. 304. 30 P. R. 1902 Cr.
4. Accused a weak looking youth of 17 years of age, on his return found the paramour of his wife coming out of the house and on remonstrating with her, was further annoyed by her reception of remonstrances and killed her. Held, he was guilty under S. 304. 3 P. R. 1913 Cr.
5. Accused a lad of 19 years was abused by deceased and killed him in anger, he was guilty of murder. 27 P. L. R. 15.
6. Accused who was abused by the deceased abused him in return and defied the deceased to come on. The deceased caught hold of the accused by the tuft and gave him beating. Accused gave him a dagger blow and caused his death. Held, he was guilty under S. 304. 1928 M. 136=105 I. C. 343=29 Cr. L. J. 7.
7. The accused had been married to a girl and the ceremony of *tabdil parchat* was to take place on the day of occurrence. He found the deceased taking away the girl. The deceased told him that girl would not marry him and abused him. He plunged knife in the abdomen and caused her death. Held, he was guilty under S. 304. 1924 L. 234=24 Cr. L. J. 563=73 I. C. 695.
8. Accused got enraged when deceased abused him and attacked him with a fork, but afterwards went to fetch a *chhavi* in order to strike the deceased again. Held, that provocation was not sudden. 76 I. C. 970=1923 L. 408=25 Cr. L. J. 298.

*Murder—(contd.)***70. Plea of guilty.** See Plea of guilty. S. 271, Cr. P. C.

1. If the accused in answer to a charge of murder states that he committed the offence but alleges provocation, it is not a plea of guilty. He must be put on his trial. 14 B. 564, 11 C. 410, 73 I. C. 266.
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2. If a man took a spear and ran straight to deceased and gave him a fatal stab, it is a deliberate murder. 1930 M. W. N. 1211.
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order—(contd.)

6. Where as a result of petty quarrel, accused lost his temper and struck his grandfather with a *lathi* causing extensive fracture of the skull and the man died within a few hours. Held, he was guilty of murder. 90 I. C. 159.
7. A tendency to assume that because accused murdered his wife, he must have received provocation, is most illogical and unjust. Provocation must be proved. 63 I. C. 149 = 22 Cr. L. J. 613.
8. Where accused's concubine refused to abandon another connection and the accused after remonstrating with the woman followed and killed her with a dagger, which he stated, he had purchased it for killing. Held, he was guilty of murder. (1882) 1 Weir 306.
9. Refusal of wife to have connection with her husband is not a grave and sudden provocation. (1886) 1 Weir 308, 1922 P. W. R. 1 Cr.
10. Where accused saw his wife seated on the same cot with her paramour whom he had expelled from his house and gave a blow on her head and caused her death. Held, he must be considered to have received a grave and sudden provocation. 29 Cr. L. J. 454.
11. If the accused goes deliberately in search of provocation sought to be made the mitigation of his offence, the first exception will not apply. 8 A. 622, 8 A. 635.
12. Where the accused saw his sister and her paramour coming out of the *Hujra* of a mosque and receiving an insulting answer from the latter, killed him then and there, he was guilty under S. 304. 140 P. L. R. 1905.
13. Accused saw the deceased lying in bed with their sister, killed him, they were guilty under S. 304. 18 A. 497, 5 L. L. J. 40.
14. Accused asked his wife for a *pan* (bettle) and she threw dirty water and he, being enraged took up a stone and struck her on the head and the wife died. Held, he was guilty under S. 304. 30 Cr. L. J. 720 = 1929 P. 201 = 117 I. C. 164.
15. The act must be done whilst the person doing is deprived of self control by grave and sudden provocation. That is, it must be done under the immediate impulse of provocation. 31 Cr. L. J. 737 = 1930 C. 199, 33 P. R. 1884 Cr., 22 Cr. L. J. 674.
16. If the act is done after the excitement has passed away and there is time to cool, it is murder. 8 A. 635.
17. Before a person can claim the benefit of Exception (1) to S. 300, I. P. C., he must prove that he was deprived of the power of self-control, and, that the provocation was so grave and sudden as to reasonably justify such loss of self-control. 63 I. C. 610 = 22 Cr. L. J. 614.
18. Accused saw his cousin's wife sleeping with the deceased, who was a guest. He reproached deceased who retorted with an indecent gesture. Accused got enraged and struck a blow with a hatchet on his neck and killed him and admitted his guilt within two days of the crime. Held, that murder was the result of grave and sudden provocation. 1923 L. 312.
19. A Bania finding his daughter-in-law with a Faqir, hacked her to death. Held, there was sufficient provocation and was not guilty of murder. 61 I. C. 165 = 22 Cr. L. J. 341.
20. A wife was in the habit of running away though not ill-treated. Accused asked her to come back but she gave foul abuse, and thereupon he gave her three blows and killed her. Held, that the circumstances of an Indian household, where wife is expected to obey and respect her husband must also be taken into consideration and the accused was guilty under S. 304 only. 74 I. C. 712 = 24 Cr. L. J. 808.
21. Where the deceased, who was trusted and treated with hospitality by the accused, seduced his wife and persisted in remaining in his house after he had been asked to leave, his conduct is certainly provoking and so it is not a case in which death sentence should be passed. 106 I. C. 457 = 29 Cr. L. J. 41.
22. "Where the accused is provoked by sudden such as to deprive the accused of the fact. The Court must consider the condition of provocation. 108 I. C. 902 = 29 Cr. L. J. 454, 3 I. R. 1915 Cr.

9. Accused murdered his wife who called him "a pig, a son of pig." Held, that such abuse could not constitute grave provocation in the case of a low class persons as accused, who are accustomed to abusive language. But as the act was not premeditated sentence of death should not be passed. 1930 L. 344. See 74 I. C. 712.
10. Accused murdered the deceased in a sudden fit of fury provoked by persistent abuses. Held, a sentence of transportation was sufficient. 45 M. 766.
11. Accused, whose intelligence was below normal, was abused by his father for not attending to work. He assaulted him with stick and killed him. Held, that accused acted under grave and sudden provocation. 1935 P. 506.

B. Assault by deceased.

1. The deceased, the wife of accused, led an immoral life and was upbraided by her husband. Instead of being repentant, she said she would do such acts on his head and struggled with him and bit his fingers. He lost control and stabbed her with knife. Held, he was guilty under S. 304 only. 1925 A. 676=83 I. C. 844=26 Cr. L. J. 1228.
2. Where death was caused partly under the influence of apprehension from a severe beating from which the accused had just escaped and partly from provocation from beating, the offence fell under S. 304. (1881) Weir (3rd edition) 168.
3. The provocation caused by the deceased of an accusation which the accused knew she had already made and which she again made on a challenge by him to do so, cannot be called sudden provocation. 73 I. C. 266=1923 N. 251.
4. Deceased caught hold of accused's tuft and the latter stabbed him with knife. Held, there was grave and sudden provocation. 1934 M. 722, 29 Cr. L. J. 7=1928 M. 136 Rel on.

C. Benefit of doubt.

Where death took place by twisting deceased's hair round her throat. Held, that accused must have acted on grave provocation and as it could not be ascertained, he must get benefit of doubt. 77 I. C. 983=25 Cr. L. J. 519.

D. Burden of proof.

1. The burden of proving grave and sudden provocation is on the accused. 6 L. 171, 32 P. L. R. 804.
2. Because the accused murdered his wife, it cannot be assumed that he must have received grave provocation. It must be positively proved. 63 I. C. 149. See 77 I. C. 983.

E. General scope of—.

1. Provocation given by any thing done in obedience to law or by public servant in lawful exercise of his powers is not covered. 1933 P. 508.
2. Arrest or attempted arrest by person not entitled to do so is not outside the provocation mentioned in Exception 1. 1933 P. 508.

F. Grave and sudden.

1. Accused caused the death of his wife, being annoyed with her because she opposed him in some domestic matter. Held, that there was no grave and sudden provocation. 1927 L. 729=28 Cr. L. J. 258=100 I. C. 225.
2. In determining whether the provocation was grave and sudden, it is admissible to take into account the condition of mind in which the offender was at the time of the provocation. 2 M 122.
3. It is not a necessary consequence of anger or other emotion, that the power of self-control should be lost. 20 B. 215, 10 P. R 1878 Cr., 14 B. 564, 33 P. R. 1884.
4. The provocation must be such as will upset not merely a hasty and hot tempered person, but one of ordinary sense and calmness. 7 L. 488=1926 L. 598=27 Cr. L. J. 897, 5 L. 67, 1930 C. 199=31 Cr. L. J. 737.
5. Act need not immediately follow provocation. The accused can continue to be under the influence of provocation, until he kills the deceased. Such a case falls within S. 300, Exception (1). 68 I. C. 403=23 Cr. L. J. 563.

murder—(contd.)

6. Where as a result of petty quarrel, accused lost his temper and struck his grandfather with a *lathi* causing extensive fracture of the skull and the man died within a few hours. Held, he was guilty of murder. 90 I. C. 159.
7. A tendency to assume that because accused murdered his wife, he must have received provocation, is most illogical and unjust. Provocation must be proved. 63 I. C. 149 = 22 Cr. L. J. 613.
8. Where accused's concubine refused to abandon another connection and the accused after remonstrating with the woman followed and killed her with a dagger, which he stated, he had purchased it for killing. Held, he was guilty of murder. (1882) 1 Weir 306.
9. Refusal of wife to have connection with her husband is not a grave and sudden provocation. (1886) 1 Weir 308, 1922 P. W. R. 1 Cr.
10. Where accused saw his wife seated on the same cot with her paramour whom he had expelled from his house and gave a blow on her head and caused her death. Held, he must be considered to have received a grave and sudden provocation. 29 Cr. L. J. 454.
11. If the accused goes deliberately in search of provocation sought to be made the mitigation of his offence, the first exception will not apply. 8 A. 622, 8 A. 635.
12. Where the accused saw his sister and her paramour coming out of the *Hujra* of a mosque and receiving an insulting answer from the latter, killed him then and there, he was guilty under S. 304. 140 P. L. R. 1905.
13. Accused saw the deceased lying in bed with their sister, killed him, they were guilty under S. 304. 18 A. 497, 5 L. L. J. 40.
14. Accused asked his wife for a *fan* (bottle) and she threw dirty water and he, being enraged took up a stone and struck her on the head and the wife died. Held, he was guilty under S. 304. 30 Cr. L. J. 720 = 1929 P. 201 = 117 I. C. 164.
15. The act must be done whilst the person doing is deprived of self control by grave and sudden provocation. That is, it must be done under the immediate impulse of provocation. 31 Cr. L. J. 737 = 1930 C. 199, 33 P. R. 1884 Cr., 22 Cr. L. J. 674.
16. If the act is done after the excitement has passed away and there is time to cool, it is murder. 8 A. 635.
17. Before a person can claim the benefit of Exception (1) to S. 300, I. P. C., he must prove that he was deprived of the power of self-control, and, that the provocation was so grave and sudden as to reasonably justify such loss of self-control. 63 I. C. 610 = 22 Cr. L. J. 614.
18. Accused saw his cousin's wife sleeping with the deceased, who was a guest. He reproached deceased who retorted with an indecent gesture. Accused got enraged and struck a blow with a hatchet on his neck and killed him and admitted his guilt within two days of the crime. Held, that murder was the result of grave and sudden provocation. 1923 L. 312.
19. A Bania finding his daughter-in-law with a Faqir, hacked her to death. Held, there was sufficient provocation and was not guilty of murder. 61 I. C. 165 = 22 Cr. L. J. 341.
20. A wife was in the habit of running away though not ill-treated. Accused asked her to come back but she gave foul abuse, and thereupon he gave her three blows and killed her. Held, that the circumstances of an Indian household, where wife is expected to obey and respect her husband must also be taken into consideration and the accused was guilty under S. 304 only. 74 I. C. 712 = 24 Cr. L. J. 808.
21. Where the deceased, who was trusted and treated with hospitality by the accused, seduced his wife and persisted in remaining in his house after he had been asked to leave, his conduct is certainly provoking and so it is not a case in which death sentence should be passed. 106 I. C. 457 = 29 Cr. L. J. 41.
22. Whether provocation is grave and sudden such as to deprive the accused of the power of self control is a question of fact. The Court must consider the condition of mind of the offender at the time of provocation. 108 I. C. 902 = 29 Cr. L. J. 454, 3 P. R. 1913 Cr.

Murder—(contd.)

23. A provocation though insufficient to bring a case within the exception to S. 300 may still be sufficient for the reduction of sentence. 16 Cr. L. J. 61=30 I. C. 435.
24. Accused finding his mistress in the arms of another lover, killed him. Held, it was sufficient provocation and he should be convicted under S. 304. 1931 M. W. N. 1137.
25. The fact that mother behaved shamelessly in running away with her paramour, is not a grave and sudden provocation for the murder of the paramour. 1932 L. 438=33 P. L. R. 511.
26. Grave and sudden provocation need not come within the hearing or sight of the offender. 1932 S. 168.
27. Deceased raped sister-in-law of the accused, who hearing of it lost his self control and killed him. Held, that his case fell within Exception I. 1932 S. 158.
28. Accused was overcome with passion at insult heaped upon him by his brother. He procured and concealed a *Dao* for killing. After a couple of hours he killed him. Held, that although there was premeditation, the accused committed murder while smarting under insult. A lesser penalty than death was ordered. 1935 C. 591=36 Cr. L. J. 1254=158 I. C. 67.
29. Once the provocation is given by the offender himself, he cannot urge that the opposite party had acted in a provocative manner. 1935 Pesh. 155.
30. The test of grave and sudden provocation is whether a reasonable man will lose control of himself to the extent of inflicting the injury. 1934 L. 600.
31. Accused whose daughter was abducted, suspected the deceased, who abused the accused that another daughter will be abducted. Accused inflicted a single blow with a *kulhar*. Held, it was grave and sudden provocation. 1934 L. 600.
32. Accused not finding his wife at home took an axe and went to fields. Finding that she was carrying on intrigue with a man, he killed him. Coming back to the house he took a knife and cut her throat. Held, he acted under grave and sudden provocation. 1933 Pesh. 38=34 Cr. L. J. 804.
33. Accused was taking his wife when deceased took hold of her hand and interfered. Held, it was grave and sudden provocation. 1936 R. 216=37 Cr. L. J. 569.
34. Deceased struck child of accused. Accused lost self control and killed with a *da*. Held, provocation was sudden. 1936 R. 526.

G. No grave or sudden—

1. Accused finding a man intriguing with his wife, beat him and after taking him to a bank of river, killed him. He was guilty of murder. (1869) 12 W. R. 68 Cr.
2. Accused's concubine refused to abandon another connection and accused followed her and killed her with a dagger he had purchased with the intention of killing her. He was guilty of murder. (1882) 1 Weir 306.
3. A person suspected his wife and made preparations to catch her with the paramour. A person who had been on the watch at his asking informed him that they were together. Accused returned to his house, took a heavy pole and going to the place, caught the couple in the act and dealt the paramour a blow which killed him. He committed murder. 18 A. L. J. 851.
4. Accused finding the deceased and his wife lying together, took him to another house, where his father brought a bamboo and suffocated the deceased by putting bamboo on the neck. He was guilty of murder. (1873) 19 W. R. 35 Cr., 23 C. 571.
5. Accused suspecting infidelity in his wife, followed her and killed her with a hatchet one night, when she stealthily left his house and finding her talking with her paramour, then and there killed her. Held, he was guilty of murder. 8 A. 622, 7 P. R. 1890 Cr.
6. Accused suspected the widow of his cousin, followed her and actually saw her in the act of adultery, killed her then and there with a sword. He was guilty of murder. 8 A. 635.
7. Accused suspected his sister and killed her and the man with whom she had come to his house after some conversation. Held, he was guilty of murder. 7 S. L. R. 118.

-(contd.)

Mere singing by the deceased girl of love songs, which reminded the accused, who was her cousin, of her immoral relations with a stranger, was not grave and sudden provocation as to reduce murder into an offence under S. 304. 7 L. 488.

Where the accused stated that he had seen the deceased arrange a clandestine meeting between his wife and a young man, whom he actually saw enter his house and after that he had no sleep, till he killed him, he was guilty of murder. 23 C. 613.

Accused asked his wife to sever connection with her paramour and she declined. A quarrel arose and he in a fit of anger killed his wife. Held, he was guilty of murder but extreme penalty of law should not be exacted. 29 Cr. L. J. 347.

A belief in having been the victim of witchcraft during a period extending over four months was not a provocation to reduce the offence of murder into culpable homicide. (1882) 1 Weir 305, See (1886) 6 W. R. 82 Cr.

Accused left his wife for eight months exposed to temptations and on return found her pregnant and killed her lover when asleep. Held, he was guilty of murder. 29 Cr. L. J. 465=109 I. C. 113, 1928 O. 241.

Accused stabbed his wife with a pen knife in the region of breast and caused a wound $2\frac{1}{2}$ inches deep, because she refused to go with him to another place immediately but merely asked him to wait for a night. Held, he was guilty of murder. 1913 M. W. N. 556.

If the act was done after the excitement had passed away and there was time to cool, it is murder. 8 A. 635.

As a result of petty quarrel accused lost his temper and fractured the skull of his grandfather with a *lathi* blow. Held, he was guilty of murder. 90 I. C. 159=26 Cr. L. J. 1503=1926 O. 27.

Deceased remonstrated with accused's father for driving the course of the old water channel and accused assaulted him. Held, there was no grave and sudden provocation. 6 L. L. J. 424=1924 L. 742.

Where provocation ripens into resentment and malice and accused is determined to take the lives of the persons who offended him, breaks into their house and kills them with a deadly weapon in their sleep, he is guilty of murder. 1923 L. 493=83 I. C. 712=26 Cr. L. J. 152.

If a person uses *chhavai* on a slight provocation, which shows a callous disregard of human life, he is guilty of murder. 1923 L. 326=85 I. C. 822=26 Cr. L. J. 398.

Improper overtures by step mother to step son is not sufficient provocation. 121 I. C. 185=1930 L. 415=31 Cr. L. J. 229.

Accused finding his wife reproaching his co wife about the immoral conduct of her daughter, killed them. Held, there was no grave and sudden provocation and was guilty of murder. 5 L. 67=1924 L. 450=25 Cr. L. J. 1050=81 I. C. 826.

Accused killed his wife under provocation which was grave but not sudden, he could not claim the benefit of Exception (1) of S. 300. 134 I. C. 596 (2)=32 Cr. L. J. 1244 (1).

If the accused takes a long time to search a knife and then kills a man he is guilty of murder. 1931 M. W. N. 134.

Accused knowing that his sister had gone to meet her paramour, deliberately went to the spot with the intention to kill him. Held, that the provocation was no doubt grave but not sudden. 1934 L. 103=151 I. C. 751, 30 P. R. 1872 Diss. from. 1925 L. 114=26 Cr. L. J. 534=89 I. C. 374 and 68 I. C. 403=1920 L. 501 Ref.

Accused was suffering from pangs of jealousy by deceased falling in love with the same woman he was in love with. Held, this was no ground for provocation. 1934 O. 222=35 Cr. L. J. 894.

Wife's or sister's adultery and bad character.—

Accused found a man committing adultery with his wife and killed him, he was guilty under S. 304. 8 P. R. 1899 Cr., 115 I. C. 476=10 L. L. J. 508, 27 P. R. 1900 Cr., 2 L. L. J. 406, 71 I. C. 993.

Murder—(contd.)

2. Accused finding his wife committing adultery, killed both his wife and the adulterer, he was guilty under S. 304. (1867) 8 W. R. 38 Cr., 25 Cr. L. J. 1077.
3. Accused killed a person who came to his house to commit adultery and afterwards killed his wife also, he was guilty under S. 304. 6 L. L. J. 437=26 P. L. R. 250.
4. A father-in-law killing his daughter-in-law when she committed adultery, was guilty under S. 304. 22 Cr. L. J. 341.
5. Accused saw a man in criminal conversation with his wife on the first day and on the second, seeing them eating together, took up a bill book lying nearby and killed him, he was guilty under S. 304. 3 M. 33, 30 P. R. 1872 Cr.
6. Where accused saw his wife being violated by a physician, jumped down from the roof and killed him, he was guilty under S. 304 (1869) 3 Beng. L. R. 33.
7. Accused saw his wife in company with her paramour and killed him, the provocation was sudden and grave. 10 L. L. J. 508.
8. Accused's wife led grossly immoral life. After a recent act of unchastity he remonstrated with her, but she replied that she would continue the same. Accused struck her with a stick but she bit his fingers. He lost control and stabbed her to death. Held, he was guilty under S. 304. 1925 A. 676=88 I. C. 844=28 Cr. L. J. 1228.
9. Accused's wife was leading a notoriously immoral life. On the night previous to murder she had a mysterious disappearance from the bedside of her husband and subsequent protest resulted in vulgar abuse by her. He took up a stick and dealt a fatal blow. Held, that the whole unfortunate affair should be looked at as one prolonged agony on the part of husband and his case was covered by Exception (1), S. 300. 1929 L. 861=119 I. C. 323=30 Cr. L. J. 1041=30 P. L. R. 652, 30 P. R. 1902 Cr., 2 M. 122.
10. Accused asked his wife to give up her paramour but she declined, thereupon there was a quarrel and he killed her. Held, there was no grave and sudden provocation. 1928 L. 544=108 I. C. 156=29 Cr. L. J. 347.
11. Accused killed his wife who had long been known to him as a bad character and who had denied access to him. Held, there was no grave and sudden provocation. 23 Cr. L. J. 140=65 I. C. 572.
12. Whether accused saw his wife and the deceased actually committing adultery or whether he simply found them together in a *khola*, there is a grave and sudden provocation. 68 I. C. 403=2 L. L. J. 406, 8 P. R. 1890, 8 P. R. 1899 Cr.
13. Where husband was inducing his wife who had gone astray to lead a moral life in future but she insolently replied that if he so attempted, she would leave him. Held, this was a grave and sudden provocation. 83 I. C. 482=26 Cr. L. J. 3=1925 O. 288.
14. Accused's wife left the house at mid-day and went to her lover. Accused followed in search of her with a weapon and finding them sitting together, killed her. Held, that the provocation was grave but not so grave and sudden as to bring the act within the first exception. 27 Cr. L. J. 65=29 I. C. 241.
15. Mere suspicion of wife's conduct is no extenuation of deliberate murder. 116 I. C. 142=1929 M. 495=30 Cr. L. J. 630.
16. Accused came unexpectedly at dead of night as he entertained a suspicion about his wife and found his wife and lover. The lover got away and he followed him and killed him with a knife which he had with him and immediately returned to his own house and killed his wife. Held, he was guilty under S. 304 as there was grave and sudden provocation. 1925 L. 114=85 I. C. 374=26 Cr. L. J. 534, 7 P. R. 1890 Cr. Dist.
17. Accused entering his house found his wife sitting with her paramour on a cot and suspected them of having committed sexual intercourse injured the paramour and killed his wife. Held, he was guilty under S. 304 (1) as the provocation was grave and sudden. 115 I. C. 476=10 L. L. J. 508=30 Cr. L. J. 481.
18. If a husband discovers his wife in the act of adultery and kills her, he is guilty under S. 304 only. But that rule has no application when the relationship between parties is not that of husband and wife. 1930 C. 199=31 Cr. L. J. 737=124 I. C. 818.

Murder—(contd.)

19. Where deceased was a man of immoral character and had intimacy with the wives of accused it is a case of grave provocation and sentence of transportation for life should be passed: 131 I. C. 431.
 20. Accused caught the deceased in the act of ravishing his wife and in fury killed him. Held, that a sentence of one year was proper. 1931 M. W. N. 553.
 21. Deceased had an intrigue with the accused's wife and sangs provocative songs. It is a continuing grave provocation. The fact that he had managed to control himself on previous occasions when provoked, was no reason for refusing to give him the benefit of exception (2) to S. 300, I. P. C. 1935 Pesh. 78.
 22. Accused suspected his wife. He called for suspected persons and locked them in a room. Wife then admitted her connections with them. Accused stabbed her and caused several injuries. Held, it amounted to murder. As the accused was wounded in his tenderest part and was brooding over the matter, sentence was reduced to transportation for life. 1934 M. 176=35 Cr. L. J. 694=148 I. C. 590, (1913) 2 K. B. 29 Dist.
 23. Accused caught deceased his sister in the act of intercourse with a stranger and killed her. Held, a sentence of 3 years was sufficient. 1934 L. 428 (2)=151 I. C. 898, 1924 L. 62=25 Cr. L. J. 685 Dist.
 24. The mere fact that the discharge from the penis of deceased contained spermatozoa and whitish discharge known as leucorrhoea from the vagina of deceased woman, are not conclusive proof that the two were caught in the very act of coitus. 1933 O. 148=34 Cr. L. J. 498.
 25. Accused found deceased violating his wife and killed him. Held, that right of private defence was not exceeded. He was entitled to acquittal. 1933 A. 213=34 Cr. L. J. 882, 17 I. C. 1001=13 Cr. L. J. 905 Rel. on.
 26. Deceased who was accused's sister went at 3 A. M., to the back of house to meet a stranger. When she came back accused asked her why she did not give up her evil ways. She refused and was killed by him. Held, that provocation was as grave and sudden as if he would have seen her in the act of adultery. He was given 4 years. 1933 L. 869=35 Cr. L. J. 74.
 27. In case of mother running away with paramour who was killed, the provocation was not grave or sudden. 1932 L. 438
 28. Public boasting by suspected paramour of one's wife of intention to take away one's wife, is sufficiently provocative. It amounts to grave and sudden provocation. 1936 R. 472.
- 77 Random blow in the heat of fight.**
- Accused struck a more or less random blow in the heat of fight which proved fatal, the accused should be convicted under S. 304 (2) and not S. 302, I. P. C. 1931 M. W. N. 1320.

78. Sentence. See Sentence.**A. Abettor.**

1. Where the abettor did not strike a blow and was present at the murder, a sentence of transportation for life is proper. 88 I. C. 365=26 Cr. L. J. 1133, 35 P. R. 1866 Cr.
2. When the accused is held constructively liable under Ss. 302-149, I. P. C., and is not a ring leader lesser punishment under S. 302 is sufficient. 1935 O. 190

B. Age or youth. See Sentence—21-A.

1. Accused who was 16 years of age committed murder being provoked by the outrageous conduct of the deceased in having sexual intercourse with a female relative of his in an open and bare faced manner three days before the murder. The High Court sentenced him to transportation for life and recommended his case to Local Government under S. 401, Cr. P. C. 1932 L. 308=33 P. L. R. 279
2. Youth may not in itself be a reason for not hanging a murderer, but extreme youth (16 years) may be such a reason. 1931 L. 177=32 Cr. L. J. 682.
3. Accused, who was 18 years old, attacked an armed man from behind and gave him a most savage premeditated blow. It was held, that youth was not sufficient to mitigate the sentence of death. 9 R. 81=1931 R. 171=32 Cr. L. J. 941.

Murder—(contd.)

4. Sentence of transportation was passed on an accused of 19 years when his act was influenced by his elder brother aged 22. 1931 L. 536=32 Cr. L. J. 645.
5. Age or sex, cannot, of itself, be sufficient reason for leniency in sentence. 64 I. C. 277, 1930 L. 50, 1933 L. 305, 1931 L. 536, 29 Cr. L. J. 211, 1935 Pesh. 170, 1928 L. 531.
6. It is undesirable that a girl of 10 or 11 years of age should be sent to prison for an offence of murder. In such a case S. 31 of Reformatory Schools Act should be applied. 65 I. C. 609=23 Cr. L. J. 345.
7. In case of brutal and ruthless crime, the fact that murderer is 18 years of age is wholly insufficient reason for not imposing sentence provided by law. 107 I. C. 99=29 Cr. L. J. 211, 1928 L. 531, 29 Cr. L. J. 1017.
8. Although ordinarily in cases of deliberate murder death sentence should be passed, yet it cannot be affirmed that tender age of accused is not of itself sufficient reason for passing the lesser punishment, *i. e.*, transportation for life. 95 I. C. 507=27 Cr. L. J. 955, 11 C. W. N. 904, 1922 N. 65 Dist., 16 Cr. L. J. 95.
9. Where a motive for murder was absent and a youngman of 20 years of age killed his wife and child on the way to another village, a sentence of transportation for life was proper. 1924 L. 654=84 I. C. 653=26 Cr. L. J. 349.
10. Where the murder by a juvenile was not wholly deliberate or cold blooded but that there was some provocation rankling in his mind, lesser sentence should be passed. 1930 M. W. N. 681, 28 Cr. L. J. 217.
11. The sentence of transportation of life should be passed when the Court thinks there are some extenuating circumstances. 7 O. W. N. 767=1930 Cr. C. 965.
12. The mere fact that accused is 19 or 20 years of age is wholly insufficient reason for not imposing the extreme penalty. 1928 L. 531=112 I. C. 345, 29 Cr. L. J. 540.
13. If the youthful accused was a mere tool in the hands of third persons, death sentence is uncalled for. 29 Cr. L. J. 682.
14. The tender age of accused may, by itself, be a sufficient reason for awarding transportation for life. 27 Cr. L. J. 955, 29 Cr. L. J. 400, 16 Cr. L. J. 95 *Contra* 30 Cr. L. J. 65.
15. Where conviction is based on circumstantial evidence, the age of accused is an element to be taken into consideration. 16 Cr. L. J. 20. *See* 16 Cr. L. J. 38.
16. A boy of 15 or 16 years should not be hanged for even a cruel or inhuman murder. 1934 A. 132=147 I. C. 630.
17. Accused of 17 years joined in a murder under influence of older men, sentence was reduced to transportation for life. 1934 L. 786.
18. The fact that age of the accused is only 20 years is not sufficient to justify lesser penalty. 1935 C. 526=36 Cr. L. J. 1220=157 I. C. 829.
19. Accused of 18 years of age made indecent overtures to the deceased who refused, and was attacked with sharp edged weapon of formidable nature. Held, that death sentence was proper. 1934 L. 20=35 Cr. L. J. 619.

C. Assault by deceased.

Accused armed with knife challenged the deceased who was unarmed to fight. First blow was given by deceased. Accused in causing immediate death by blows is guilty of murder. As the parties were drunk and first blow was given by deceased, a lesser penalty was imposed. 1934 R. 10=35 Cr. L. J. 1065.

D. Delay in confirming death sentence. *See* Sentence—16.

E. Drunkenness. *See* Drunkenness.

1. Although S. 86, I P. C., attributes to a drunken man the knowledge of a sober man, it does not give him the same intention and therefore intoxication is a sufficient excuse for not exacting the extreme penalty of law. 28 P. R. 1917, 27 C. W. N. 292, 7 L. 50, 1934 R. 361, 41 P. R. 1866.
2. Where accused primed themselves with drink in order to wreak vengeance upon their enemy and beat him mercilessly the penalty of death was inflicted. 7 L. 50.

murder—(contd.)

3. Drunkenness is neither a defence nor a palliation. 7 L. 141=1926 L. 428.
4. Two persons were quarrelling and the weaker called for help. Accused who was drunk, stabbed the stranger. Held, that the extreme penalty was not called for. 1935 R. 408.
5. If the drunken accused followed the deceased and cut him then and there, it is not extenuating circumstance. 1934 R. 361, 7 L. 141=1926 L. 428 Diss. from. 1936 R. 477.

F. General.

1. The mere fact that conviction is based on circumstantial evidence is no reason why a lesser sentence should be passed. 44 M. 443, 1930 S. 225, 1921 M. 423, 118 I. C. 817 *Contra* 76 I. C. 97, 13 M. 426, 1929 M. 667, 16 Cr. L. J. 28.
2. Where a person goes to another's house with the intention of killing and others join him with full knowledge of intention, no other sentence except death is appropriate in their case. 1929 L. 292=120 I. C. 180=31 Cr. L. J. 41.
3. If the accused fired a shot to maim a person but death is caused, death sentence should be passed. 1930 M. W. N. 377.
4. Unless extenuating circumstances can be found, a murderer must be sentenced to death. 124 I. C. 841=1930 P. 252, 1923 L. 598=24 Cr. L. J. 935.
5. Where murder is committed for lust or rape, it is necessary to award death sentence to deter others. 1930 S. 225=31 Cr. L. J. 1026=126 I. C. 449.
6. Where the accused were ignorant peasants and were guilty under Ss. 149—302 by misrepresentations made by one whom they believed was a worker of miracles, a lesser sentence of transportation for life is sufficient. 27 Cr. L. J. 193.
7. Where a crime in a particular locality is rampant, extreme penalty of law is necessary to serve as a deterrent. 31 Cr. L. J. 1026=1930 S. 225.
8. The fact that accused belongs to a trading class or the assault followed a sudden quarrel, it is not sufficient that death sentence should not be passed. 1930 L. 154.
9. Where dead body is not found and the case is established on a retracted confession, a sentence of transportation should be awarded. 1925 A. 627=89 I. C. 903, 1924 A. 662=25 Cr. L. J. 900, 11 W. R. 20.
10. Killing a woman under the belief that she is a witch, a sentence of transportation for life is proper. 1921 P. 63.
11. Extreme sentence is the normal sentence and the mitigated sentence is the exception. It is not for the Judge to ask himself whether there are reasons for imposing the penalty of death, but whether there are reasons for abstaining from doing so. 1 L. B. R. 216.
12. If the Judge does not pass death sentence, he is bound to record reasons why death sentence was not passed, that is to say, he must find that there are extenuating circumstances. 11 L. B. R. 323, 1 R. 751.
13. If murder is carried out with deliberate and persistent ferocity, although not pre-meditated, the proper sentence is that of death. 28 Cr. L. J. 980.
14. An accused is entitled to benefit of doubt in the matter of sentence as in the matter of conviction. 1 R. 751.
15. The usual practice in the Punjab is to avoid the imposition of fine where death sentence has been given. 18 P. R. 1913 Cr.
16. Where the accused was not actuated by baser motive but he committed the offence in the honest, though unfounded belief that by doing so he was saving the life of and alleviating the suffering of others, the sentence of transportation is the proper sentence. 1 P. L. T. 282, 1921 P. 63=21 Cr. L. J. 603.
17. Where appellant constituted himself a tribunal and decided that a charge of paternity against him was an offence, he cannot pass a sentence of death on himself, a sentence of death is the proper sentence.
18. When verdict of Jury is overruled by the High Court and case depends on circumstantial evidence, a death sentence is not proper. 26 Cr. L. J. 609.

Murder—(contd.)

19. A so-called Baluch custom justifying murder for unchastity is no ground for mitigation of sentence. 21 I. C. 589=15 Cr. L. J. 501.
20. When several persons beat a man to death and it is not shown who gave the fatal blow, a sentence of transportation for life instead of death may be given. 1932 L. 189=33 P. L. R. 1=137 I. C. 282.
21. The fact that the landlord was a "petty tyrant" was no justification for causing death, although the accused may be given transportation for life instead of death. 9 O. W. N. 350.
22. In case of premeditated, cold blooded and brutal murder only death sentence should be awarded. 1932 L. 245=33 P. L. R. 158.
23. Transportation for life is the minimum sentence under S. 302. 32 P. L. R. 810.
24. Accused cannot escape capital punishment, merely because he belongs to a particular community. 1932 L. 500=33 Cr. L. J. 497.
25. Accused in an upper storey inflicted fatal wounds on deceased, 4 or 5 persons went up on hearing cries, no question of panic arises which can be treated as extenuating circumstance. 1932 L. 500=137 I. C. 691.
26. If there is common intention to kill and fatal blow is given by one of the accused, all are guilty of murder. Transportation for life is sufficient. 1932 C. 815=139 I. C. 81=33 Cr. L. J. 663, 1925 L. 581.
27. Accused being brought to bay during his escape is not an extenuating circumstance. 1932 C. 818=33 Cr. L. J. 722=139 I. C. 213.
28. If there is common intention to kill, all the accused are guilty of murder, although fatal blow is given by one only. A sentence of transportation is sufficient. 1932 C. 815=139 I. C. 81=33 Cr. L. J. 663.
29. If the offender acted with malice full penalty of law should be imposed. 1932 S. 201.
30. Under S. 302 extreme sentence is the normal sentence. Mitigated sentence is exception and reasons must be given for the same. 1935 O. 265=154 I. C. 570, 1 L. B. R. 216.
31. In a murderous assault when blows are given on the head, capital punishment should be awarded. 1935 O. 110=153 I. C. 81.
32. The fact that the accused was starving is no justification for murder. It is not an extenuating circumstance. 1935 R. 49=12 R. 616=36 Cr. L. J. 336.
33. The fact that accused is the only son of a widowed mother or is sincerely penitent and filled with remorse for his conduct is no ground for not inflicting death sentence. 1935 C. 591=36 Cr. L. J. 1254=158 I. C. 67.
34. If there is a reasonable doubt in the guilt of accused, he should be acquitted. It cannot be reason for inflicting lesser penalty. 1935 A. 919=1935 Cr. C. 1136.
35. Deceased molested accused with whom he had illicit intimacy. She in order to get rid of him poisoned him. Held, she was guilty of murder but lesser penalty was sufficient. 1934 L. 673.
36. Accused had illicit connection with the deceased for 11 years with husband's consent. Accused remonstrated with her for carrying on intrigue with another and killed her. He was given transportation for life 1933 A. 533.
37. If Assessors give opinion of not guilty, it is no reason for awarding lesser sentence. 1933 N. 307=34 Cr. L. J. 1168, 1 R. 751.
38. Where evidence was enough to convict accused but there was doubt as to precise part taken by accused, transportation was sufficient. (1864) 1 W. R. 48.
39. The fact that for the murder of one person, more than one has to be sentenced to death is no ground for commuting death sentence. 12 P. R. 1916.
40. Where the origin of the assault is in obscurity, death sentence is not proper. 1931 L. 538=32 Cr. L. J. 1083.

G. Minor. See—A.

1. Where a minor is convicted of murder, he should not, under ordinary human prin-

Murder—(contd.)

ciples, be made to pay the penalty when law allows an alternative punishment. 1929 L. 64=113 I. C. 77=10 L. L. J. 463=30 Cr. L. J. 65.

2. It is undesirable that a girl of ten or eleven years should be sent to prison for an offence of murder. In such a case S. 31, Reformatory Schools Act, should be applied. 65 I. C. 609=23 Cr. L. J. 145.
3. Under Children Acts, no child under the age of fourteen years shall be sentenced to death or transportation. S. 22, Bom. Act, XIII of 1924, S. 21, Beng. Act, II of 1922. S. 22 M. Act, IV of 1920.

H. Party Fight.

1. If the party fight was not started by accused, death sentence should be commuted. 1933 R. 95=34 Cr. L. J. 747, 1933 L. 434=34 Cr. L. J. 711.
2. In case of complainant side deliberately provoking conflict and no previous intention on the part of accused to kill any body, transportation is proper. 1932 L. 5.

I. Provocation or sudden quarrel. See—76 H.

1. Where there has been some provocation and there is no premeditation, and the crime is committed in the heat of passion, transportation for life is enough. 1927 A. 105, 32 P. L. R. 810, 1929 M. W. N. 789, 18 A. L. J. 851, 1935 R. 427.
2. While a wrestling match was going on, the deceased a *kamin* boy obstructed the sight of an old Jat and consequently there was an exchange of abuse. The old man ordered his sons to kill him and they killed him with *dangs*. Held, that as the elements of premeditation or preparation were absent, the sentence of transportation for life was sufficient. 1927 L. 516=29 Cr. L. J. 35, 101 I. C. 484.
3. Where murder occurred suddenly after mutual abuse and the accused who did not belong to a turbulent class took up a weapon at the spur of moment and killed the deceased, a lesser sentence should be passed. 1928 L. 913, 24 W. R. 28.
4. The deceased was seen talking to her paramour and when reprimanded, she replied that she would elope with the lover and she persisted in this statement, when he strangled her to death. Held, a sentence of transportation was proper. 1930 L. 171=11 L. L. J. 461=31 Cr. L. J. 759.
5. The fact that assault followed a sudden quarrel or accused not belonging to a turbulent class extreme penalty of law should not be exacted. See 1932 L. 500, 1930 L. 154.
6. Where the fatal attack was not premeditated and the victims were injured in the heat of passion upon a sudden quarrel and the offender did not take undue advantage nor acted in a cruel or unusual manner, death sentence should not be passed. 105 I. C. 678=1928 L. 93=28 Cr. L. J. 966.
7. The mere absence of premeditation may or may not be a sufficient ground for imposing lesser penalty. 6 L. L. J. 323.
8. A provocation though insufficient to bring the case within exception to S. 300, may still be sufficient for the reduction of sentence. 16 Cr. L. J. 611=30 I. C. 435.
9. Where accused stabbed the deceased with *chhuri* and it appeared that he acted under some provocation caused by the deceased, he should be given transportation for life and not death. 1932 L. 302=33 P. L. R. 154.
10. Deceased a foul mouthed old Sardar abused the accused, called him son of dog and struck him with a *lathi*. Accused killed him without any premeditation. Held, that a sentence of transportation for life was sufficient. 1932 L. 369.
11. Accused saw the deceased having sexual intercourse with his wife and killed him. High Court reduced the sentence to that already undergone. 1933 L. 165.
12. If murder is committed under grave provocation though not sudden, High Court commuted the sentence. 17 Cr. L. J. 190, 1932 L. 369, 1923 L. 408, 1933 A. 533, 16 Cr. L. J. 611, 28 C. 613.
13. In case of misconduct of wife who was murdered for same, death penalty was not awarded. 12 Cr. L. J. 214=10 I. C. 119.

J. Sex. See—A.

1. Sex cannot of itself be sufficient reason for leniency in sentence. 64 I. C. 277.

Murder—(contd.)

2. Where a barren woman killed another's child to get children, death sentence was passed. 1 R. 751.
3. Comparative leniency to women is common rule of practice though not of law, but in dealing with an atrocious crime, the mere sex of the accused is no bar to imposition of death sentence. 16 Cr. L. J. 20.
4. Where a young girl of 15 years killed her step son because her husband was ill-treating her, the Court sentenced her to transportation for life. 26 P. L. R. 550.
5. Where a woman in order to hide her shame, murders her newly born illegitimate child; there are mitigating circumstances sufficient to reduce the penalty of death very much below transportation for life. 25 Cr. L. J. 63.
6. A woman led to desperation owing to starvation killed her child. Held, that a sentence of transportation was sufficient. 1932 C. 658=137 I. C. 511.
7. A woman administered opium to a new born child who was probably illegitimate, she was sentenced to transportation under S. 302 but High Court recommended one year's imprisonment to the local Government. 1932 L. 297=33 Cr. L. J. 448. 7 L. 70=1926 L. 271 Rel. on.
8. Where a woman murders a child for ornaments, penalty of death is proper. 1936 N. 200.

K. Weak intellect or eccentricity of accused.

1. If accused is a man of weak intellect, subject to fits and is not possessed of normal mind, and it was possible that owing to some feeling of revenge he was impelled by some uncontrollable feelings to attack deceased, he should be given transportation for life. 1932 A. 233, 1931 M. W. N. 105=719, 1932 C. 658, 23 C. 604, 1933 L. 123, 1932 O. 18, 1933 R. 144=34 Cr. L. J. 791, 16 Cr. L. J. 95, 12 M. 459.
2. Accused who committed double murder was shown to have been eccentric in the past and had very inadequate motive for the murders. Held, that there were not sufficient grounds for not passing death sentence. 1931 O. 77.
3. When accused killed his children, he was given transportation. 10 B. 512.

L. Who gave fatal blow not certain. See—85.**79. Similar attempts at—**

Previous attempt to shoot the person murdered is evidence of accused's intention to kill, but not of the act of killing. S. 14 ill. (o) Ev. Act. 11 Bom. H. C. R. 190.

80. Stolen property of deceased found with accused.

1. When the body of a child was pointed out by accused from a well and ornaments stolen from her were sold by accused and he was last seen with the deceased. Held, he was guilty of murder. 16 P. W. R. 1915 Cr.
2. Where the only evidence against an accused was that he was found with stolen property of murdered man, he can be convicted under S. 411, I. P. C., only. 220 P. L. R. 1913=23 P. W. R. 1913 Cr.
3. In a murder case the possession of deceased's jewels by the accused is not evidence unless it is shown that the deceased was wearing them and the accused cannot explain his possession. 14 Cr. L. J. 49.
4. In a case of murder there was evidence of a child of 10 years and accused was in possession of the jewels of murdered child. Held, that the accused were guilty of murder. 11 Cr. L. J. 157.
5. Accused found with deceased the previous night and possession of property stolen from the deceased are insufficient for murder but sufficient under Ss. 379 or 411, I. P. C. 1929 L. 61=112 I. C. 212=10 L. J. 525, 40 P. W. R. 1914 Cr., 20 C. W. N. 166, 13 Cr. L. J. 249, 1922 A. 340.
6. Mere pointing out a place from where property of the deceased was recovered is insufficient under S. 302. 96 I. C. 849=27 Cr. L. J. 993, 1924 L. 109.
7. It is not safe to convict an accused of murder because he produced property stolen from the deceased. 89 I. C. 516=26 Cr. L. 1380, 1936 N. 200, 1926 M. 638, 1936 N. 23, 1934 N. 71.

der—(contd.)

8. There is a presumption of murder when the ornaments stolen were worn on the day of murder by the woman and were found with accused immediately. 1930 C. 379, 17 C. W. N. 1077, 50 M. 274=1926 M. 638 and 1925 L. 621 Dist. See 50 M. 274.
9. The possession of the jewels of a murdered woman if unexplained is a presumptive evidence that accused was the murderer as well as thief. 13 M. 426, 50 M. 274, 21 M. L. J. 1071, 53 I. C. 481=20 Cr. L. J. 753, 1921 M. 679=23 Cr. L. J. 697=69 I. C. 377, 55 M. 231=1933 M. 233.

Sudden quarrel

1. Where the accused had a pistol with him but he did not come with the intention of using it and he used it in the course of a sudden quarrel, he was guilty under S. 304. 1925 L. 219=93 I. C. 251=27 Cr. L. J. 459.
2. A fight is not *per se* a palliating circumstance, only an unpremeditated fight is such. 5 C. 31.
3. Exception 4 applies when there is no wish to kill or hurt. 31 P. R. 1914 Cr.
4. An unpremeditated assault committed in the heat of passion upon a sudden quarrel comes within Exception 4 and it is immaterial which party offers provocation or commits the assault. 12 P. R. 1866 Cr., 1931 M. W. N. 873.
5. A sentence of 7 years for causing one fatal blow in a sudden quarrel is excessive. 5 L. L. J. 414
6. Accused struck a blow with a hatchet lying by in a sudden quarrel and admitted his guilt two days after to the Committing Magistrate before he was legally represented. Held, he was guilty under S. 304. 1923 L. 312.
7. Where in a sudden fight the accused was also attacked and wounded by knife, he should be convicted under S. 304. 97 I. C. 952.
8. There was a dispute regarding the cutting of the sugarcane crop and three men attacked the deceased who was cutting it and beat him to death. It was not known who gave the fatal injury. Held, they were guilty under S. 304 as the matter was sudden and injuries were caused in the heat of passion. 40 A. 686, 1929 A. 508, 49 A. 103 Dist from.
9. There was no enmity between the accused and the deceased, rather they were relations. On a sudden quarrel about sharing a pumpkin, the accused struck the deceased with a limestone weighing 3 pounds and caused her death. Held, he was guilty under S. 304. 1925 A. 4=81 I. C. 320=25 Cr. L. J. 800.
10. A sudden fight arose about drawing water at a tap between accused and deceased, who abused each other. The accused drew out his knife and stabbed him. Held, he was guilty under S. 304. 82 I. C. 361=25 Cr. L. J. 1289.
11. Because a fight is a sudden one, it cannot be said that each accused must be held responsible only for the part played by him individually. When each accused used axe and their intention at the time of attack was a common one, they were equally guilty. 1923 L. 336=76 I. C. 692.
12. Where in the course of a sudden fight, the deceased grappled with him from behind and the accused gave him a knife blow and caused his death, he was guilty under S. 304 (2). 8 L. L. J. 51.
13. In a sudden quarrel, accused gave one blow on the head and the other on the leg, he is entitled to the benefit of Exception 4. 121 I. C. 724=1929 L. 719.
14. Accused gave a hatchet blow to an unarmed man in a brawl, he was guilty of murder. 29 Cr. L. J. 230, 94 I. C. 134.
15. Exception 4 to S. 300 applies to cases wherein, in whatsoever way the quarrel originated, the subsequent conduct of both parties puts them on equal footing. 1926 L. 219=93 I. C. 251.
16. the sudden quarrel, and he also
l. Held, he was entitled to 4th
17. If the murder is committed on a sudden quarrel, the accused should be given the benefit of Exception (1), S. 300. 1931 M. W. N. 134, 1931 M. W. N. 873.

Murder—(contd.)

18. When there are as many as six injuries on the head of the deceased, it is difficult to hold that the case falls within Exception (4) to S. 300, because, even assuming that the quarrel was sudden, the accused acted in a cruel manner in so assaulting and causing injuries to a man who was not armed. 1931 L. 280=134 I. C. 829=32 Cr. L. J. 1234.
19. On a sudden quarrel accused dealt blows with a winnowing instrument which he was carrying for agricultural purposes. Held, that an offence under S. 304 and not under S. 302 was committed. 32 P. L. R. 513.
20. Deceased who was grazing his sheep, hit the dog of the accused, which was molesting his sheep. Accused seized him, in a sudden temper, took the turban of the deceased and strangled him to death. Held, that accused was guilty under S. 304 (2). 1931 L. 189=134 I. C. 583=32 Cr. L. J. 1205.
21. In a sudden fight when every one is trying to hit one of the opposite side and no body thought of self defence, the offence is culpable homicide. 1935 A. 438.
22. Accused picked up skewer for breaking ice and plunged it into the stomach of the victim in a heat of passion. The crime was unpremeditated. Held, it fell under S. 304. 1935 L. 149=152 I. C. 860=36 Cr. L. J. 190.
23. S. 34, I. P. C., does not apply in a case of sudden fight. 1935 Pesh. 41=1935 Cr. C. 250.
24. Where without premeditation blows were struck in heat of passion and on sudden quarrel and person giving the fatal blow is not known, all are guilty under S. 304. 1935 A. 717=155 I. C. 560=36 Cr. L. J. 773.
25. If the crime is unpremeditated and in hot blood death sentence is uncalled for. 1935 R. 427.
26. Son suddenly and in a heat of passion struck his father. Held, he was guilty under S. 304 (2). 1933 L. 664.
27. If accused acted in a cruel manner and took undue advantage, he is not entitled to the benefit of Exception 4. 1933 O. 438=35 Cr. L. J. 115, 1928 O. 282 Ref.
- 82. Treatment.** See Wound 17—, Death by negligence —7.
 1. The mere fact that more prompt or better treatment would have saved the deceased cannot exonerate the accused from liability for the death. 108 I. C. 164=29 Cr. L. J. 345, 1932 O. 279=9 O. W. N. 655.
 2. The deceased fell down on account of two serious injuries and was taken to Hospital. He felt it after he was progressing well and died a month and a half after the occurrence, of pneumonia. Medical evidence showed that death was not due to injuries. Held, that the accused was not guilty under S. 304. 81 I. C. 181.
 3. If one gives blows to another, who neglects to cure the wounds, dies, it is murder or man-slaughter according to circumstances. 29 Cr. L. J. 345.
 4. The fact that victim did not take great care or neglected to take care of his health after assault, which hastened his death is immaterial. 1934 O. 405=35 Cr. L. J. 1113.
 5. Where death was due to the ignorance of deceased and the unskilful treatment and the injuries were only the remote cause of death, the accused was not guilty of culpable homicide. 1935 R. 418.
- 83. Undue advantage.**
 1. When a person during the course of a sudden fight, without premeditation, took undue advantage and acted in a cruel manner in using knife or dagger, he was guilty of murder. 9 Bom. L. R. 145, 4 L. L. J. 276, 6 L. L. J. 527.
 2. Where a person uses deadly weapon in a sudden fight against an unarmed man, he is not entitled to the benefit of Exception 4 to S. 300. 2 L. B. R. 320, 30 Cr. L. J. 173.
 3. If a man uses a hatchet to an unarmed man, without any apprehension of injury to himself, he cannot claim the protection of Exception 4. 28 Cr. L. J. 415, 8 L. L. J. 188.

Murder—(contd.)

4. Accused's party pursued the complainants in three boats and when they had them in their powers, landed and attacked them with spears and killed three of them. Held, they were guilty of murder. 8 C. L. J. 551.
5. Accused being inimical to the deceased came to his field and beat him with sticks so severely that he died within few minutes. Fourteen ribs were fractured and both the lungs and spleen were ruptured. Held, they were guilty of murder. 31 P. R. 1914 Cr.
6. In order to apply Exception 4, the accused must not have taken undue advantage or acted in cruel manner. 1932 L. 606=33 P. L. R. 718.

84. Weapon—nature or use of. See Weapon—Wound.

1. When there is nothing more than a fatal result to indicate an intention and no weapon is used, it is unsafe to convict the accused of murder. (1881) 1 Weir 299, 13 Cr. L. J. 145.
2. Where the weapon used, the part of the body aimed at and pierced and violence with which the blow was inflicted lead to inference that accused intended to cause such bodily injury as was likely to cause death, even though the accused did not intend to cause death, the accused can be convicted of murder. 124 I. C. 680=31 Cr. L. J. 731=1930 L. 154.
3. Where a person gives a club wound sufficient to cause death, he is guilty of murder irrespective of intention to cause death. 1926 O. 184=90 I. C. 147=26 Cr. L. J. 1491.
4. It would be most unsafe to suggest that in all cases where death is caused by a single blow from a hollow bamboo, the offence is not murder. The size and the weight of the stick, the manner in which it is used and the actual injuries caused by the blow must all be considered. 65 I. C. 495=1921 L. B. 4.
5. A *takwa* or *chhavi* is a deadly weapon and a person who strikes a blow on the head with such a force as to cut through the skull is guilty of murder. 88 I. C. 995, 69 I. C. 439.
6. Where death is caused recklessly and without premeditation, the safer criterion to decide the nature of the offence committed is the nature of weapon used. 14 Cr. L. J. 459=20 I. C. 619.
7. Accused killed a person by striking him one blow on the head, with a long and heavy bamboo. The nature of injury showed that very great force was used. Held, he was guilty of murder and although the weapon used was not one that would of necessity cause fatal injury. 11 L. B. R. 115.
8. If blows by heavy weapon as rice pounder are given on the head, accused must be regarded to have intended injury sufficient in ordinary course to cause death. 1935 R. 427.
9. The number of wounds is not the criterion but the position of combatants with regard to their arms must be considered. A single grievous hurt to an unarmed man may amount to murder. 1935 Pesh. 59=1935 Cr. C. 357.
10. Incised wound $7\frac{1}{2} \times 3 \times 3\frac{1}{2}$ near the nostril points to intention necessary for murder. 1933 R. 95=34 Cr. L. J. 747.
11. In case of wound five inches deep, intention is to cause death. 1936 R. 474.
12. A person who kills another by striking with a *da* on the forehead is guilty of murder. 1936 R. 477.

85. Who gave the fatal blow not certain. See Culpable Homicide

1. When all the accused joined in beating the deceased mercilessly, but it was not shown who inflicted the fatal blow, the accused may be sentenced to transportation for life instead of death. 1932 L. 184=137 I. C. 282=33 P. L. R. 1.
2. When both assailants were proved to have been armed with *kirpan* but there was single blow on the head which caused death and it was not certain who gave the fatal blow. Held, that they were guilty under S. 302 and not under S. 304 or S. 325. A sentence of transportation for life was proper. 133 I. C. 557=32 Cr. L. J. 1083=1931 L. 538.

MURDER—(contd.)

3. When the common intention to murder brutally is carried out, the mere fact that it is possible to say as to who gave the fatal blow, is not sufficient to impose the lesser penalty of transportation for life. 135 L. 337=156 L. C. 745. 1932 L. 133=137 L. C. 282 Dict.

86. Wound. Nature of— See —84 Wound.

N

NEGLIGENCE.

1. Contributory. See Death by negligence—10.
2. Death by—. See Death by negligence. Culpable homicide—20.
3. In Driving. See Rash and Negligent driving.
4. Rash and Negligent Act. See Rash and negligent act.
5. To get medical treatment. See Wound—17, Murder—82.

NEGLIGENT TREATMENT OF WOUND. See Wound 17.

NEWSPAPER.

1. Defamatory articles in— See Defamation—32.
2. Defamation of— See Defamation—4.
3. Extracts from—
 1. Extracts from newspaper by itself is not admissible though it can be used for contradicting the writer. 119 L. C. 337=1929 O. 494.
 2. Printed newspaper was found with the accused. It is no evidence of truth of facts stated therein unless their existence is made probable by other evidence. 1933 A. 690.
4. Forfeiture of— See Forfeiture of Books and Newspapers.
5. Nod. See Gesture.
6. Presumption about. S. 81, Ev. Act.
 1. Although presumption of genuineness attaches to a newspaper, it cannot be treated as proof of facts contained therein. 1930 L. 371=31 Cr. L. J. 168, 1925 L. 299=26 Cr. L. J. 1078.
 2. A statement of facts contained in a newspaper is hearsay, unless the maker of statement appears in Court and deposes to having perceived the fact reported. 1925 L. 299=88 L. C. 22.
 3. As to the presumption about the publisher or printer of— See 36 M. 457.

NICOTINE. See Poison—11.

NITRIC ACID. See Poison—12.

NOLLE PROSEQUI. S. 333, Cr. P. C. See Advocate-General.

1. In a murder case, Jury returned a verdict of not guilty. In the second trial on the remaining counts the Jury was divided and the Judge disagreed with the verdict of not guilty. Third time the Advocate General entered *Nolle Prosequi*. 41 C. 1072.
2. A Judge being a shareholder of the Prosecuting bank received under S. 556, Cr. P. C. and the Chief Justice took up the case from that point. On objection being raised about the seisin of the case by the retiring Judge, the Advocate-General in order to get rid of many difficulties arising out of the case, entered *Nolle Prosequi*. 2 C. W. N. 481.
3. After the close of the case for the prosecution and before calling the defence witnesses, the foreman of the Jury informed the Court that they find the accused guilty. On objection being taken that it was a misbehaviour the Advocate-General entered *Nolle Prosequi*. 7 C. W. N. XXXI.
4. An order of discharge under S. 333, Cr. P. C., is no bar to proceedings being taken afresh. 40 C. 71.
5. Though a *Nolle Prosequi* does not amount to acquittal, it puts an end to indictment.

Nolle Prosequi—(concl'd.)

on which the prisoner is brought before the Court and he cannot be subsequently proceeded against on the same charge. 52 C. 590.

6. A *Nolle Prosequi* is usually granted when there is a vexatious attempt to harass the accused, by repeatedly preferring defective indictment. 1931 C. 607=134 I. C. 1045=33 Cr. L. J. 3.

NON-APPEALING ACCUSED. See Appeal—35.

If the co-accused has preferred the appeal the Court can reduce the sentence of non-appealing accused. 1932 L. 615 (1), 1934 L. 346.

NON-PRODUCTION OF WITNESSES. See Witness—70.**NOSE CUTTING.** See S. 326, I. P. C. Grievous hurt.**NOTES OF SPEECHES.** See Refreshing memory—3.**NOTIFICATION.** See Government Notification, Judicial Notice.

If the objection as to legality of notification is not raised in the first Court, there is presumption in favour of lawful exercise of powers given by the Act. 43 P. R. 1888 Cr.

NOTORIOUS FACTS. See Judicial notice—9.**NOXIOUS FOOD.** See Adulteration.

S. 273, I. P. C., does not apply to sale of noxious food for animals. 15 P. R. 1873 Cr., 3 P. R. 1908 Cr.

NUISANCE. See Public Nuisance**NUMBER OF WITNESS.** S. 134, Ev. Act. See Witness—73, Evidence—34.**O.****OATH.** See Oath's Act, Kalma Oath.

1. Administration of—. See False evidence—2.

2. Refusal to take—. S. 178, I. P. C. See Kalma Oath, Public Servant—39.

3. Special—. See False evidence—27—34.

4. To accused. See Examination of accused—14.

5. To a child. See Witness—74.

OATH AGAINST OATH.

Prosecution for perjury should not be ordered, when it is a matter of oath against oath, 1927 M. 996=28 Cr. L. J. 1006=105 I. C. 831, 1933 R. 119=34 Cr. L. J. 781, 1924 R. 54=26 Cr. L. J. 523.

OATHS ACT (X OF 1873.)**S. 1.**

Evidence given under special oath is conclusive only as against the person who offers to be bound by it; but it does not prevent the Court from prosecuting him for perjury. 1924 A. 511=82 I. C. 359.

S. 4.

All Courts are authorised to administer oaths and affirmations in the discharge of their duties. 34 P. R. 1916 Cr.

S. 5.

1. A child of tender years should be examined as a witness only after the Court had satisfied itself that he can fully understand and the Court should comply with the provisions of S. 6 of Oaths Act. 120 I. C. 514=31 Cr. L. J. 114.
2. Mere fact that the Court advisedly refrained from administering oath to a boy of six does not render his evidence inadmissible. 38 A. 49, 61 I. C. 705.
3. An accused is competent to testify under S. 118, Evidence Act, but he is incompetent to be a witness. 1932 R. 190=10 R. 511.
4. S. 5 was intended to apply to an accused person while he is under trial and not when he is convicted. 54 C. 52.

Oaths Act—(concl'd.)

Ss. 9 and 11.

1. Ss. 9 and 11 are not intended to apply to criminal proceedings. 58 I. C. 147=21 B. L. R. 898.
2. Special oath only binds the parties and not the Court. If a person takes a special oath and makes a false statement to his knowledge, Court can challenge truth and prosecute him for perjury. 1924 A. 511, 68 I. C. 45.

S. 13.

1. S. 13 cures the form of oath and even an entire omission to take an oath but does not cure the absence of authority in the officer administering the oath 1929 B. 136=116 I. C. 248=30 Cr. L. J. 593.
2. S. 13 applies equally whether the omission is due to the deliberate act of the Court or to some oversight or negligence on the part of the presiding officer. 1921 P. 109=61 I. C. 705.
3. When the interpreter omits to take oath, it must be proved that the interpretation was made accurately. The omission does not make the deposition inadmissible. 36 C. 808.
4. When the officer is not authorized to administer an oath the statement made to him does not amount to an affidavit. 8 I. C. 897.

S. 14.

1. Evidence of a child witness cannot be brushed aside as inadmissible merely because no oath is administered to her. 1923 L. 332=76 I. C. 1037=23 Cr. L. J. 317.
2. The word "omission" to take an oath under S. 13 includes only an accidental and not a deliberate omission to take an oath. 36 I. C. 468, 43 I. C. 86.
3. Omission to administer an oath even if intentional would be cured by S. 13. 58 I. C. 817, 41 C. 406.

OBITER DICTA.

The *obiter dicta* in previous order of the High Court Judge is not binding. 4 P. R. 1919 Cr., 4 P. R. 1919, 4 P. R. 1509, 10 B. 176 and 54 C. 42 Dist.

OBJECTIONS BY COUNSEL.

1. Duty to record.

1. If a Judge disallows a question, the Pleader should have the question and order disallowing it recorded, as such a refusal on the part of Judge is illegal. 36 I. C. 468=17 Cr. L. J. 500, 55 I. C. 593=21 Cr. L. J. 321.
2. Some latitude should be allowed to a member of Bar, insisting in the conduct of his case upon his question being taken down or his objections noted where the Court thinks the question inadmissible or the questions untenable. There ought to be a spirit of give and take between Bench and Bar in such matters and every little persistence on the part of a Pleader should not be turned into the occasion of a criminal trial unless the Pleader's conduct is so clearly vexatious as to lead to the inference that his intention is to insult or interrupt the Court. 6 Bom. L. R. 541 (543)=1 Cr. L. J. 612

2. Omission to object. See Consent.

1. An erroneous omission to object to the admission of irrelevant testimony does not make it available as ground of judgment. 19 A. 76, 38 M. 160, 30 B. 109, 1921 P. 61.
2. A ground of waiver cannot prevail in a criminal trial. 10 Bom. H. C. R. 497.
3. A prisoner can consent to nothing. It is the duty of the Judge to see that accused is condemned on legal evidence 9 Bom. H. C. R. 358, 2 C. 23, 6 C. 83, 6 C. 95 (99), 20 C. 851, 123 I. C. 209=32 Cr. L. J. 91.
4. Court can prevent the production of inadmissible evidence whether it is objected to or not. 11 B. H. C. R. (Cr. C.) 44.

3. Time for—

1. The proper time is in the Court of first instance. 12 W. R. 13, 12 W. R. 244.

Objections by Counsel—(concl'd.)

2. Where the accused, who had been examined as approver had been committed to the Sessions for trial. The objection could be raised in appeal for the first time, though it had not been raised in the grounds of appeal. 1932 O. 113 128 I. C. 209=32 Cr. L. J. 91.
1. To admissibility of evidence. See Admissibility—4.
5. To irregularities. See Jurisdiction—26. Irregularities—Consent.
- 5 To relevancy. See Relevancy—5.

OBSCENE ACTS AND SONGS. Ss. 292-293, I. P. C. See Public Nuisance—27.

OBSCENE BOOKS, PAINTINGS, ETC. Ss. 292-293, I. P. C.

1. Advertisement of—.

An advertisement of a book—Kashmiri Kok Shastar—that it contained "pictures of 84 postures of men and women with interesting description" is no offence. 29 Cr. L. J. 773=110 I. C. 805.

2. Charge.

1. A charge under S. 292 should be made specific in regard to the representations alleged to have been exhibited. 1 C. 356, 1 L. B. R. 262.
2. Particular obscene passage should be given in the charge. 1932 C. 651.

3. Destruction of—.

On a conviction under Ss. 292-293, I. P. C., the Court can order the destruction of all copies of the thing in respect of which the conviction was had. See S. 521, Cr. P. C.

4. Essentials and Evidence.

1. The test of obscenity is whether the language complained of would corrupt those whose minds are open to immoral influences. The form of expression and not the actual meaning is important. 19 I. C. 504=15 Bom. L. R. 307=14 Cr. L. J. 248, 20 B. 193, 32 C. 247, 37 I. C. 521, 1932 C. 651.
2. There should be no printing of descriptions exciting sensuality but descriptions of diseases with appropriate remedies therefor intended only for doctors and patients are not criminal. 25 P. R. 1917 Cr.
3. The literary eminence of the author of the book containing obscene matter does not justify the offence under S. 292. A publication describing illicit love for another man's wife and selling at a low price, leaves no doubt about the obscene nature in law, in spite of the person's intention being only to publish classical work. 37 I. C. 521=18 Cr. L. J. 153.
4. Pamphlet containing vulgar abuses and ridiculing the head priest and his followers if obscene falls under S. 292. 22 Bom. L. R. 166=62 I. C. 401.
5. An advertisement of Kok Shastra containing the words "84 *asans* (postures) of men and women with interesting description of these" is not an offence under S. 292. 1928 P. 649=110 I. C. 805=29 Cr. L. J. 773.
6. An allowance must be made for the primitive directness of expression, which though coarse is not obscene. 19 I. C. 504=15 Bom. L. R. 307.
7. Whether the book is a scientific treatise or only an obscene book in the guise of science, the scope and object of the work must be looked at. 28 A. 100.
8. The intention of the writer is immaterial. 28 A. 100, 37 I. C. 521, 3 A. 837, 20 B. 193, 15 Bom. L. R. 307, 32 C. 247, 25 P. R. 1917 Cr.
9. The question whether a picture or print is obscene or not is one of fact and not law. 20 B. 193.
10. Motive is immaterial if the book is obscene. Motive can mitigate the offence. 1932 C. 651=36 C. W. N. 985, 28 A. 100 Rel. on.

5. Liability of proprietor and printer.

The printer or the proprietor of an obscene print is not guilty if the management of the printing was in the hands of the agent, unless there is evidence that the work was executed with authority, knowledge or consent. 18 P. R. 1889 Cr., 35 P. R. 1905 Cr., 10 A. W. N. 175.

Obscene Books, Paintings, etc.—(concl'd.)

6. Religious books containing obscene matter.

1. The publisher of a religious book described the acts prohibited during the fast of Ramzan, including sexual intercourse of various kinds, which were set out in indecent details. He was held guilty under S. 292. 5 P. R. 1917 Cr.=34 J. C. 473.
2. A religious book is not obscene, though it may contain passage of doubtful decency. 39 C. 377.
3. Accused wrote a book denouncing the religion of Islam as a reply to certain attacks on the practices of Hinduism. It was not immoral but was held to be immoral and the accused was found guilty. 3 A. 837, 28 A. 100.

OBSCURITIES. See Court's duty, Questioning Court.

Court can use Police diary for clearing up obscurities and not for coming to judicial decision. 1926 L. 54=26 Cr. L. J. 1308.

OBSTRUCTING PUBLIC SERVANT. S. 186, I. P. C. See Public Servant—33.

OCCURRENCE.

1. Absence at—. See Facts forming part of the same transaction—1.

2. Contradictory version of—.

If accused considers that prosecution has given incorrect version, he must place true version of the occurrence. 1934 O. 251=35 Cr. L. J. 943.

3. Events leading to—. See Events leading to occurrence.

4. Statement before, during or after—. See Facts forming part of the same transaction.

5. Time of—. See Time of occurrence.

6. Witnesses of—. See Eye witness.

OCTROI.

Refusal to show goods to an Octroi Officer acting in the discharge of his duties is punishable under S. 186, I. P. C., and assault on him under S. 332. 1935 S. 245.

OFFENCE. S. 40, I. P. C.

1. Abetment.

Abetment of an offence is in itself an offence. 49 P. R. 1887 Cr.

2. Attempt.

An attempt to commit offence is in itself an offence within the meaning of S. 40 and where no express provision is made in any other part of the Code for the punishment of such offence, it is punishable under S. 511. 17 A. 120.

3. Definition of—and what is—.

1. Offence means the commission or omission of an act or series of acts punishable by Law. 7 A. 67.
2. Entering a cattle pound with intent to commit an offence under S. 24, Cattle Trespass Act, amounts to criminal trespass under S. 447, I. P. C. 8 L. 331=1927 L. 495=28 Cr. L. J. 665=103 I. C. 201.
3. Resistance to arrest under S. 55, Cr. P. C., is not an offence. 7 A. 67, 8 C. 331, 9 A. 452.
4. An order for payment of maintenance is not a conviction for an offence. 16 M. 234, 7 W. R. 10.
5. Proceedings to recover legal fare under S. 28 of Bombay Public Conveyances Act, 1867, is not a complaint of an offence. 44 B 463.
6. Peaceful picketing is no offence, but when it is accompanied by violence, it becomes criminal. 1931 P. 52=130 I. C. 269=32 Cr. L. J. 478.
7. Everything made punishable by special law is an offence. 1931 A. L. J. 986=1932 A. 18.
8. Under S. 451, I. P. C., any offence punishable under Penal Code or any offence punishable with imprisonment of six months is an "offence." 1931 L. 405=131 I. C. 381=32 Cr. L. J. 732.

Offence—(concl'd.)

9. The word "offence" has no reference to the Procedure Code or English law. It must conform to the definition under S. 40. 19 B. 105, 13 B. 506, 5 B. 338.

OFFER OF BRIBE. See Bribe—11.

OFFENSIVE TRADE OR OCCUPATION. See Public Nuisance—30.

OFFICIAL COMMUNICATION. See Privilege—11.

OFFICIAL DUTY. See Assault on Public Servant—1, Bribe—8, Prosecution of Judges—1.

OLD MAN—ATTACK ON. See Murder—12.

OMISSION.

When a person is sought to be punished for an omission his case must be brought within the terms of rule or section which he has disobeyed. 1935 A. 121.

OMISSIONS IN EVIDENCE. See Evidence—32, Discrepancy Statement to Police—8.

OMISSION TO APPREHEND ACCUSED. Ss. 221-222—225-A. I. P. C.

1. The duties of a chawkidar as private citizen ought not to be confounded with his duties as a public servant. When the legal obligation of chawkidar to arrest or detention has not been established, he is not guilty for intentionally suffering a pilferer to escape from his detention. 1929 A. 935=120 I. C. 205=31 Cr. L. J. 12.
2. If accused intentionally aids a prisoner to escape, he is guilty under S. 222 even though the attempt is frustrated. 1929 L. 631=30 Cr. L. J. 1103=119 I. C. 762.
3. Villagers assisting a headman in arresting person and bringing him to the Police Station are not public servants. 38 I. C. 735.
4. A Police Officer can arrest or cause to be arrested without warrant or an order from a Magistrate any person who comes within the provisions of S. 55, Cr. P. C., and the confinement of the arrested person is a legal custody within the meaning of S. 225-A. 1930 P. 103=124 I. C. 638, 35 A. 407.
5. Public servant witnessing murder is bound to apprehend murderer. If murderer escapes he is guilty. His motive may not have been that he wanted the man to escape, but that he was afraid of getting hurt. 1936 A. 651=164 I. C. 702.

OMISSION TO GIVE INFORMATION TO PUBLIC SERVANT. S. 176, I. P. C.

1. By landlord. See Landlord, S. 45, Cr. P. C.

2. Essentials and Evidence.

1. The fact that some persons should give information, while others not, omitted to do so, the latter are not guilty under S. 176, I. P. C. 90 I. C. 145, 1926 N. 217=25 Cr. L. J. 1489, 4 C. 623, 20 C. 316, 7 M. 436.
2. An omission by an owner of a house to give information of a sudden or unnatural death is not an offence. (1887) 1 Weir 101.
3. The information must be with regard to the commission or prevention of a particular offence and not of offences generally. 9 M. L. J. 274. See 15 C. 380.
4. Where a person failed to give information to the Police of the explosion of fireworks, which resulted in the death of a child, he is guilty under S. 176 17 M. L. T. 263.
5. Where the zamindar collecting more than the recorded rent from tenants has not been asked the information by Qanungo or Patwari, his failure to inform the officials concerned the fact of such collection does not amount to an offence under S. 176. 1927 A. 111=98 I. C. 487=27 Cr. L. J. 1367.
6. To sustain conviction under S. 176 it is not necessary to prove that death took place on the land of the accused. The mere finding of a dead body on his land is sufficient. 11 C. 619.
7. A village Magistrate omitting to inform Police about the loss of a jewel of a person is not guilty as the information did not relate to the commission of a non bailable offence of theft. 9 Cr. L. J. 224.

Omission to give Information to Public Servant—(concl'd.)

8. Where a Mukadam received information of a non-bailable offence and he is aware that his agent has omitted to make a report, it is his duty to report and omission on his part is punishable under S. 176. 7 N. L. R. 101.
9. A Sarbrah Zaildar omitting to give information is not guilty. 19 P. R. 1886 Cr.
10. S. 176 does not apply when the public servant has already got the information from other sources. 4 C. 623, 7 M 436, 58 P. R. 1889, Cr., 1933 L. 515.
3. **Legally bound to give information.** S. 43, I. P. C.
 1. A Karnam is legally bound to furnish true information regarding cultivation in his village. (1894) 1 Weir 111. See (1897) 1 Weir 105.
 2. A Zaildar or Sarbrah Zaildar omitting to report a heinous offence is not guilty, as they are not legally bound under S. 43, I. P. C. 25 P. R. 1894 Cr., 19 P. R. 1886 Cr.
 3. Servants of the master are not legally bound to report. 17 P. W. R. 1911 Cr.
 4. An owner of a house is not legally bound to report an offence. 30 Bom. L. R. 1570.

4. **Procedure.**

A conviction under S. 189, I. P. C., cannot be altered into one under S. 176. 3 L. 440.

5. **Who can make complaint.**

A complaint under S. 176 for failure to comply with the provisions of S. 8, Explosive Act, by Prosecuting Inspector is not valid under S. 195 Cr. P. C. 1935 N. 241.

OMISSION TO ASSIST PUBLIC SERVANT S. 187 Cr. P. C. See Aid to Police Officer.

OMISSION TO GIVE NOURISHMENT TO CHILD. See Starvation.

ONUS PRO BANDI. See Burden of proof.

OPEN COURT. See Court to be open.

Judges should be moved in open Court. 16 B. 580.

OPINION. Ss. 45 to 51, Evidence Act.

1. **As regards general repute.** See Security for good behaviour from habitual offenders—11.

If a complainant has a notoriously bad reputation as a bribe taker, the imputation as to his having taken bribe on a particular occasion even if false, is not sufficient to convict accused for defamation, as complainant had no reputation to lose. 4 L. 55=1923 L. 225=73 I. C. 805.

2. **As to age.** See Age.

3. **As to handwriting.** See Expert—9.

4. **As to finger impression.** See Expert—6.

5. **As to relationship (Marriage, etc.) as expressed by conduct.** S. 50, Evidence Act. See Marriage.

1. According to English Law general reputation is admissible to establish the fact of marriage but S. 50 is limited to opinion as expressed by conduct. 1926 M. 475=91 I. C. 462.

2. Long cohabitation and conduct inconsistent with any other relationship would give rise to a strong presumption of the existence of marriage. 1925 R. 90=96 I. C. 762, 10 L. 725.

3. Opinion as expressed by conduct is not sufficient to prove marriage. 1927 O. 140=100 I. C. 535=28 Cr. L. J. 311.

4. Mere hearsay evidence about relationship of parties is not admissible. 1928 L. 624=109 I. C. 774, 32 C. 84, 39 C. 492, 26 I. C. 110, 26 A. 581.

5. A person establishing his legitimacy or otherwise can prove the statement of the deceased father as expressed by conduct. 27 M. 32.

Opinion—(contd.)

6. On a question of legitimacy, the opinion of relations and members of family is entitled to weight. 38 A. 627.
6. Evidence of— See Security of good behaviour S. 110, Cr. P. C.
 1. The opinion and impression of a witness that the assembly appeared to be unlawful is inadmissible. 1928 P. 98=105 I. C. 234.
 2. If the hypothetical opinion of a doctor is conflicting with the evidence of eye witnesses, the latter should prevail. 1924 B. 157=83 I. C. 616.
7. Expression of—by Jury and Judge. See Jury.
8. Expression of—by Magistrate in a connected or counter case. See Transfer (Grounds of)—36.
9. Expression of—by Magistrate on a case. See Transfer—37.
10. Of Assessor. See Assessor—5.

Giving the opinion as "the same" after the first assessor has given his opinion, is not enough. 1929 L. 37=30 Cr. L. J. 378.
11. Of dead person.
 1. Opinion of dead persons cannot be proved except under S. 32, Evidence Act. 1925 C. 116=52 I. C. 886, 23 A. 37
 2. A person claiming as an illegitimate son can rely upon the statement of deceased persons under S. 32 upon opinion expressed by conduct. 27 M. 32
12. Of expert. See Expert—4 and 5.
13. Of expert who is not called as witness (Scientific treatises). S. 60, Evidence Act
 1. The scientific treatises like Taylor's Medical Jurisprudence, which are commonly offered for sale can be referred to without calling the author, under circumstances specified in S. 32. 10 C. 140, 12 C. L. R. 86.
 2. Production of scientific treatises is sufficient. 9 W. R. 23 Cr.
 3. Technical works cannot be used to refute an expert witness's opinion unless the passages to be used are put in cross-examination to witness to explain them. 28 C. L. J. 32=19 Cr. L. J. 753=46 I. C. 593=22 C. W. N. 745.
 4. The report of an expert by itself is no evidence. Expert should be produced in Court and his evidence tested by cross-examination. 1935 A. 142
14. Of Investigating officer.

Opinion of investigating officer whether hole in a house was made from inside or outside is not legal evidence. 1935 A. 981.
15. Of Jury. See Jury—22.
16. Of Magistrate.
 1. Private opinion of Magistrate is inadmissible in judgment. 8 P. W. R. 1909 Cr.
 2. The opinion of a Judge on a document written or attested by accused in a proceeding to which he was not party, is not admissible to prove his intention in his trial for perjury in respect of another alleged forged document. 18 Cr. L. J. 539=38 I. C. 723.
17. Of medical witness See Witness—68.
 1. The opinion of medical witness must not depend on which party calls him as witness. 1925 C. 768=87 I. C. 534=41 C. L. J. 300.
 2. The expert medical opinion of surgeons who conducted *Post-mortem* examination is relevant. 26 P. W. R. 1911 Cr
 3. Hypothetical opinion of a doctor should not prevail against the evidence of eye witnesses. 1924 B. 457=83 I. C. 616=16 Bom. L. R. 622.
 4. In the absence of sworn testimony, a doctor's letter containing opinion is inadmissible in evidence. 1936 A. 363=37 Cr. L. J. 424.
18. Of members of a Municipal Committee.

Opinion expressed by members of Municipal Committee by its resolution is not

Omission to give Information to Public Servant—(concl'd.)

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Opinion expressed by members of Municipal Committee by its resolution is not

Opinion—(concl'd.)

admissible in evidence, when the members are not examined. 1931 A. 499=
134 I. C. 21.

19. Of non-expert.

Evidence of a person who is not expert in art of handwriting can be ruled out as inadmissible. 1930 L. 336=31 P. L. R. 109.

20. Of Panchayat. See Panchayat.

The opinion of *Panchayat* as to the guilt of accused, when he declined to prove his innocence is not relevant fact. 13 P. R. 1914 Cr.

21. Of Predecessor of a Magistrate.

A Court is not bound by the opinion of its predecessor about the evidence in a connected case. It should weigh the evidence before it and form its own opinion. 8 L. 263.

22. On Foreign Law. S. 46, Evidence Act.

1. Expert opinion on foreign law need not be called for, when it is elaborately laid down in a Code. The Court should interpret it itself. 1930 M. 146=123 I. C. 600.
2. Foreign law is a question of fact and the opinion of experts in foreign law is admissible. 47 A. 823.

23. On Law.

It is the duty of the Courts themselves to interpret the law of the land and not to depend on the opinion of witnesses however learned they may be. 47 A. 823.

24. Regarding breach of peace.

Opinion of Police Officer as to likelihood of the breach of peace is not relevant. 7 B. 42, 22 P. R. 1887 Cr.

25 Regarding palm impressions.

Opinion of expert as to identity of palm impression is admissible. 52 B. 223.

OPIUM—POISONING BY—. See Poison—13.**OPIUM ACT (I OF 1878.)****General.**

Private complaint under the Opium Act cannot be allowed. 52 M. 613,
1923 M. 339,

S. 3.

1. Morphia is an alkaloid prepared from the poppy and is an intoxicating drug and comes within the definition of S. 3. 3 L. 230=1923 L. 216=68 I. C. 612 *Contra* 99 I. C. 40=28 Cr. L. J. 8=1927 A. 146.
2. The notification empowering all second class Magistrates to try offence is *ultra vires* of the powers given by the Act. 28 I. C. 156=16 Cr. L. J. 268.

S. 4.

1. Selling more than two tolas of opium to one person is breach of rule 48 and punishable under S. 9. 33 P. L. R. 1919 Cr.=54 I. C. 884.
2. A licensee cannot have a partner without the sanction of the Collector. 10 I. C. 126

S. 5.

1. Master is liable for the acts of his servants though not committed with his knowledge and permission. 34 A. 379.
2. It the licensee omits to keep daily accounts of sales under rule 49 (3) (f) framed by the Punjab Government he is liable under S. 9 of the Act. 9 P. R. 1919 Cr. 1925 O. 350=89 I. C. 250=26 Cr. L. J. 1306.
3. Under the amended rules 38 (2) the amount of "Chandu" which two or more persons may without license at one time possess collectively is limited to one tola. 15 P. R. 1918 Cr.
4. Rule 4 (ii) (a) is a rule of evidence as to the fact of possession and as such is *ultra*

Opium Act—(contd.)

rules of the section and the conviction based on the rule is, therefore, illegal. 27 I. C. 300=16 Cr. L. J. 135.

S. 9.

1. The possession of opium to be punishable must be possession with one's knowledge and assent. 13 Cr. L. J. 1922, 7 R. 11=117 I. C. 248=1929 R. 121.
2. A person possessing a black substance with traces of opium hardly more than one per cent. is not guilty. 35 I. C. 972=17 Cr. L. J. 412.
3. Mere temporary custody does no amount to possession within the meaning of S. 9 (c). 117 I. C. 212=30 Cr. L. J. 727.
4. When opium was found in petitioner's kitchen where several persons had equal right of access, the petitioner is not guilty. 1922 P. 387=23 Cr. L. J. 264.
5. The mere fact that the passenger by boat has contraband opium does not place liability on the boat man to give any satisfactory account of the opium. 59 I. C. 133=22 Cr. L. J. 21.
6. Two persons were found in possession of 9 mashas of "Chandu." The amount allowed by law to each person being 6 mashas neither of them is guilty. 1930 L. 342=121 I. C. 292=31 Cr. L. J. 240, 34 P. R. 1905 Cr., 31 P. R. 1902 Cr. 10 P. R. 1901 Cr., 13 P. R. 1897 Dist.
7. Two brothers were the joint owners of the shop from which illicit opium was recovered. The elder brother was licensee of opium previously. Held, that presumption might safely be made that the possession of the opium was that of the elder brother. 6 L. 311.
8. If opium is found in a boat, the owner of the boat and not the crew are said to be in possession of it. 37 C. 24.
9. Possession of railway receipt for contraband opium amounts to possession of the opium. 36 C. 1016, 45 C. 820
10. The fact that the accused gives opium to his father and children to eat is of itself sufficient to show that he alone was not in possession of the quantity discovered in his almshouse. His confession to Excise Inspector is admissible. 3 P. R. 1918 Cr.
11. Where the post office suspecting a parcel to contain opium marks it "doubtful" and sends it on to the place of despatch, S. 9 (c) has no application, as the parcel ceased to be in the post office on "accused's" account before it left India for Burma. 2 P. R. 1911 Cr.=108 P. L. R. 1911
12. The possession of opium on behalf of master who is not entitled to possess it is not a plea against S. 9. 35 I. C. 816
13. When consignee of a railway receipt knows that a parcel containing opium has been sent to him, the possession of the railway receipt constitutes possession of the opium, it amounts to importing opium under clause (c). 46 C. 820
14. The owner of the house where locked-up box of opium has been left by another, is in illegal possession of the opium. 12 Cr. L. J. 184=91 I. C. 1019.
15. Where opium was found in accused's house during his absence, he is not in possession of it in the sense required by law. 15 Cr. L. J. 426=24 I. C. 255.
16. An authorised agent at a retail vend licensee is not authorised to keep opium beyond the limits of his license. 66 I. C. 993. See 41 P. R. 1917 Cr.
17. The word "admixture" refers only to a completed article and can only be applied after the mixing had been finished and not earlier. 4 L. 12.
18. Mistakes in the registers kept by an authorised agent is not punishable under the rules. 1921 L. 169=66 I. C. 993.
19. Accused was convicted for having possessed opium in excess of quantity shown in the stock register and hidden in the premises, cakes of opium supplied by the treasury were proved to be often of over-weight. Excess cannot be assumed to be due to selling under weight. The conviction was set aside. 1923 C. 324=112 I. C. 901=30 Cr. L. J. 37.

Opium Act—(contd.)

20. Mere preparation of sugar mixed opium pill is no offence though prepared with intent to sell. 1924 L. 529=81 I. C. 154=25 Cr. L. J. 666.
21. Where a person under a pretended name consigns from a native state bags of maize containing a considerable quantity of opium which was detected at Cawnpore, the offence under S. 9 is complete. 46 A. 146.
22. It is incumbent on the prosecution to prove affirmatively that the possession by the servant was on his master's behalf and with his authority in order to render the latter liable for conviction. 15 P. R. 1916 Cr.
23. The sale of morphia by a medical practitioner is punishable under S. 9. 55 I. C. 657=21 Cr. L. J. 497.
24. Mere illegality in the exercise of the right to search under the Opium Act is not a sufficient ground for setting aside a conviction. 35 A. 358, 31 C. 557, 26 M. 12= Foll., 53 I. C. 153 Dist.
25. A wife cannot be held to be in joint possession with her husband of anything found in the house. 133 I. C. 1=1931 M. 490 (2), 15 A. 129, 10 C. 898.
26. If opium is recovered from a box in a room, the master of the house is liable. Prosecution need not prove as to who put it there. 133 I. C. 1=32 Cr. L. J. 907=1931 M. 490 (2)
27. The mere possession of the paraphernalia of opium smoking material is no offence. 130 I. C. 367.
28. Accused, a Native of Assam, went to Cooh Behar and posted a parcel of opium ostensibly to a friend of his in Assam but in effect to himself, he was guilty of importing. 1932 C. 455=136 I. C. 137=33 Cr. L. J. 267.

S. 11.

1. An order under S. 11, confiscating a boat in which opium had been found without giving the owner an opportunity to be heard is bad. 15 C. W. N. 296=12 Cr. L. J. 103, 1925 C. 1021=91 I. C. 703.
2. A person is not liable because his servant uses his private carriage for his stock of opium. The carriage is not liable to confiscation. 15 C. W. N. 296=9 I. C. 587.
3. An order of confiscation of conveyance under S. 11 should not be passed without giving an opportunity to the owner to prove that he did not know and had no reason to believe that opium was transported in the conveyance. 1921 P. 232=69 I. C. 635.

S. 12.

A Magistrate who has power to order confiscation has also the power to give the owner an option to pay in lieu of confiscation such a fine as the officer thinks fit even exceeding his jurisdiction under Cr. P. C. 1921 P. 232=69 I. C. 635.

S. 13.

Reward out of fine levied under S. 13, Opium Act, is *ultra vires*. 13 P. R. 1894 Cr.

S. 14.

The provisions of S. 103, Cr. P. C., are applicable to searches made under S. 14 but not searches in an open place under S. 15. 1927 R. 170=100 I. C. 980, 1930 R. 49=7 R. 771=121 I. C. 715.

S. 15.

Opium which has been carried from place to place is in "transit" even when the boat is temporarily anchored or fastened. 10 Cr. L. J. 85.

S. 19.

1. An officer entering a boat temporarily anchored between sunset and sunrise for search must have a warrant from another officer, authorised under S. 19. If an officer has lawfully entered a boat, sees opium in it, he may seize it if he has reason to believe that it is liable to confiscation. 10 Cr. L. J. 85.
2. The onus of proving knowledge is upon prosecution and relying solely upon the bare

Opium Act—(concl'd.)

fact that the opium was found in the accused's cabin without proof of any additional facts to establish any connection between him and the opium is not sufficient to discharge that *onus*. 1930 C. 668=129 I. C. 184=32 Cr. L. J. 245.

OPTION OF PUBERTY. See Bigamy—18.

ORDER OF PRODUCTION OF WITNESSES. See Witness—77. Examination of witness—18.

ORDERING PROSECUTION. See Directing prosecution.

ORDINANCE—REPEAL OF. See Interpretation of statute.

ORNAMENTS.

1. Containing alloy—. See Cheating—31.

2. Identification of—. See Identification of things—6.

3. Meeting of—. See Assisting in concealment of stolen property—6.

OSTENSIBLE MEANS OF SUBSISTENCE. See S 109, Cr. P. C.

OVERHEARING CONFESSION. See Confession to Police Officer.

OWNER. See Joint Owner.

1. Theft by—of his own property. See Theft—9.

2. Trespass by—. See Criminal Trespass—9.

P.

PADDING EVIDENCE. See Duty of Prosecution—4.

PAINTING. See Obscene books and painting

PANCHAYAT.

1. Confession to—. See Confession by inducement—10-B.

2. Ex-communication from—. See Defamation—16—20.

3. Opinion of—. See Opinion—19.

PARDA NASHIN LADY See Commission—1, Exemption from appearance, complainant—7

PARDON. Ss. 337 to 339-A., Cr. P. C.

1. As bar to trial of approver. S 339-A, Cr. P. C.

1. If the pardon is forfeited and approver is put upon his trial, it should be made clear to him that he can plead the pardon as bar to his trial. 5 L. 379, 30 Cr. L. J. 559.

2. It is the duty of Sessions Judge to ask the approver whether he relies on the pardon granted to him. It is not sufficient, that Committing Magistrate has found that pardon has been forfeited. 16 Cr. L. J. 234, 39 A. 305, 1929 O. 256.

3. Approver is entitled to plead pardon as bar to his trial. 30 B. 611, 37 A. 331, 1 L. 218, 68 I. C. 835, 1933 L. 910

4. Approver may plead pardon as bar to trial [before the Committing Magistrate or Sessions Judge. 42 C. 856, 37 A. 331.

2. The *onus* is on the prosecution to prove that approver has forfeited pardon. 42 C. 856, 42 C. 756, 25 B 675, 30 B. 611, 32 M. 173, 39 A. 305, 1935 L. 799.

6. If the approver rejects the pardon after some time and wants to be tried, the so-called pardon is no bar to his trial along with others. 45 M. L. J. 613.

2 Effect of —Effect on other cases.

1. If pardon is given to one accused, the co-accused must be committed. 116 I. C. 193, =1929 O. 190, 86 I C. 477, 1935 B. 70, 1932 A. 581, 1925 R 207, 1925 O. 472, 1925 N. 119, 1925 L. 378, 1933 Pesh. 3. But if the pardon is given by Local Government, he should not be committed. 16 L. 594.

2. Where an approver in a dacoity case was given pardon and after his release he was prosecuted under the Arms Act. Held, that his prosecution is improper as the possession of arms cannot be separated from his guilt as dacoit and he fulfilled the conditions of his pardon. 1921 A. 234=22 Cr. L. J. 699, 11 A. 79.

Pardon—(contd.)

3. If the offence pardoned and those further disclosed by the approver are obviously linked together, he cannot be prosecuted for those offences. 1925 P. 279.
 4. When pardon is given to an accused, the Magistrate with powers under S. 30, Cr. P. C., cannot try the case himself. He must commit the accused to Sessions. 1925 N. 119, 82 I. C. 573 = 35 Cr. L. J. 1341.
 5. Even if the pardon is invalid, it would not prevent approver being examined in the Sessions Court as a witness, if he is not committed for trial along with the accused. 1926 A. 590 = 97 I. C. 367 = 27 Cr. L. J. 1103.
 6. A pardon tendered to a person in respect of one offence, is no bar to his trial and conviction for an entirely different offence. 1924 A. 230 = 46 A. 236.
 7. S. 337 (2-A.) does not mean that approver must be committed for trial to the Court of Session. 1932 A. 581 = 139 I. C. 408.
 8. When a pardon is accepted accused person ceases to be such and is to be treated as a witness thereafter. It is not necessary that prosecution should be withdrawn in such cases. 16 L. 594.
 9. Where a pardon is given in respect of an offence not specified in the section and he is examined as witness, such evidence is inadmissible, because he continued to be accused and no oath could be administered to him. 2 A. 260, nor could he be prosecuted for perjury. 10 B. 190.
 10. Where accused expresses complete ignorance and states that he is indifferent whether pardon is granted or not, he cannot be said to have accepted pardon. 1924 A. 564.
- 2-A. Examination of Approver.** S. 337 (2). Cr. P. C.
1. Prosecution is bound to examine approver as witness even where he shows an intention of retracting his former statement. 1931 L. 102 = 32 Cr. L. J. 1126.
 2. His non-examination vitiates trial. 11 L. 230 = 1930 L. 95.
 3. If pardon is already forfeited, he need not be examined for the purpose of introducing his former retracted confession as evidence. 61 C. 399 = 1934 C. 636. Such a statement is inadmissible under S. 288. 1891 A. W. N. 184.
- 3. Forfeiture of—** S. 339, Cr. P. C. *See Certificate—5.*
1. When a pardon is tendered and the approver introduced material discrepancies in his evidence with the intention of benefiting the accused, the pardon is forfeited. 91 I. C. 253 = 27 Cr. L. J. 77.
 2. The approver will be said to have broken the conditions of the pardon, if he wilfully conceals anything essential or gives false evidence. 30 B. 611, 32 M. 173. 24 P. R. 1918, 42 C. 856, 27 Cr. L. J. 77, 1930 M. W. N. 773, 34 P. R. 1902, 42 C. 756.
 3. If the approver makes a statement entirely inconsistent with one, upon the strength of which he was granted pardon, he has forfeited it. 9 L. 608, 11 N. L. R. 59.
 4. If an approver made damaging admissions in cross examination but did not actually resile from his previous statement and in re-examination once more returned towards his previous statement, his pardon should not be forfeited. 95 I. C. 288 = 27 Cr. L. J. 768.
 5. Prosecution must establish breach of conditions of pardon by wilful concealment of material facts or false evidence. 24—34 P. R. 1902 Cr.
 6. Statement as an approver is admissible against himself after forfeiture of pardon. 41 P. R. 1905 Cr.
 7. If the statement of approver is substantially true, the acquittal of accused should not be made the basis of forfeiture of pardon. 59 P. R. 1905 Cr.
 8. If after accepting the tender of pardon, the approver refuses to make any statement, saying that he knows nothing, his pardon will be revoked. 29 A. 24.
 9. If an approver gives false evidence under S. 512, Cr. P. C., when the principal offender has absconded, he may be proceeded against. 46 B. 120.

Pardon—(contd.)

10. If the approver absconds before the conclusion of cross-examination, his pardon is not forfeited. 17 Cr. L. J. 391.
 11. Strictest faith should be kept with the approver and his mere failure to secure the conviction of his accomplice does not justify withdrawal of pardon. 15 P. R. 1895 Cr., 59 P. R. 1905, 3 Bom. L. R. 489.
 12. Any trifling discrepancies elicited in cross-examination do not justify forfeiture. 34 P. R. 1902 Cr., 30 B. 611, 27 Cr. L. J. 768=95 I. C. 288.
 13. Approver will forfeit his pardon if he screens one of the offenders, although he secures the conviction of the other offenders. 24 P. R. 1918 Cr.
 14. Small inconsistency from the previous statement is no ground for forfeiting pardon. 12 C. L. R. 224, 1935 L. 799=37 Cr. L. J. 79.
 15. No formal declaration that pardon has been forfeited is necessary. 42 C. 856, 42 C. 756, 39 A. 305, 32 M. 173, 24 P. R. 1918 Cr., 30 B. 511.
 16. Where the approver resiled from his statement before the Sessions Judge, who ordered his commitment. Held, that the order is not illegal. 1 L. 218, 31 P. R. 1904 Cr.
 17. The question as to whether the approver has forfeited pardon should be left to jury. If the Judge decides the question himself and convicts the accused, the conviction is illegal. 33 M. 514.
 18. It is the duty of the trying Court to decide first of all, whether the approver has forfeited his pardon, before the original offence can be tried. 30 B. 611, 32 M. 173, 42 C. 856, 34 P. R. 1902 Cr.
 19. Accused cannot be properly tried and convicted of murder until the Court trying him has recorded a finding that he had forfeited the pardon owing to his non-compliance with its conditions. 5 L. 379, 1929 O. 255=116 I. C. 64.
 20. Mere fact that there are two contradictory statements, prosecution for perjury is not warranted in every case. 1934 A. 43=56 A. 288.
 21. If the confession and incriminating statements are not true, prosecution for perjury is undesirable. 56 A. 288=1934 A. 43.
 22. If the confession and incriminating statements are true but the accused resiles from it and his subsequent statement is false, prosecution for perjury should be ordered. 56 A. 288.
 23. Prosecution is not bound to examine approver who has forfeited pardon. 1934 C. 636=61 C. 399.
- 4. Illegal—**
1. It is illegal for a Magistrate to convert an accused into a witness except when a pardon is lawfully granted to him. 1 B. 610.
 2. Where a Magistrate tenders pardon to one of the accused persons in a case not exclusively triable by the Court of Sessions and examines him as a witness, the statement so made is inadmissible in evidence, even as confession of co-accused. 25 M. 61.
 3. Even if the pardon is invalid, it would not prevent the approver being examined as a witness in the Sessions Court. 1926 A. 590=97 I. C. 367.
- 5. Implied—**
- A person appeared as prosecution witness in one case. On enquiry into the case, he was implicated as accused in another case. Held, that there was no implied pardon when he gave his evidence. 1935 P. 91=154 I. C. 387=36 Cr. L. J. 500, 35 I. C. 983=17 Cr. L. J. 428 Dist. 45 C. 720 Ref.
- 6. Non-acceptance of—**
1. Where the accused expressed complete ignorance and stated that he was indifferent whether a pardon was granted or not. Held, that he did not accept the tender of pardon. 1924 A. 564=84 I. C. 560=25 Cr. L. J. 336.
 2. Where the accused rejects the pardon and refuses to give evidence as an approver

Pardon—(contd.)

before he is put into the witness box, his action does not amount to forfeiture of pardon. He can be jointly tried with other accused. 1924 M. 391=76 I. C. 642.

3. If the pardon though accepted for a time was rejected by the accused himself and not forfeited, the so-called pardon was no bar to the trial of the accused along with others. 45 M. L. J. 613.

7. Power of Local Government to tender—.

1. The Local Government has no power to offer conditional pardon to an accused for the purpose of giving evidence against other accused. 33 C. 1353, 4 Cr. L. J. 44.
2. Local Government can refrain from prosecution independently of this section. 45 A. 226, 21 A. L. J. 42.
3. Outside S. 337, Cr. P. C., the Legislature has not provided any method by which a Local Government can provide an accomplice with a judicial order which he can plead as bar to his prosecution. 45 A. 226.

8. Procedure.

1. Failure to comply with provision of S. 337 (2), is an illegality vitiating trial. 1930 L. 95=11 L. 230=120 I. C. 489=31 Cr. L. J. 111.
2. There is no authority for preliminary examination on oath after the extension of pardon to the approver. 3 R. 224.
3. When a Magistrate is asked to tender a pardon, and he does so, there is an inquiry within the meaning of S. 377. 3 L. 431.
4. A previous statement made by accused, who was subsequently pardoned is admissible in evidence against him. 46 A. 236, 11 A. 79 Dist.
5. Although accused was tendered pardon, he was treated as accused in the Sessions trial and his plea was taken. He pleaded guilty. When the fact of pardon was brought to the notice of the Sessions Judge, he was removed from the Dock and was examined as witness. Held, that his evidence was admissible. 54 C. 539.
6. Approver should not be tried jointly with the other accused. 1935 O. 226=35 Cr. L. J. 889.
7. Joint committal of approver along with other accused is illegal. 1931 O. 113=32 Cr. L. J. 91.

9. Recording Reason for tendering—.

1. Omission to record reasons for tendering pardon is neither illegal nor irregular. 1924 L. 90=76 I. C. 398=25 Cr. L. J. 174, 13 Cr. L. J. 588.
2. Omission to record reason is a defect curable under S. 537. In order to vitiate trial, it must be shown that the omission has occasioned a failure of justice. 1929 A. 321=120 I. C. 126=30 Cr. L. J. 1157, 8 Cr. L. J. 445, 113 P. R. 1866.
3. When the facts which led up to the tender of pardon appear on the record, the omission to state the reasons is not an illegality which vitiates proceedings. 36 C. 629, 5 L. L. J. 408, 5 Cr. L. J. 142 (144).
4. Omission to record reasons is no ground for excluding the evidence of an approver. 5 C. L. J. 224.

10. Time for—.

1. Pardon may be tendered even after the charge is framed. 60 I. C. 607=22 Cr. L. J. 225. See 1884 A. W. N. 147.
2. Tender of pardon can be made only during an enquiry into an offence under the Code. 46 B. 61, or during investigation. 1932 S. 40=33 Cr. L. J. 906.
3. S. 337 does not require that a trial or an enquiry should be in progress when the pardon is tendered. When the case is postponed under S. 526 (8), the Magistrate does not become *functus officio* in the matter of tendering pardon. 49 A. 181.
4. When a pardon has been tendered not during an enquiry under the Cr. P. C. and the approver makes a statement under such pardon, he cannot be prosecuted for perjury on the basis of that statement. 46 B. 61.

Pardon—(contd.)

- 5 A pardon can be tendered to an accused, when the principal offender is absconding. His statement will be taken under S. 512, Cr. P. C. 46 B. 120.

11. To whom pardon can be tendered. See Spy—accomplice.

1. A pardon can be tendered to any person who is supposed to be directly or indirectly concerned in the offence. It can be tendered to a person who pleaded guilty but was not convicted. 7 A. 160, (1895), Rat. 750.
2. Pardon cannot be tendered to a person whose complicity in the crime is not admitted by himself. 24 Cr. L. J. 799.
3. It is not necessary that a person to whom pardon is tendered should himself be charged with an offence exclusively triable by the Court of Sessions. It is not necessary that he should be accused in the case. 24 Cr. L. J. 566=6 N. L. R. 144.
4. Where a Magistrate tenders a pardon to one of accused in a case not exclusively triable by Court of Sessions and examines him as a witness, the statement is inadmissible even as confession of co-accused. 2 A. 60, 10 B. 190. See 25 M. 61.
5. The real culprit should not be left out in the hope of obtaining evidence against the other accused. 1921 P. 499=2 P. L. T. 125.
6. It is not necessary that he should know what crime is being committed in all its details. 1920 C. 980=21 Cr. L. J. 802.
7. If he is in a position to give true account of what has happened he should be given pardon. 1923 N. 248, 1933 R. 199, 1924 O. 188.

12. Trial of accused after forfeiture of Pardon. See Certificate.

- If the pardon, is withdrawn the accused should not be tried jointly with others. 1935 O. 226=148 I. C. 1192=35 Cr. L. J. 889. 1931 O. 113=32 Cr. L. J. 91 Rel. on. 1935 B. 70=154 I. C. 327.

13. When justified.

1. No pardon is permissible under the law to be given in respect of an offence which is not triable exclusively by a Sessions Court. 1921 P. 499=2 P. L. T. 125.
2. If along with an offence exclusively triable by the Sessions Court some other offences are charged which are not so triable, the pardon is not invalidated. The approver is an approver as regards all the accused. 1925 N. 409=87 I. C. 965.
3. When an accused while in jail made a statement to the Sub-Divisional Officer that he was influenced and assaulted by Police to make his confession, pardon should not be given to him under S. 337, Cr. P. C. 1921 P. 499=2 P. L. T. 125.
4. The pardon can be given even when the principal offender is absconding. 46 B. 120.
5. The real culprit should not be left out in the hope of obtaining evidence against the other accused. 1921 P. 499
6. Pardon can be given when there is a *bona fide* inquiry into what is believed to be an offence exclusively triable by the Court of Sessions, although it subsequently turns out to be a minor offence. 63 I. C. 612=27 Cr. L. J. 676.

14. Withdrawal of—

1. Under the Code no formal withdrawal of a pardon and no formal declaration that the pardon has been forfeited are necessary. 42 C. 856, 42 C. 756, 30 B. 611, 39 A. 305, 32 M. 173, 24 P. R. 1918 Cr
2. The substitution of the word "forfeited" for "withdrawn" indicates that a pardon cannot be withdrawn but can only be forfeited on the ground of the breach of condition. 25 B. 675.
3. It is necessary that pardon granted by the District Magistrate must be withdrawn by the Magistrate before the approver could be committed to Sessions. The Sessions Court can order commitment, if the approver resiles from his previous statement. 13 P. R. 1904 Cr., 1 L. 218.
4. When after the tender of pardon the accused retracts his confession, the confession is unreliable. 1935 O. 226=148 I. C. 1192=35 Cr. L. J. 889.

*Pardon—(concl'd.)***15. Who can tender—.** *See* 337—529, Cr. P. C.

1. After the commitment of case to the Sessions either the Court of Sessions can itself tender pardon or it can direct the Committing Magistrate or District Magistrate to tender it. 33 C. 1353, 10 C. W. N. 847.
2. Sessions Judge cannot direct Police to tender pardon. 6 W. R. (Cr.) 5.
3. Where the offence is under investigation, the Magistrate, other than District Magistrate, tendering pardon must have jurisdiction over the offence. 20 A. 40.
4. Local Government has no power to offer a conditional pardon to an accused for the purpose of giving evidence against other accused. 10 C. W. N. 847, 33 C. 1353. Though it can refrain from prosecuting any person. 1925 N. 313.
5. A Magistrate of one District cannot tender pardon to a person implicated in an offence committed in another District and inquired into in the latter District. The pardon is illegal and cannot be validated under S. 529, Cr. P. C. 20 A. 40.
6. A District Magistrate is not precluded from trying the case of an approver to whom pardon was tendered with his sanction. It is only the Magistrate tendering pardon who is debarred under S. 337 (4), Cr. P. C. 30 P. R. 1919 Cr.
7. A Special Magistrate can tender pardon. 1935 C. 281.
8. Additional District Magistrate cannot tender pardon in a pending case. 16 L. 594.
9. Mere written sanction of District Magistrate is not sufficient to invalidate a pardon. 8 Cr. L. J. 445.
10. A Magistrate having no jurisdiction over the offence cannot tender pardon. 20 A. 40.
11. Local Government cannot tender pardon. 33 C. 1353, 4 Cr. L. J. 44.

PARTISANS AS WITNESSES. *See* Witness—81.**PARTNER.**

1. Breach of trust by—. *See* Breach of trust—19.
2. Concealing property by—. *See* Concealing property—2.
3. Falsification of account by—. *See* Falsification of account—3.

PARTY FIGHT. *See* Grievous hurt—12.**PARTY WALL.**

Accused gave notice to the complainant who was his neighbour prohibiting him from raising wall. He raised the height and accused pulled it down in his absence. He was held not guilty. 26 Bom. L. R. 978=1924 B. 486=84 I. C. 254.

PAST GOOD CHARACTER. *See* Good character.

Past good character does not lead to the presumption of innocence. 1928 L. 647=110 I. C. 676.

PATWARI (VILLAGE ACCOUNTANT).**1. If Public Servant.**

A Patwari is a public servant. 68 I. C. 157.

2. Inspection of record.

Where a Patwari refused to allow a Qanungo to go through his books and to check them, it was held that it was an act of insubordination and not a criminal act. 26 Cr. L. J. 597.

3. Making incorrect record by—.

1. A Patwari making an incorrect copy of an entry in his Roznamcha for a plaintiff in a suit is guilty under S. 167, I. P. C. 32 P. R. 1872 Cr.
2. A Patwari, in order to save the trouble of taking down the evidence, was directed by a Revenue Court to prepare a written statement according to his papers and file it and where he made such a statement on oath, he was held not guilty under S. 218 but under S. 193, I. P. C. 1929 A. 374=30 Cr. L. J. 874.

Patwari (Village Accountant)—(concl'd.)

4 Taking bribe.

A Patwari taking grain as consideration for showing favour to the giver, is guilty under S. 161. 2 N. W. P. H. C. R. 148.

PERJURY. See False evidence.

PERSON. S. 11, I. P. C.

Person includes Government as representative of people. 1 B. 610.

PERSONATION.

1. As a Judge. S. 170, I. P. C. See Public Servant—37.

2. At an election. See Election—3.

3. At an examination. See Forgery—21.

4. Before a Public Servant. See Cheating by personation—8.

5. Cheating by—. S. 419, I. P. C. See Cheating by personation

6. False—. See False information, False Personation in Court.

PERSONS IN AUTHORITY. See Confession by inducement—10.

PERSONAL KNOWLEDGE OF JUDGE—IMPORTING OF—. See Judicial notice—15.

PHOSPHORUS—POISONING BY— See Poison—14.

PHOTOGRAPH— See Identification—13

1. Where the head is cut off and the rest is swollen, identification by looking at the photograph is not reliable. 9 Mys. L. J. 142.

2. A photograph cannot be relied upon as proof in itself of the dimensions of the depicted object and of the relative proportions of such object except by evidence of personal knowledge. 1931 P. C. 189=131 I. C. 771.

PICKETING. See Criminal intimidation—4. Extortion—6.

1. Peaceful picketing is no offence but if it is accompanied by violence, it becomes criminal. 1931 P. C. 130 I. C. 269=32 Cr. L. J. 478.

2. Where the applicant with a view to prevent sale of foreign cloth, asked a dealer in foreign cloth to execute an agreement to the effect that he would not import any more foreign cloth for one year and pay a fine of Rs. 10 in default and the applicant threatened to picket the shop, the accused is guilty under S. 506, I. P. C. 53 A. 407.

3. A batch of national volunteers picketted the bazaar to stop sale of liquor. Held, that in a small village flooding of volunteers would amount to criminal intimidation. 1924 A. 233.

4. When a Magistrate in his executive capacity had been taking steps to put down picketing of certain shops, he should not try cases arising out of picketing. 1931 L. 30=32 Cr. L. J. 491=130 I. C. 330 (1).

5. An accused, a respectable woman of 60 was sentenced to four months' rigorous imprisonment and a fine of Rs. 100 and in default one month's rigorous imprisonment for picketing a liquor shop. Held, that the sentence was vindictive. 55 B. 220.

6. Accused was arrested for raising objectionable shouts in a crowd collected in connection with picketing of shops. There was no evidence of likelihood of the breach of peace. Held, that mere mental excitement was not sufficient under S. 107, Cr. P. C. 1931 L. 184=131 I. C. 205, 21 P. R. 1888 Cr.

7. Realizing fine by means of or under threat of picketing is extortion. 45 A. 137, 1924 N. 19.

8. Accused was found guilty of picketing. Two separate sentences under Criminal Law Amendment Act and Ordinance are illegal. 1933 M. 337=34 Cr. L. J. 277.

PIECE-MEAL EVIDENCE. See Evidence—33.

PLAYING CARDS. See Public Gambling Act, Diwali gambling.

Playing cards is not an offence under S. 34, Police Act. An assault by persons playing

Playing Cards—(concl'd.)

cards on a Constable who prohibited them, is not an offence under S. 332 but under S. 323, 1. P. C. 27 Cr. L. J. 377=92 I. C. 897=1925 L. 250.

PLEA OF GUILTY. See Admission, Confession.

1. Appeal from conviction on—. S. 412, Cr. P. C. See Appeal—10.

2. Effect of—on the trial.

1. No sooner an accused pleads guilty, he ceases to be accused who is to be tried. Then there is no issue between him and the Crown. The practice of not accepting plea of guilty in order to avail the confession under S. 30, Evidence Act, against co-accused is illegal and is an abuse of the process of Court. 55 C. 1214, 30 A. 540, 12 A. L. J. 1239, 13 C. W. N. 552.

2. If a person pleads guilty, the Judge may either convict him and may be called as witness or put him on his trial. 40 I. C. 742, 58 C. 1214, 1935 C. 580.

3. If the Court accepts the plea of guilty and convicts the accused, his trial is at an end and he may be called as witness against or for any person who has been accused along with him. 23 M. 151.

4. Where in a joint trial of several accused, one of them pleads guilty, his statement cannot be taken against the co-accused, as he ceases to be jointly tried, because his trial ends with his plea. 22 M. 491, 4 C. 483, 22 A. 445, 7 A. 160, 7 M. 102, 15 B. 66, 15 P. R. 1911 Cr., 38 M. 302.

5. Accused cannot be convicted of conspiracy on his plea of guilty if others are acquitted. (1902) 2 K. B. 339.

3. In murder case—. See Murder—67.

4. In Sessions case—S. 271, Cr. P. C.

A. By Pleader.

1. The accused must plead guilty or not guilty by his own mouth and not through his counsel. 15 W. R. 42, 6 Bom. L. R. 861.

2. Admission by a Pleader, especially by a Pleader engaged by the Court for the accused and not by the accused himself, is not binding on him. 2 Bom. L. R. 751.

B. Conviction on—

1. After an accused has claimed to be tried, any confessional statement made by him should be laid before the Jury. Such an admission should not be taken as a plea of guilty upon which a Judge may record a finding, without taking the verdict of Jury. 7 Bom. L. R. 731.

2. It is left entirely to the discretion of the Judge in each case whether in spite of the plea it is or it is not desirable to enter upon the evidence. 115 I. C. 582=1928 C. 775=30 Cr. L. J. 508.

3. Under S. 271 (2) all that is incumbent on the Judge is to record the plea. It is not obligatory on him to convict him thereon. 93 I. C. 241.

4. Sentence passed on plea of guilty is not illegal. 73 I. C. 266.

5. The word 'thereon' shows that the conviction must be upon the plea recorded before the Sessions Judge and not on a confession made before the Committing Magistrate. 2 N. W. P. H. C. R. 479.

6. Some corroborative evidence is necessary to warrant a Court of Sessions in acting upon the confession made before the Committing Magistrate, which is retracted at the trial. 23 B. 316, 1898 A. W. N. 22.

7. If the Judge does not think fit to convict accused on his plea of guilty, he should proceed to try him as if the plea has been one of 'not guilty' and take all evidence. 23 M. 151, 13 W. R. 55.

8. After a plea of guilty, a trial may be continued when it is thought necessary to ascertain the part taken by the accused in order to assess the punishment but it is unfair to defer the conviction of the accused solely for the purpose of using his confession against his co-accused. 30 A. 540, 23 A. 53.

9. Under S. 271 it is open to the Court to accept or reject a plea of guilty. 13 C. W. N. 552.

Plea of Guilty—(contd.)

10. If the prisoner pleads guilty to the offence of murder, he cannot be convicted for culpable homicide only. 3 S. L. R. 58, 2 Weir 335.
11. Independent evidence should be taken by Court notwithstanding accused's plea of guilty. 83 I. C. 881=26 Cr. L. J. 177.
12. In a case where the natural consequence would be a sentence of death, the trial should not end with the plea of guilty and evidence should be taken as if there had been a plea of 'not guilty.' 1928 C. 775=115 I. C. 582, 19 A. 119, 8 Bom. L. R. 240, 19 Bom. L. R. 356.
13. In case of qualified plea of guilty, evidence should be taken. 19 A. 119.

C. Duty of Judge.

- If accused offers a plea of guilty, the Judge should make him understand the responsibility he assumes and proceed to record the plea. 40 I. C. 742=18 Cr. L. J. 742.

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1. If the accused pleads guilty the plea should be recorded, where no such plea appears on the record, the conviction must be set aside. 7 C. 96, 5 A. L. J. 157.
2. It is incumbent on the Magistrate to record the plea of guilty. 93 I. C. 241.
3. If the statement of the accused is in a foreign language, it is not necessary that the plea must be recorded in the words of that language. It should be recorded in the language in which it is conveyed to the Court by the interpreter. 5 C. 826.

E. Refusal to plead—

1. The accused can plead 'guilty' under S. 271 or he can claim to be tried under S. 272 or he can refuse to plead which is taken to be the same as claiming to be tried. 41 C. 1072.
2. If the accused pleads guilty the Magistrate should consider whether the accused understands the charge. 1935 R. 49=12 R. 616=36 Cr. L. J. 336=153 I. C. 390.

F. What is sufficient or not—

1. The accused must distinctly and unequivocally admit the guilt, otherwise it is not sufficient. Where the accused made a long rambling statement more or less admitting the guilt, it would be better if the Judge records a formal plea of "not guilty" and proceeds to try him. 5 A. L. J. 157.
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3. Where the prisoner admitted that he killed his wife but he was not in his right mind at that time, it was not a plea of guilty. 5 N. W. P. H. C. R. 110.
4. Where the prisoner said that he beat his wife but he did not say whether he had any intention of causing such bodily injury as was likely to cause death, it was held, that it was not a plea of guilty. 8 Bom. L. R. 240, 2 Weir 336.
5. An accused person does not plead to a section of criminal statute, but to the facts alleged to disclose an offence under that section. 7 L. 359.
6. If no offence is proved, accused cannot be convicted on plea of guilty. 55 A. 857.

G. In summons case. S. 243, I. P. C.

1. Where an accused pleads guilty and shows no sufficient cause why he should not be convicted, he can be convicted. 27 I. C. 910, 29 Cr. L. J. 893=111 I. C. 573, 46 A. 41, 50 A. 559, 1928 O. 402, 60 C. 351.
2. Independent evidence should be taken notwithstanding accused's plea of guilty. 63 I. C. 881, 1931 B. 195.
3. The admission of the accused should be recorded as nearly as possible in the words used by the accused, because the right of appeal depends upon whether he pleaded guilty or not. 1889 A. W. N. 81, 5 Bom. L. R. 999.
4. The admission of the accused should be recorded at once, and not afterwards from the rough notes nor from the Magistrate's memory. 15 M. 83.

Playing Cards—(concl'd.)

cards on a Constable who prohibited them, is not an offence under S. 332 but under S. 323, I. P. C. 27 Cr. L. J. 377=92 I. C. 889=1926 L. 250.

PLEA OF GUILTY. *See Admission, Confession.*

1. **Appeal from conviction on—** S. 412, Cr. P. C. *See Appeal—10.*

2. **Effect of—on the trial.**

1. No sooner an accused pleads guilty, he ceases to be accused who is to be tried. Then there is no issue between him and the Crown. The practice of not accepting plea of guilty in order to avail the confession under S. 30, Evidence Act, against co-accused is illegal and is an abuse of the process of Court. 58 C. 1214, 30 A. 540, 12 A. L. J. 1239, 13 C. W. N. 552.
2. If a person pleads guilty, the Judge may either convict him and may be called as witness or put him on his trial. 40 I. C. 742, 58 C. 1214, 1935 C. 580.
3. If the Court accepts the plea of guilty and convicts the accused, his trial is at an end and he may be called as witness against or for any person who has been accused along with him. 23 M. 151.
4. Where in a joint trial of several accused, one of them pleads guilty, his statement cannot be taken against the co-accused, as he ceases to be jointly tried, because his trial ends with his plea. 22 M. 491, 4 C. 483, 22 A. 445, 7 A. 160, 7 M. 102, 15 B. 66, 15 P. R. 1911 Cr., 38 M. 302.
5. Accused cannot be convicted of conspiracy on his plea of guilty if others are acquitted. (1902) 2 K. B. 339.

3. **In murder case—** *See Murder—67.*

4. **In Sessions case—**S. 271, Cr. P. C.

A. By Pleader.

1. The accused must plead guilty or not guilty by his own mouth and not through his counsel. 15 W. R. 42, 6 Bom. L. R. 861.
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9. Under S. 271 it is open to the Court to accept or reject a plea of guilty. 13 C. W. N. 552.

Plea of Guilty—(concl'd.)

3. Plea of guilty with qualifications does not amount to plea of guilty to the charge. 1925 L. 153, 1935 C. 681, 1920 C. 522, 19 A. 119, 1928 L. 827, 15 Cr. L. J. 703, 1930 B. 176, 43 B. 842.

4. A plea of self defence is not inconsistent with a plea of not guilty. 1 C. W. N. 545.

8. Withdrawal of—

A plea of guilty can be allowed to be withdrawn, if the accused was at the time of making it enfeebled by illness and was undefended. 222 P. L. R. 1915=44 P. W. R. 1914 Cr.=28 I. C. 145=16 Cr. L. J. 257.

PLEDGEE. See Breach of trust—21, Cheating—7.

PNEUMONIA—DEATH BY— See Culpable homicide—20.

POINTING OUT.**1. Arms—** See Arms Act.

Accused pointed out a rifle and said that rifle had been buried in a certain place. He was not in custody. Held, it cannot be presumed that he concealed it himself. He was held not guilty. 1923 L. 238 (2).

2. Dead body or weapon. See Murder—72.**3. Places by accused to Police.** See Confession to Police Officer—18, Discovery—15.

Accused pointed out window by which they effected their entrance and committed dacoity. The admission can be proved under S. 21, Evidence Act 1932 L. 488.

4. Stolen property. See Discovery—16, Receiving stolen property—12,—5.**POISON.** See Attempt to murder—5.**1. Aconite.**

1. *Fatal dose.*—Of the root sixty grains have proved fatal; but it is probable that this is much in excess of the minimum fatal dose. Of the pharmacopoeial tincture two or three drachms might probably be fatal. *Taylor's Med. Jur.*, 1928, Vol. II, P. 715

2. *Duration.*—Death usually ensues within a few hours, but may be delayed. *Ibid*, P. 716.

3. *Symptoms.*—In from three to five minutes after chewing the root of aconite, or after contact of any of its preparations with the tongue, a hot, burning, astringent sensation is experienced on the tongue, extending to the fauces and to the lips, especially the lower. The sensation soon becomes very severe. The patient feels cold, especially in the extremities and the skin is cold, clammy and perspiring. The patient is restless and there may be twitching of the muscles, and great muscular weakness is complained of. Respiration is slow and laboured, the pulse slow and irregular. *Ibid*, P. 716. *Criminal Investigation by Dr. Hans Gross*, 1934, P. 444.

4. *Test of.*—The only test available is by taste. *Criminal Investigation by Dr. Hans Gross*, 1934, P. 444.

2. Arsenic. See Hurt by Poison—1, Murder—23—35

1. *Fatal dose.*—The fatal dose in an adult may be assigned at from two to three grains. *Taylor's Med. Jur.* 1928, Vol. II, P. 492.

2. *Duration.*—The average time at which death takes place is twenty four hours, but the poison may destroy life within a much shorter period. There are many authentic cases reported in which death has occurred in from three to six hours. *Ibid*, P. 493.

3. *Symptoms.*—In an acute case of arsenical poisoning by the mouth the individual usually first experiences faintness, depression, nausea, and sickness, with an intense burning pain in the region of the stomach, increased by pressure. The pain in the abdomen becomes more and more severe; and there is violent vomiting of brown turbid matter, mixed with mucus and sometimes streaked with blood. These symptoms are followed by purging which is more or less violent. The colour of the vomited matters may be blue or black when coloured arsenic has been taken, or

Plea of Guilty—(contd.)

5. If a warrant case is tried as summons case, the Magistrate cannot convict the accused on his own admission, even if the case is tried summarily. 27 C. W. N. 923.
6. Court has discretion to accept or reject a plea of guilty. If it rejects and takes evidence, it cannot go back again and base conviction on it. 1931 B. 195.
7. Admission of truth of allegations is not admission of offence. 1931 N. 100, 1932 L. 363, 7 L. 359, 1928 L. 827, 1934 N. 65.
8. If the accused's plea of guilty was not recorded in accordance with S. 243 and the accused also denied the plea, the conviction was set aside. 36 C. W. N. 132.
9. If accused admits having travelled without ticket, he does not thereby admit that he did so with fraudulent intention. 1920 A. 203=21 Cr. L. J. 665.
10. If there is no plea of guilty before the Magistrate, he cannot rely upon admission in some other case and at some other time. 29 C. 595.
11. One admission by number of accused is bad. 1932 S. 211.

6. In Warrant case. S. 255, Cr. P. C.**A. By Pleader—**

1. A Pleader cannot be called upon to plead under S. 255, Cr. P. C., on behalf of his client. Accused should say with his own lips whether he denies the truth of the complaint. 6 Bom. L. R. 861, 1 Cr. L. J. 939, 1925 O. 305.
2. If the accused is permitted to appear by a Pleader under S. 205, Cr. P. C., the Pleader can plead guilty or not guilty. 50 B. 250, 14 Cr. L. J. 272.
3. Pleader can admit fact in appeal. 52 B. 686=1928 B. 241.

B. Conviction on—

1. Where an accused does not formally plead guilty, the fact that he throws himself at the mercy of Court should not prejudice him. 12 C. W. N. 140.
2. An admission which does not admit all the elements of a charge is not a plea of 'guilty.' 25 W. R. 23, 15 Cr. L. J. 703, 1930 B. 176, 43 B. 842.
3. If after a charge is framed, the accused pleads guilty, the Magistrate can refuse to convict on the plea and can proceed to take further evidence. 62 I. C. 590=22 Cr. L. J. 574=25 C. W. N. 212.
4. If the accused admits some or all the facts alleged by the prosecution, but pleads not guilty, the proper procedure for the Magistrate is to proceed with the trial. 9 Bom. L. R. 1346.
5. It is highly improper in a warrant case to convict an accused on his own admission alone without recording any evidence for the prosecution and without framing a charge. 29 M. 372, 1933 O. 86=34 Cr. L. J. 124.
6. If accused was not asked to plead, conviction is illegal. 16 Cr. L. J. 538.
7. If accused pleads guilty to one offence, he cannot be convicted for another offence. (1870) 13 W. R. 55.
8. Independent evidence should be taken notwithstanding accused's plea of guilty. 1925 S. 188=26 Cr. L. J. 177=83 I. C. 881.
9. If the accused pleads guilty, Court may take evidence for the purpose of enhanced sentence. 25 C. W. N. 212=62 I. C. 590=22 Cr. L. J. 574.
10. In case of ignorant villager plea of guilty may not be admitted without closest scrutiny. (1897-1901) 1 U. B. R. 72, 47 P. R. 1866, 1935 R. 49.

7. Use of—against co-accused. See Confession by co-accused.**8. What is—. See—4 (F).**

1. Plea of guilty refers not to section of criminal statute but to acts alleged against the accused. 1932 L. 363=33 P. L. R. 278, 7 L. 359.
2. Accused admitted that he found a spanner on a road and attempted to sell it. He was acquitted under S. 403, I. P. C., as spanner was not of appreciable value notwithstanding his plea of guilty. 1930 B. 176=31 Cr. L. J. 926.

Poison—(contd.)

of these daring depredators still exist. It has been pointed out that as *dhatūra* is popularly supposed not to be poisonous to death, the fatal result is due to the overdose necessary to put the robber on the safe side. *Ibid*, P. 413.

8. Foodstuffs.

The food may not be fit for human consumption originally, e.g., certain molluscs, fungi, fish, etc., etc., eaten in ignorance. The food itself may be perfectly wholesome in every way, but it may disagree with its host from (a) unsuitability to circumstances as to age, exercise, illness, etc., (b) idiosyncrasy. The food may contain definite poison owing to the animal having fed on plants poisonous to human beings, (e.g., belladonna) or it may contain definite metallic poisons. It may contain the germs of specific diseases, e.g., typhoid in oysters, scarlet fever or diphtheria in milk. It may contain pathogenic bacteria or their toxins. It may contain simple non-specific chemical products of decomposition (ptomaines). It may contain parasitic worms in some stage of development. It may be injurious to man owing to added preservative. *Taylor's Med. Jur.*, 1928, Vol. II, P. 384.

9. Hydrochloric Acid

1. *Fatal dose.*—Remarks similar to those made on nitric acid may be used for hydrochloric. The smallest quantity of hydrochloric acid which has as yet been known to prove fatal was a teaspoonful in the case of a girl fifteen years of age. *Taylor's Med. Jur.*, 1928, Vol. II, P. 382.
2. *Duration*—These are similar to those of nitric acid. *Ibid*

10. Mercury.

1. *Fatal dose.*—The difference between the amount of calomel and of corrosive sublimate that can be given without a likelihood of any unpleasant symptoms is very extraordinary; three grains of the latter would almost inevitably entail death if not vomited, whereas three grains of the former is but a very ordinary medicinal dose. The smallest doses of corrosive sublimate which have destroyed life are two and three grains respectively. Of nitrate of mercury a drachm has proved fatal, probably more due to the nitric acid than to mercury. Of the cyanide twenty grains have proved fatal. *Taylor's Med. Jur.*, 1928, Vol. II, pp. 442-443.
2. *Duration.*—The symptoms in acute cases come on within a very few minutes. They are rarely, if ever, delayed more than ten minutes, thus contrasting rather markedly with arsenic. In an acute case, a person commonly dies in from one to five days; but death may take place much sooner or later than this. *Ibid*, P. 443.
3. *Symptoms.*—In the acute cases the particular salt swallowed seems to have no particular relation to the symptoms produced. In the first place there is perceived a strong metallic taste in the mouth, often described as a coppery taste; and there is during the act of swallowing a sense of constriction almost amounting to suffocation, with burning in the throat, extending downwards to the stomach. In a few minutes violent pain is felt in the abdomen, especially in the region of the stomach, and increased by pressure. The tongue is white and shrivelled—the skin cold and clammy, the respiration difficult; and death is commonly preceded by fainting, convulsions, or general insensibility. *Ibid*, P. 444.

11. Nicotine.

Symptoms of.—Nicotine is recognised by the well-known odour of tobacco juice. The general symptoms of nicotine poisoning resemble those of *Dhatūra*. *Criminal Investigation by Dr. Hans Gross*, 1934, P. 44.

12. Nitric Acid.

1. *Fatal dose.*—The smallest quantity of this acid which we find reported to have destroyed life is about two drachms. *Taylor's Med. Jur.*, 1928, Vol. II, P. 375.
2. *Duration.*—Death commonly takes place in from eighteen to twenty-four hours, and is sometimes preceded by a kind of stupor, from which the patient is easily roused. *Ibid*, P. 376.
3. *Symptoms.*—There are gaseous eructations from the chemical action of the poison, swelling of the abdomen, violent vomiting of liquid or solid matters, mixed with

Poison—(contd.)

the admixture of bile may render them of a deep green. The pulse is small, frequent, and irregular, sometimes wholly imperceptible. This is almost constant and is probably due to the direct action of the poison on the heart muscle. The skin is cold and clammy in the stage of collapse, at other times it is hot. The respiration is painful from the tender state of the stomach. There is great restlessness, but before death stupor may supervene, with paralysis, tetanic convulsions, or spasms in the muscles of the extremities. *Ibid*, P. 495. See *Criminal Investigation* by Dr. Hans Gross, 1934, P. 442.

4. *Use of.*—Arsenic is largely used as an antidote to fevers of all kinds, as an aphrodisiac in cases of rheumatism, gout, and syphilis, and externally for skin diseases such as itch and eczema. It is also employed for many industrial purposes, as curing skins and gold-working ; and preserving roofs, floors, and walls of buildings from the ravages of vermin and particularly white ants. *Criminal Investigation* by Dr. Hans Gross, 1934, P. 442. *Taylor's Med. Jur.*, 1928, Vol. II, P. 923.

3. Atropine.

Symptoms of.—Atropine and all the forms of belladonna strongly dilate the pupil of the eye ; sometimes this dilation is so great that the membrane of the iris is reduced to a very narrow circular ring ; besides, the person poisoned will complain of this dilation which produces a very disagreeable effect on the eyes. *Criminal Investigation* by Hans Gross, 1934, pp. 444-445.

4. Carbolic acid or phenol.

1. *Symptoms of.*—The odour of phenol is known all over the world and is very readily recognised. *Criminal Investigation* by Dr. Hans Gross, 1934, P. 444.
2. *Use of.*—Carbolic acid or phenol, a commonly used disinfectant of the present day, is a very ready instrument of poisoning. *Ibid*.

5. Castor Oil.

1. *Fatal dose.*—The smallest exactly recorded fatal dose of the seeds is two. *Taylor's Med. Jur.*, 1928, Vol. II, P. 843. The oil itself can hardly be said to have any toxic properties. *Ibid*.
2. *Duration.*—In the recorded fatal cases death has followed only after a few days' interval. In the fatal case from two seeds (above) the patient, a dock labourer, succumbed on the sixth day. *Ibid*, P. 844.
3. *Symptoms.*—At the time of eating the seeds there is an absence of any disagreeable taste or sense of heat in the mouth and throat. Soon after the pulp has been swallowed there is severe pain in the abdomen, copious and painful vomiting with bloody purging, thirst and convulsions, terminated by death. *Ibid*, P. 844.

6. Cocaine.

1. *Fatal dose.*—About two-thirds of a grain seems to be the smallest recorded dose which has caused death. *Taylor's Med. Jur.*, 1928, Vol. II, P. 785.
2. *Duration.*—Local anaesthesia is produced in a few minutes by cocaine solutions, and a similar period usually elapses before ill effects are produced by toxic doses in acute cases. As in the case of morphia, danger is not over for many hours after a large dose, in one unaccustomed to the drug. *Ibid*, P. 786.
3. *Symptoms.*—Deafness ; loss of taste and smell ; profuse perspiration ; intermittent pulse ; shallow, irregular, gasping convulsive breathing ; impairment of gait and speech ; muscular rigidity ; convulsive twitchings and paralysis are none of them rare in the cases taken as a whole. *Ibid*, P. 787.

7. Dhatura. See *Hurt by Poison*—2.

1. *Symptoms of.*—The most distinctive external symptoms of *dhatura* poisoning are giddiness, followed by drowsiness and muttering delirium, picking at imaginary objects, sometimes wild and excited behaviour, but always wide dilation of the pupils of the eye, while internally the brain is congested, and so also frequently are the lining of the mucous membrane of the stomach and intestines. *Criminal Investigation* by Dr. Hans Gross, 1934, P. 413.
2. *Use of.*—*Dhatura*, the poison of the thugs, is still used mainly to facilitate robbery, and that chiefly in the Western districts of India, where traditions, even memories

Poison—(contd.)

4. *Use of.*—The phosphorus for poisoning is obtained from the ends of matches, and the phosphorus from sixteen matches has been found sufficient to poison an adult. *Criminal Investigation by Dr. Hans Gross, 1934, P. 412.*

15. Prussic acid

- Symptoms of.*—Prussic acid and all its combinations are recognised by the strong odour of bitter almonds. This odour can sometimes be distinctly felt in the room in which the corpse is found. *Criminal Investigation by Dr. Hans Gross, 1934, P. 414.*

16. Santonine.

1. *Symptoms of.*—In poisoning by santonine, the urine is yellowish green. *Criminal Investigation by Dr. Hans Gross, 1934, P. 415.*
2. *Use of.*—Santonine is commonly used for extirpating worms, and as infants are extremely sensitive to this medicament, its absorption is at times followed by sudden death. *Ibid.*

17. Strychnine.

1. *Fatal dose*—The thirtieth of a grain is an average dose. This quantity has operated as a poison on a child. It caused the death of a child between two and three years of age in four hours. *Taylor's Med. Jur., 1928, Vol. II, P. 854.* (b) A fatal dose of strychnine for an adult may be assigned at from half a grain to two grains. *Ibid.*
2. *Duration*—In fatal cases death generally takes place within two hours after the swallowing of the strychnine. *Ibid, P. 856*
3. *Symptoms*—(a) The patient experiences a sense of uneasiness and restlessness, accompanied by a feeling of suffocation, and not infrequently by a sense of impending calamity or death. There is shuddering or a trembling of the whole frame, with twitchings and jerkings of the head and limbs. Tetanic convulsions then commence suddenly with great violence and nearly all the muscles of the body are simultaneously affected. The limbs are stretched out involuntarily, the hands are clenched, the head after some convulsive jerkings is bent backwards, and the whole of the body becomes as stiff as a board. *Ibid, P. 857.* (b) Strychnine causes death by convulsions and immediately renders the corpse rigid—a rigidity which sometimes remains for weeks. *Criminal Investigation by Dr. Hans Gross, 1934, P. 443.*

18 Sulphuric Acid.

1. *Fatal dose*—The smallest fatal dose is one drachm, it was taken by mistake by a stout young man, and it killed him in seven days. *Taylor's Med. Jur., 1928, P. 368, Vol. II.*
2. *Duration*—The average period at which death takes place in cases of acute poisoning by sulphuric acid is from eighteen to twenty-four hours. When the stomach is perforated by the acid, it commonly proves more speedily fatal. *Ibid.*
3. *Symptoms.*—There is violent burning pain, extending down the throat and gullet to the stomach, and the pain is often so severe that the body is bent. There is an escape of gaseous and frothy matter, followed by retching and vomiting. There is great difficulty in breathing, owing to the swelling and excoriation of the throat and larynx, and the countenance has, from this cause, a bluish or livid appearance; the least motion of the abdominal muscles is attended with increase of pain. Vomiting may cease from the collapse for many hours before death actually takes place; there is generally great thirst, with obstinate constipation, and should any evacuations take place they are commonly either of a dark brown or leaden colour, in some instances almost black, arising from an admixture of altered blood. *Ibid, P. 370*

19. Tobacco.

1. *Fatal dose*—While tobacco in the mass cannot be called very poisonous, the alkaloid nicotine is a deadly poison, and like prussic acid, it destroys life in small doses with great rapidity. *Taylor's Med. Jur. 1928, Vol. II, P. 810.*
2. *Duration.*—A rabbit was killed by a single drop in three minutes and a half. In fifteen seconds the animal lost all power of standing, was violently convulsed in its fore and hind legs, and its back was arched convulsively. *Ibid.*

Poison—(contd.)

altered blood of a dark brown colour, and shreds of yellowish-coloured mucus, having a strongly acid reaction. The mucous membrane of the mouth is commonly soft and white, after a time becoming yellow, and the enamel is partially destroyed by the chemical action of the acid. *Ibid*, P. 377.

13. Opium.

1. *Fatal dose*.—The medicinal dose of opium for a healthy adult is from half a grain to two grains. Five grains would be fatal dose to most persons. The medicinal dose of tincture is from five to fifteen minims. The smallest dose of solid opium which has been known to prove fatal to an adult was in the case of a man aged 32, who died very speedily in a convulsive fit, after having taken two pills each containing about one grain and a quarter of extract of opium. The fatal dose of morphine: several cases are known in which a dose of one grain of hydrochloride of morphine has proved fatal to adults. *Taylor's Med. Jur.*, 1928, Vol. II, pp. 818-819.
2. *Duration*.—(a) The symptoms usually commence in from half an hour to an hour after the poison has been swallowed. Sometimes they come on in a few minutes especially in children, and at other times their appearance is protracted for a long period. *Ibid*, P. 820. (b) There are several instances of death in fifteen or seventeen hours. *Ibid*, P. 821.
3. *Symptoms*.—(a) A condition of pleasurable mental excitement, usually of very short duration, is experienced. The period of excitement is followed by weariness, headache, incapacity for exertion, a sense of weight in the limbs, diminution of sensibility, giddiness, drowsiness, a strong tendency to sleep and stupor succeeded by perfect insensibility, the person lying motionless, with the eyes closed as if in sound sleep. *Ibid*, P. 821. (b) The pulse is at first small, quick and irregular, the respiration hurried, the skin warm and bathed in perspiration sometimes livid; but when the person becomes comatose, the breathing is slow and stertorous, and the pulse slow and full. *Ibid*, P. 822. (c) The contracted state of the pupils has been considered to furnish a valuable distinctive sign of poisoning by opium or the salts of morphine. *Ibid*. (d) There were no symptoms of poisoning by strychnine at any time, although three hours had elapsed before remedies could be applied. Vomiting is an occasional symptom which may come on soon after the poison has been taken; so also may itching of the skin with a rash. *Ibid*, P. 824.
4. *Symptoms in case of drug addiction*.—If the habit is not of long standing the withdrawal symptoms are mild and consist of uneasiness, depression, weakness and may be very severe symptoms if the drug is . . . yawning, sneezing and coryza, dilatation of the pupils, violent pains and cramps in the abdomen and legs. There may be irritability and excitability which may progress to a condition of mania. There may be severe collapse with weak and irregular pulse and death may occur from cardiac failure. Injection of morphine causes an immediate arrest of the symptoms. *Ibid*, pp. 833-834.

14. Phosphorus.

1. *Fatal dose*.—In one case death was caused by a grain and a half in twelve days; in the other, by two grains in about eight days. One to two grains is a fatal dose. *Taylor's Med. Jur.*, 1928, Vol. II, P. 589.
2. *Duration*.—Symptoms are commonly delayed from a quarter of an hour to some three or four hours, and the total duration varies greatly, from a few hours to two weeks or more. In a case related by Orfila death took place in four hours. In a case that ends fatally within a few hours the result is due in all probability to shock. *Ibid*, pp. 590-91.
3. *Symptoms of*.—(i) In poisoning by phosphorus there is pain in the stomach, vomiting, feeble pulse and collapse; in chronic cases there may be a yellowing of the skin, and slight bleeding from nose, mouth, and bowels. *Criminal Investigation by Dr. Hans Gross*, 1934, P. 442. (ii) In the first instance the patient experiences a disagreeable taste, resembling that of garlic, peculiar to this poison. An alliaceous or garlic-like odour may also be perceived in the breath. There is pain and oppression in the region of the stomach, malaise, crutation of phosphoric vapour, having a garlicky odour; and these may be luminous in the dark. Vomiting is sometimes frequent and violent. *Taylor's Med. Jur.*, 1928, Vol. II, P. 591.

Poison—(concl'd.)

3. *Symptoms*.—Every one is familiar with the depression and faintness, collapse, cold sweats, pallor, and rapid onset of vomiting which smoking produces in one unaccustomed to it. *Ibid*, P. 811.
20. **Death by—**. See Murder—35.
21. **Hurt by—**. S. 328, I. C. See Hurt by Poison.
22. **Negligent conduct with regard to—**. S. 284, I. P. C. See Public Nuisance—32.
23. **Similar acts of—poisoning.**
 1. Accused administered *Dhatura* poison to A and B who died. Next day he gave the poison to D who died. The acts against A and B are relevant to a case of murder of D, as forming incidents in a series of similar transactions occurring about the same time and tending to show system and intention. 32 P. L. R. 1911=12 Cr. L. J. 125.
 2. Where accused is charged with murder, for having administered *Dhatura* to the deceased, the evidence of certain boys that he had previously offered sweets to boys and that one of the boys was afterwards robbed of ornaments, when affected with the symptoms of *Dhatura* poisoning, is admissible. 73 I. C. 262.
 3. The fact that the deceased offered sweetmeats to other boys and poisoned one of them with *Dhatura*, is not evidence that he administered poisoned sweetmeats to the deceased. 1923 N. 248=24 Cr. L. J. 566=73 I. C. 262.

POLICE ACT (V of 1861)

Railway Police have all the powers of General Police within their special District. 1933 B. 63.

S. 1.

The term "Police Officer" does not include Police Patels in Berar. 1927 N. 222=101 I. C. 599=28 Cr. L. J. 471.

S. 7.

1. S. 7 does not preclude offenders to be prosecuted under Penal Code. 26 P. R. 1915 Cr.
2. To order a Police Officer to live in Police Lines until further orders and not to leave the lines without permission is to confine him in those lines. This order is illegal. 58 C. 1132.
3. A Police Officer who is suspended should not be asked to live in Police lines to hamper his defence. 58 C. 1132.

S. 9.

A Police Constable did not return to duty on the expiry of casual leave for which he was fined. After his trial he was re-instated and asked to join which he did not do. The constable is guilty of another distinct offence. 42 A. 22.

Ss. 15 and 16.

1. A Deputy Magistrate has no jurisdiction to apportion the cost of quartering additional Police among the inhabitants. 40 C. 452.
2. If the tax is imposed on a joint family, the attachment of entire joint family property is legal. 1935 P. 214.

Ss. 17 and 19.

1. It is objectionable to appoint as special constables, parties to dispute against whom proceedings under S. 107, Cr. P. C., are pending, so as to handicap them in their defence. 43 C. 277.
2. The failure of a person appointed as a special constable under S. 17 to obey a lawful notice issued to him to attend a Police Station amounts to a neglect or refusal to serve as a special constable within S. 13. 43 I. C. 251=19 Cr. L. J. 91, 28 C. 411 Dist.
3. An order under S. 17 of the Police Act appointing special constables is of an executive nature and not open to Revision under S. 435, Cr. P. C. 42 I. C. 132=18 Cr. L. J. 900.

*Police Act—(contd.)***S. 22.**

A Police Officer was controlling traffic on the road leading from a private place to the public road and was assaulted while so discharging his duty. The offence falls under S. 353, I. P. C. 1928 L. 230=111 I. C. 665=29 Cr. L. J. 905.

S. 23.

1. S. 149, Cr. P. C., does not restrict the Police in their preventive action to cognizable offence only. Their powers are defined by Code and the Police Act, S. 23. 35 I. C. 523=17 Cr. L. J. 347.
2. There is nothing either in the Police Act Ss. 23 and 24 or in the Cr. P.C. which may in any way prevent a Police Officer from lodging a complaint with regard to a non-cognizable offence 1929 P. 514=120 I. C. 297=31 Cr. L. J. 55.
3. Report about suspects to superior officers falls under S. 23 and a suit brought after a month from the date of notice is time barred. 1930 L. 592=125 I. C. 379=31 P. L. R. 883.
4. The Municipal Committee is a competent authority within the meaning of S. 23. 1930 N. 33=122 I. C. 258=31 Cr. L. J. 382.
5. S. 23 does not cover the execution of invalid warrant or extend a constable's power to arrest. 1932 P. 171.
6. An order of a City Inspector under S. 165, Cr. P. C., requiring a subordinate officer to search a house is illegal. 1935 N. 237.

S. 29.

1. An order by a Superintendent of Police directing Police to groom their horses is a lawful order under S. 29 and a disobedience of such order renders the guilty person liable to conviction. 56 I. C. 497=21 Cr. L. J. 465.
2. S. 29 is not limited to wilful breaches or neglect of rule or regulation or a lawful order but includes any violation of duty. 1930 P. 195=9 P. 31=31 Cr. L. J. 641.
3. "Police Officer" includes constables. 1929 L. 325=30 Cr. L. J. 635.
4. Mere negligence does not amount to violation of duty, within S. 29. 1928 L. 164=107 I. C. 771=29 P. L. R. 30.
5. S. 29 really is intended to punish intentional or wilful acts of Police Officers as described therein. 1927 L. 325=116 I. C. 611.
6. Over-staying the leave granted does not necessarily amount to neglect of duty. 66 I. C. 67.
7. If a Police Officer chooses to be treated by a private practitioner and does not like to enter a Civil Hospital he cannot be convicted under S. 29. 1927 L. 15=97 I. C. 423.
8. If a Police Officer who is really ill and is on leave, fails to report himself for duty on the expiration of his leave, his failure to report is not without a reasonable cause. 1927 L. 15=97 I. C. 423=27 Cr. L. J. 1111.
9. When a Superintendent of Police asks a Sub-Inspector to register cases in the Police diary and sends up for trial the person concerned, the Sub-Inspector has no discretion in the matter and the failure to obey the order is an offence under S. 29. 1926 A. 562=95 I. C. 765=27 Cr. L. J. 845.
10. The mere escape of a prisoner from lawful custody does not make the constable, in whose charge he was guilty of an offence under S. 29. 1927 O. 257=28 Cr. L. J. 664.
11. If the order under S. 7 is illegal, no conviction under S. 29 can be sustained. 58 C. 1132.
12. Two constables were taking an under-trial prisoner by a camel cart at night. The prisoner wanted to get down to make water and was permitted to do so. The night was dark. The prisoner got himself free from the rope which was tied to his handcuffs and bolted. Held, whatever the rules may be against travelling after dark, they committed no breach of rules thereby 1925 O. 281=26 Cr. L. J. 103.
13. A Mukhtar who is allowed to have possession of diary by the Police Officer is guilty of abetment of the offence under S. 29. 9 P. 31=31 Cr. L. J. 641.

Police Act—(contd.)

14. If a constable in keeping the rioters out, is carried into a building by a rush of the very men whom he is trying to protect, he is not guilty of cowardice. 1923 O. 285=112 I. C. 99.
- S. 30.**
1. S. 30 of the Act gives the Police power to control processions, but it does not include the power to forbid processions. 1926 P. 173=4 P. 795, 57 A. 790=1935 A. 657.
 2. There is no provision of law which makes it incumbent on an applicant for license to provide sureties. 10 L. 852.
 3. The Superintendent of Police under S. 30 is authorised to regulate the extent to which music may be used in the streets on the occasion of festivals and ceremonies, but a prohibition of every kind of music is not covered by the word "regulate." 51 A. 485.
 4. Once an application is made in time the applicant is free to take out a procession, whether the license had been, by then, issued or not. If the license had been issued he is bound to obey the conditions and if not issued he is bound only to see that the general law was not broken. 4 P. 795=27 Cr. L. J. 522.
 5. The condition in the license that the speed of the procession shall be under the direction of the Illaga Magistrate and the local Police, is vague and indefinite. The licensee cannot be prosecuted for violation of this condition. 10 L. 852.
 6. When a D. S. P. signs the license and delivers it to some one with directions, that it shall in due course be delivered to the applicant, the license has been issued within the meaning of S. 30. 4 P. 795.
 7. A notification by a Superintendent of Police forbidding processions for three months is illegal. 2 P. 134.
 8. Under S. 30 there must be special notice when an intended assembly is required by Superintendent of Police to be controlled by means of license to be taken out by persons celebrating the festival. 49 I. C. 773, 1933 C. 353.
 9. Disobedience to an order under S. 30 (2), Police Act, is punishable under S. 141, I. P. C., because it constitutes resistance "to the execution of any law" within the meaning of S. 141. 54 M. 1025=32 Cr. L. J. 806=1931 M. 484.
 10. An image carried by five or six persons to a Ghat to be immersed in the river cannot be said to be carried in a procession. 1931 C. 128=136 I. C. 239=32 Cr. L. J. 482.
 11. S. 30 does not authorise a Police Officer to issue a general notice that any man taking procession near a mosque must take license. 58 C. 879.
 12. Parshotam Dass park cannot be considered to be a thoroughfare. 1933 A. 614=55 A. 862.
 13. Only the directors or promoters of a procession can be convicted under S. 30 (2). The mere fact that some persons were at the head of the procession and were wearing garlands is insufficient. 1933 C. 353=34 Cr. L. J. 688.
- S. 30-A.**
1. S. 30-A does not apply unless a license has been got and there is a violation of the conditions thereof. 1923 P. 1=68 I. C. 945=23 Cr. L. J. 625.
 2. S. 30-A merely gives an additional power to the Officers to stop the procession and then, if it does not disperse, to deal with its members as members of unlawful assembly. 10 L. 852.
 3. When according to conditions of license no member of the procession was to carry a lathi or sword, the licensee has to see that the condition is strictly complied with. 6 P. 763=1928 P. 166=106 I. C. 716.
- S. 31.**
1. An order issued under S. 31 may be an oral order. 1926 A. 264=91 I. C. 56.
 2. If procession is orderly and the only obstruction was to the traffic which Police could have avoided by asking the processionists to make room, the order of dispersal was illegal. 1931 L. 33=32 Cr. L. J. 532=130 I. C. 425.

Police Act—(concl'd.)

3. Police cannot enter upon private property to discharge their duties. 1935 A. M. L. J. 1.
4. Bride and bridegroom were carried in a palanquin. On objection by a high caste Hindu, a Police Officer ordered the palanquin to be carried empty. Held, the order is illegal. 1936 A. 534=37 Cr. L. J. 866.

S. 32.

1. When a notice prohibiting the organising of a procession without license is issued under S. 30 (2), the mere fact of joining in the procession which was promoted or organised by other persons would not amount to a disobedience of the order. 1927 P. 191=101 I. C. 475=28 Cr. L. J. 443.
2. Accused cannot be convicted under S. 32 if the order under S. 30 is illegal. 58 C. 879=1932 C. 286.
3. A licensee assumes responsibility for the entire conduct of the procession and cannot repudiate such responsibility by alleging that the violation of the condition took place without his consent or his knowledge or in his absence. 1929 L. 404=10 L. 852=114 I. C. 716=30 Cr. L. J. 371.
4. Taking idol by four or five persons for being immersed in river does not require license. 130 I. C. 239=1931 C. 128=32 Cr. L. J. 482.

S. 34.

1. The conviction under S. 34 of the Police Act is not illegal merely because the act complained of also constitutes a breach of S. 110 of C. P. Municipal Act. 52 I. C. 495=20 Cr. L. J. 671.
2. Unless it is proved that an act complained of was to the obstruction, inconvenience, annoyance, risk, danger or damage of the residents or passengers, there can be no conviction under S. 34. 51 I. C. 340.
3. The mere fact that a cart was kept on the land by the side of the road with a width of 40 feet cannot raise any presumption that it caused annoyance to the public. 9 P. 97=1930 P. 246=31 Cr. L. J. 785=125 I. C. 130.
4. Making water on a public road is an offence under S. 34. 1930 C. 444=51 C. L. J. 342=31 Cr. L. J. 1201=127 I. C. 261.
5. Playing cards does not fall within S. 34 (8) and the act of a Constable in prohibiting the man from playing card is not in the discharge of his duties. 1926 L. 250=92 I. C. 889=27 Cr. L. J. 377.
6. A person setting up a wooden board with an earthen jar filled with water over it and supplying water to public is not guilty under S. 34 (4) merely because sometimes some persons gave tips. 1926 A. 285=92 I. C. 591=27 Cr. L. J. 303.
7. The word "riotous" in S. 34 (b) covers the case of a person who creates a row in a thoroughfare. 7 P. R. 1916 Cr =35 P. W. R. 1916 Cr.

S. 42.

1. Notice under S. 42 is not necessary for criminal prosecution. 1934 N. 206.
2. S. 42 of the Act is no bar to the trial of a Police Officer for illegal arrest. 1922 A. 264=65 I. C. 433.
3. Limitation Act overrides provisions of S. 42, Police Act. 1930 A. 742.
4. S. 42 applies to actions brought for anything done intended to be done under the Police Act or under the general powers given under the Act, but does not refer to action brought for anything done under Cr. P. C. 1935 N. 237=160 I. C. 306.

POLICE—ASSAULT ON. See Assault on Public Servant—2.

POLICE—ARREST BY. See Arrest—6.

POLICE—BAIL BY. See Bail—5.

POLICE—COMPLAINTS AGAINST. See Preliminary inquiry—7.

POLICE CONSTABLE.

1. A Police Constable deputed by his superior Officer to make an enquiry is a "Police Officer making an investigation." Accused, who assaulted him while searching his house, was convicted under S. 353, I. P. C. 24 P. R. 1880 Cr.

Police Constable—(concl'd.)

2. "Police Officer" includes constable. 1929 L. 325=30 Cr. L. J. 635.
3. A Police Constable can be punished under Penal Code, although he has already been punished departmentally. 26 P. R. 1915 Cr.
4. If a Police Constable commits an offence when not on duty, he is liable under the Penal Code and not Police Act. 96 P. R. 1856 Cr.

POLICE CUSTODY. See Detention—2. Discovery—5. Confession to Police Officer—11.

The expression Police custody as used in S. 27, Evidence Act, does not necessarily mean formal arrest. It includes some sort of Police surveillance and restriction on the movement of the person concerned. 1932 L. 609=33 Cr. L. J. 756=139 I. C. 429.

POLICE DIARY. See Diary.**POLICE—FALSE INFORMATION TO.** See False information.**POLICE INVESTIGATION.** See Investigation.**POLICE MAN.**

1. Evidence of—. See Witness—80.
2. Killing under Officer's order by—. See Murder—62.

POLICE OFFICER. See Investigating Officer.

1. Confession to—. See Confession to Police Officer—17.
2. Making incorrect record by—. See Public Servant—18—19.
3. Opinion of—

Police Officer's opinion on questions of fact should not be accepted as final. 1933 P. 499.

4. Retaining Property for himself found in search. See Search—12-A.

POLICE REPORT. S. 173, Cr. P. C. See Cognizance of offence—20.

1. Cognizance of offence on—. See Cognizance of offence.

Magistrate on receipt of report, acts under S. 204. He cannot call for fresh investigation and report. 1932 L. 611, 1932 M. 673.

2. Contents of—

1. The report must set forth the nature of information, otherwise the Magistrate taking cognizance on such report acts illegally. 37 C. 49.
2. Abstract of evidence given by each witness need not be set forth. 1930 M. 191.
3. Report includes a charge sheet and a report that the case is false. 1932 M. 673.
4. Report should contain the names of witnesses and nature of information, and facts constituting the offence. Mere mention of the Section of Penal Code is not sufficient. 1930 B. 372, 1924 S. 71, 37 C. 49, 20 M. 189.

3. In case of death, etc.— See Inquest—3.**4. In cognizable cases—** S. 157, Cr. P. C. See Investigation—7.**5. Striking off case on—**

An order of the Magistrate directing a case reported to him by the Police under S. 173 to be struck off, is not a judicial order dismissing a complaint and cannot be revised by Sessions Judge under S. 437, Cr. P. C. (1890) Rat. Un. Rep. Cr. C. 521.

6. Validity and use of—

1. Where the accused gave information to Police about the commission of a non-cognizable case and the Police obtained the authority of a Magistrate under S. 155, Cr. P. C., to investigate the case and without report instituted proceedings against the accused under S. 211. Held, that the conviction under S. 211 was illegal in the absence of Police report. 17 Bom. L. R. 69.
2. The Railway Police can make a report under S. 173. 52 B. 238=1928 B. 162.

Police Report—(concl'd.)

3. Where the Court makes an order for investigation under S. 155 (2) and a charge sheet is filed after making the investigation, the charge sheet can be regarded as Police report. 1930 B. 372=127 I. C. 110.
4. The Police reported against three persons after investigation to the effect that A was concerned in theft and B and C were named because of enmity. Held, that report was a Police report under S. 173 even as regards B and C and the Magistrate could issue warrants. 25 Cr. L. J. 181=83 I. C. 885.
5. Report means one after the investigation of a case. 13 Cr. L. J. 752.
6. The Magistrate's order directing a case reported to him by Police under S. 173 to be struck off is not a judicial order. He can re-open case by calling for charge sheet under S. 190 (1) (c). Principal of *autrefois acquit* is not applicable. 1933 P. 242=12 P. 234, 1923 P. 585 Diss. from.
7. It is not the duty of Police Officer to decide as to which Party was in the wrong in a riot case. 2 P. R. 1912.
8. Police report is not *per se* legal evidence of facts stated therein. 1915 A. 177, 1925 P. 165, 1927 P. 37, 1907 P. L. R. Page 71. It can be used for issuing warrant. 14 Cr. L. J. 293.

POLICE—SEARCH BY— See Search—3.**POLICE STATION—OFFICER IN CHARGE OF—** See F. I. Report—15.**POLICE STATEMENT.** See Statement to Police.**POLICE SURVEILLANCE—**

Police surveillance for first offenders is illegal. 1934 L. 675 (1)

POLICE TORTURE See Extorting confession—2.**1. Death by.—**

A Police Officer is no more justified in torturing a man to death simply because he had been ordered to do so by his superior, than a robber can justify his act on the plea that he had to obey his fellow confederate. 20 B 215, 20 B 394.

2. Petition for protection from— See False charge—23.**POLITICAL AGENT.** See Certificate—4.**POLITICS.** See Legal Practitioners Act (S. 13)—22.**POOR WITNESS.** See Witness—81.**POSSESSION OF WIFE, CLERK OR SERVANT.** S. 27, I. P. C.**1. Clerk or Servant—** See Theft—7.**2. Joint Family House.**

Where the portion of a house in which an article is found is not in the exclusive possession of any one member of the joint family but is used and accessible to all, there is no presumption that article is in the possession of any person other than the head of the family. The prosecution can prove that the possession was with some particular member. 2 L. 531, 15 A. 129.

3. Mistress.

A permanent mistress may be regarded as "wife." Where a man furnishes a house for his mistress's occupation, he may reasonably be presumed to be in possession of all articles therein except those which the mistress is in possession illegally or contrary to the provision of law, especially when he might well remain in ignorance that it was in his mistresses' possession. 20 P. R. 1914 Cr., 15 Cr. L. J. 172, 23 I. C. 177.

4. Possession.

1. Possession must be with knowledge of the existence of the thing. 9 L. 531.
2. The doctrine of possession cannot be extended to the illegal possession of things on her own account, e.g., possession of cocaine. 20 P. R. 1914=22 I. C. 748.
3. The use by a servant of his master's premises as his private residence is his possession and not the possession of his master. 23 I. C. 177.

Where there is nothing to show that a pistol is a sort of article to be sold in the shop of the accused, the possession of the servant is not that of the master. 1923 A. 33= 69 I. C. 457.

6. Wife.

1. The possession of a house on account of her husband is the possession of the husband under S. 27, I. P. C. 39 I. C. 359=8 P. W. R. 1921 Cr.
2. A permanent mistress may be regarded as "wife." 20 P. R. 1914 Cr.

POST OFFICE ACT (VI OF 1898)

S. 3.

When a number of letters were lying in a *khola* opposite the Post Office and the finder gave it to the Post Master, on enquiry the Magistrate framed two alternate charges under S. 52 of the Post Office Act and S. 201, Cr. P. C., held the framing of charge in the alternative did not contravene S. 235, Cr. P. C. 1939 L. 460=127 I. C. 760.

Ss. 19, 61 and 71.

A person sending cocaine by post is not guilty under S. 61 of the Post Office Act though conviction under S. 60-A of Excise Act is proper. 37 A. 259.

Ss. 35, 64 and 74 (1).

No order or willingness can be inferred from the silence of addressee, though he does not return the articles sent or reply to any cards. But if a person pays for one of the articles sent by V. P. P. and then continues to receive the further issues of Magazine an order can be inferred. 33 M. 511, 6 A. L. J. 48 Dist.

S. 52.

1. Where a Sub-Post Master took V. P. P. cover addressed to him and also the Railway receipt and obtained delivery of goods but manipulated the register maintained in the Post Office in order to put off payment, a sentence of one year's rigorous imprisonment and a fine of Rs. 100 was adequate punishment. 52 M. 534.
2. A Branch Post Master who was also a shop-keeper ordered a consignment of flour. The Post Master opened a V. P. P. envelope containing the Railway receipt and took delivery of the goods. After 6 days he paid the price of the goods into the Post Office and in the books of the Post Office made entries "on account of the absence of the addressee" Held, the offence was a technical one, and fell under S. 403, I. P. C. and S. 52 of Post Office Act. 8 L. 662, 39 P. L. R. 1902 Dist.

S. 55.

Sanction required by S. 72 can be obtained after cognizance of the offence under S. 55, 52 M. 534.

S. 64.

1. Accused sent blank papers in an insured cover addressed to himself and claimed the value of currency notes which he alleged, had been enclosed in the cover. Held, the accused is guilty under Ss. 420 and 511, I. P. C., although his conviction under S. 64 of Post Office Act is doubtful. For a prosecution under S. 64 sanction is necessary. 9 P. 126=125 I. C. 770=31 Cr. L. J. 934.
2. The *bona fides* contemplated by rule 133 do not relate to the manner of sending a parcel. 9 Cr. L. J. 537.

POSTAL SERVANT.

1. Breach of trust by—. See Breach of trust—22.
2. Falsification of account by—. See Falsification of account—4.

*Post-mortem***POST-MORTEM.**

1. **Appearances in Drowning.** See Drowning.
2. **Appearances in Hanging.** See Hanging
3. **Appearances in Poisoning.** See Poison.
4. **Appearances in Strangulation.** See Strangulation.
5. **Appearances in Suffocation.** See Suffocation.
6. **Bleeding.**

After death, the arteries contract, and by their contraction empty the blood in them into the capillaries and veins, provided it has not co-agulated too soon; the heart having ceased to beat, the blood remains in the veins in a stagnant condition, and probably still uncoagulated. In these circumstances if a vein has been wounded before death or even if it be opened after death it may bleed freely and *post-mortem* give rise to suspicion that the wound was produced before death. *Taylor's Med. Jur.*, 1928, P. 222.

7. **Coagulation.**

- (a) When a body is examined eight or ten hours after death, it is not unusual to find the blood which may have flowed from it as a liquid forming a firm clot; and that which is effused into the chest during the examination often form after sometime a firm coagulum. *Taylor's Med. Jur.*, 1928, P. 221. (b) Blood effused into the tissues or cavities of the body clots fairly rapidly. *Ibid.* (c) Blood coagulates in most cases after death, but at a variable time after the cessation of the heart's action. *Ibid.* (d) When blood is removed from the living body, coagulation commences in from five to ten minutes or less (e) In the dead body, it does not commence until the blood begins to die and cool. *Ibid.* (f) Certain diseases, such as Pneumonia, influence the rapidity of coagulation of the blood; and in rapid deaths from vegetable and animal poisons, and in asphyxia (drowning, suffocation, hanging, strangulation), the blood remains fluid and of darker colour than normal. *Ibid.*

8. **Evidence and value of—**

1. It is most essential that the time of the *post-mortem* should be recorded as in many cases it assists the Court in determining whether death took place at the time alleged or not. 1931 O. 119=131 I. C. 439=32 Cr. L. J. 697.
2. Considering the important nature of evidence supplied by the result of the *post-mortem* examination, it is necessary that the result of observation external and internal should be fully recorded. 12 Cr. L. J. 124
3. *Post-mortem* notes of medical officer cannot go on the record *en bloc*, although they can be used for refreshing memory. 9 C. 455=460, 1930 S. 225, 4 C. W. N. 129, 6 C. W. N. 98, 27 C. 295.
4. In this country it is very rare to find a dead body free from traces of putrefaction more than 24 hours after death. 99 I. C. 857=28 Cr. L. J. 185.
5. When the medical officer is not examined at the beginning of inquiry, a copy of the *post-mortem* certificate ought to be given to the accused. 50 M. 750.

POWER OF ATTORNEY.1. **For accused.**

1. No power of attorney is necessary in order to enable an advocate to act for an accused. 1926 P. 295=27 Cr. L. J. 665=91 I. C. 714, 7 M. H. C. R. App. 40.
2. Prisoners and others have the fullest opportunity for giving *vakalatnama* to whomsoever they please 1 B. H. C. R. 16

2. **For conducting prosecution.** See Prosecution—4.3. **For proceedings under Cr. P. C.**

In proceedings under Cr. P. C. like S. 145 no power of attorney is necessary. 1933 L. 145=34 Cr. L. J. 616.

4. **Forgery of—** See Forgery—32.

Precedents

PRECEDENTS.

See Interpretation of statutes—15.

Previous decisions in criminal cases seldom afford a very great assistance in deciding the nature of offence, as they proceed on their own set of facts. 3 P. R. 1919 Cr.

PRELIMINARY ENQUIRY. S. 202, Cr. P. C.**1. Applicability and scope of S. 202, Cr. P. C.**

1. S. 202 is not applicable to an application for maintenance under S. 488, as it is not a complaint. 29 P. R. 1905 Cr.
2. A Magistrate taking cognizance of a case upon a Police report cannot proceed under S. 202 and cannot refer the case to a subordinate Magistrate for local investigation. 40 C. 854, 17 C. W. N. 824, 2 P. L. T. 220, 7 S. L. R. 45.
3. Ss. 202 and 203, are applicable to complaints and a proceeding under S. 171 cannot be regarded as complaint. 1928 L. 694=111 I. C. 450.
4. It is perfectly open to a Magistrate, who is asked to set in motion S. 167, Cr. P. C., to avail himself of the help which is available under S. 202 and it is the duty of the complainant to assist in the investigation and so any statement made during the investigation by the complainant is absolutely privileged. 49 M. 315=1926 M. 521=93 I. C. 8.
5. Magistrate can look into the Police records and if satisfied that complaint is groundless, can dismiss the complaint. 1924 P. 797=26 Cr. L. J. 129.
6. If a Magistrate is acting upon, second hand information, he cannot be said to be acting upon complaint. 21 P. R. 1888 Cr.
7. When complainant is not speaking from his personal knowledge inquiry under S. 202 should be held. 1934 R. 167, 1921 C. 561.
8. The inquiry is not intended to supersede regular trial. 55 B. 770, 46 C. 807.
9. Magistrate can consider the report only if inquiry is ordered by himself and not any other Magistrate 19 7 A. 136, 22 I. C. 165.

2. By Magistrate himself

1. The Magistrate can hold the enquiry himself or order local investigation. 42 C. 854.
2. A Magistrate is empowered to hold enquiry into the complaint in order to ascertain, whether there is sufficient foundation for issuing process against the accused. 1927 L. 30=99 I. C. 58=8 L. L. J. 524.
3. Magistrate can either inquire into the case himself or direct a local investigation. He cannot have recourse to both alternatives. 44 A. 550.
4. A Magistrate may hold an enquiry even after the local investigation has been made by a subordinate officer, if he is dissatisfied with the result of such investigation. 38 C. 68 *Contra* 11 A. L. J. 754.
5. Where a Magistrate partly investigated the matter himself and partly was investigated by a Police Officer, the procedure was illegal. 1928 L. 88.
6. In case of complaint against Police, the Magistrate should himself hold the inquiry. 20 M. 387, 18 A. L. J. 731, 18 A. L. J. 620.
7. A Magistrate while holding enquiry cannot keep the accused in custody. 1930 A. 259=31 Cr. L. J. 998=126 I. C. 256.
8. Even if the complaint is made by a Public Servant (Sub-Inspector or P. P.) inquiry under S. 202 can be ordered. 1930 P. 30, 1921 S. 48.

3. By Police. See—7.

1. It is not a proper course to make indiscriminate use of Police Agency for investigating complaints. Such a case would foster abuse. 12 B. 161.
2. Petty cases of assault, etc., should not be sent to Police for investigation, because there is a strong temptation to make money out of the complaint. 19 P. R. 1894 Cr., 1933 S. 339, 13 B. 161.
3. Magistrate can direct the Police to make enquiry but cannot direct them to treat the complaint as trust information report. 1923 P. 359=103 I. C. 333.

- Conditions precedent to—** (Examination of Complainant).

- Copy of—**

The report of Police under S. 202 is part of record which should be furnished to accused on his application. 32 Cr. L. J. 689=1931 M. 429, 14 C. 141.

Evidence in—

1. The investigating officer can examine the parties and their witnesses, 33 C. 1282.
2. It is highly irregular to allow legal advisers of complainant and accused to examine witnesses. 1926 S. 183=93 I. C. 594, 1925 C. 576=84 I. C. 449
3. Where the Magistrate making enquiry under S. 202 did not record the statement of witnesses but had before him the report of Police containing their statements and the witnesses repeated the statements to him. Held, that the procedure is not illegal. 1925 P. 584=89 I. C. 386=26 Cr. L. J. 1346.
4. The investigating officer can import his personal knowledge. 120 I. C. 69.
5. Magistrate can dismiss a complaint after looking into the Police record only. 1924 P. 797=83 I. C. 689=26 Cr. L. J. 129.
6. A Magistrate conducting local investigation can administer oath. 1 Cr. L. J. 118.

2. In complaints against Police Officers.

1. If the complaint is made against Police Officer, it is improper for a Magistrate to call for report from the Police Officer, who is himself the accused. 14 C 141.
2. Sending a case to Police for investigation is not desirable where complaint is against a member of Police. 1928 L. 83=111 I. C. 878=29 Cr. L. J. 958, 1884 A. W. N. 47, 18 A. L. J. 620.
3. Complaints against Police Officers should be handled with care. The complainant should be given every facility to prove his allegations. 1926 M. 288=91 I. C. 539.
4. The complaint against Police Officer should not be sent for investigation to a superior Police Officer or the Superintendent of Police. 9 C. W. N. 129, 18 A. L. J. 731, 1884 A. W. N. 47.
5. The Magistrate should himself hold the inquiry in complaints against Police Officers. 20 M. 387, 18 A. L. J. 620=18 A. L. J. 731.

3. Inquest report as—

Inquest report by another Magistrate made under S. 176, Cr. P. C., cannot take the place of inquiry under S 202. 35 C W. N. 1032.

9. Local inquiry or investigation.

1. The enquiry under S. 202, cannot take the place of hearing. The Magistrate cannot refer the case under S. 202 to a subordinate Magistrate for calling upon the accused to show cause against prosecution and for submitting report. 46 C. 807.

Preliminary Enquiry—(contd.)

2. A person to whom complaint is sent under S. 202 can import his personal knowledge. 1930 M. 443=120 I. C. 69=30 Cr. L. J. 1160.
3. Local investigation is not restricted to inspection of place of occurrence but examination of parties and witnesses as well. 19 Cr. L. J. 126.
4. A local investigation can be ordered when there is a quarrel of boundaries or any matter of that kind. 10 A. L. J. 79.
5. Magistrate may hold an inquiry even after a local investigation by a subordinate officer, if he is dissatisfied with the result. 38 C. 63 *Contra* 11 A. L. J. 754.
6. A Magistrate cannot direct an inquiry in a case in which the accused had been discharged under S. 253. 2 Weir 239.

10. Notice to show cause.

1. Issue of notice to accused before issuing process is undesirable. 55 B. 770, 39 C. 1011, 49 M. 918=926, 1923 C. 198, 1928 L. 97, 1930 R. 156.
2. It is a little incongruous to call on a person accused of an offence to show cause against process being issued when proceedings under S. 202 are in contemplation. 1928 L. 97=106 I. C. 455=29 Cr. L. J. 39, 49 M. 321.
3. It is not fair to the accused that he should be called upon to state his defence before prosecution have laid all their cards on the table. The procedure is condemnable. 1926 S. 194=27 Cr. L. J. 711, 1923 C. 198, 49 M. 321, 37 M. 181.
4. If a Magistrate issues a notice to accused and gives him an opportunity of stating his case and considers documentary evidence which the accused produces, he does not act illegally. 52 B. 448, 6 Bom. L. R. 91 *Contra*, 14 C. 141.
5. Examination of accused before a *prima facie* case is made out, is bad. 1928 L. 88.
6. Accused need not disclose his defence in preliminary inquiry and no inference can be drawn against him for non-disclosure. 1927 P. 292=102 I. C. 899.
7. The practice of issuing notice to show cause is unusual but does not justify interference by High Court in revision. 1928 L. 97=106 I. C. 455=29 Cr. L. J. 39.

11. Opportunity to complainant.

If in an inquiry under S. 202, evidence against the complainant's allegations is brought before him, he should give him opportunity to explain or meet such evidence. 1928 M. 135=106 I. C. 464=29 Cr. L. J. 48.

12. Position of accused and his Counsel in—

1. A preliminary enquiry should not be held in the presence of the person complained against and he should not be allowed to cross-examine the complainant's witnesses. 40 C. 444.
2. Accused can be permitted to watch the proceedings and his Pleader should be allowed to act as *amicus curie*. 8 Cr. L. J. 20, 12 Cr. L. J. 207, 1934 R. 167.
3. A person against whom no process has been issued is neither an accused nor a person against whom any proceedings have been instituted. Such persons have no right to attend, much less to be represented by Pleader in an inquiry under S. 202. 38 C. 880, 8 Cr. L. J. 20, 4 N. L. R. 81, 1928 M. 1193=29 Cr. L. J. 1059.
4. Accused cannot appear during the proceeding when Magistrate is considering the report of the local investigation ordered by him. 21 C. W. N. 127.
5. Statement made by a person complained against during an inquiry under S. 202 cannot be admitted in evidence against him. 32 C. 1085.
6. A Subordinate Magistrate who was deputed under S. 202, to hold inquiry examined the parties and witnesses and as a result of inquiry the complainant was prosecuted under S. 211. Held, that the procedure was not illegal. 1931 P. 302=133 I. C. 702, 52 B. 441, 45 I. C. 287 Foll.
7. Magistrate can give accused opportunity to explain certain circumstances. 132 I. C. 479, 52 B. 448=1928 B. 290. See 1933 C. 447, 1926 P. 34.
8. Accused has no right to be present. 1934 R. 167, 14 C. 141, 40 C. 444 Ref.

Preliminary Enquiry—(contd.)

9. Magistrate can allow accused to put in documents, to file statement and hear his arguments. 1934 O. 372=35 Cr. L. J. 1239, 1928 B. 290 Foll.
 10. Magistrate after making verbal inquiries from the accused and complainant's wife dismissed a complaint under S. 498, I. P. C. Held, his procedure was illegal. 1934 O. 88=147 I. C. 387.
 11. Accused can be allowed to state his case and produce documents. 1934 S. 143, 1928 B. 290 Rel. on.
 12. Magistrate can examine accused in an inquiry but cannot allow him to be represented by lawyer. 1933 C. 447 *Contra* 1928 L. 88, 1923 L. 663.
 13. If the Magistrate allows accused to appear, the procedure is not illegal. 52 B. 448, 1931 P. 302, 1934 O. 372, 1931 S. 113.
 14. Magistrate holding inquiry under S. 302 cannot permit accused to be represented by lawyer. 1933 C. 447=34 Cr. L. J. 604=143 I. C. 606, 52 B. 448=1928 B. 290, 40 C. 444, 35 I. C. 828 and 1923 C. 198 Ref.
- 13. Postponement or rescinding of the issue of process.**
1. The process shall ordinarily issue after the examination of the complainant, unless the Magistrate has reason to doubt the truth of the complainant. 27 C. 793.
 2. After the issue of process, inquiry and report under S. 202 is illegal. 1896 A. W. N. 140, 1901 A. W. N. 44, 9 M. 282, 13 Cr. L. J. 749.
 3. Where a subordinate Magistrate has issued a process, the District Magistrate cannot interfere and order an enquiry. 27 C. 798.
 4. Where a Magistrate without waiting for the report of local investigation issued process, the procedure is illegal. 1925 C. 989.
 5. S. 202 requires that reasons should be given when the issue of process is postponed. 1929 C. 176=116 I. C. 721=30 Cr. L. J. 705.
 6. After the issue of process against two accused one of them lays a cross complaint, the Magistrate can properly rescind the order to issue process and call for inquiry and report. 1932 C. 662.
 7. Magistrate should hold preliminary inquiry before ordering issue of process against the accused. 1935 R. 485
- 14. Powers of investigating officer.**
1. A Magistrate conducting local investigation can administer oath. Such a proceeding is judicial proceeding. 1 Cr. L. J. 118, 52 A. 457.
 2. The investigating Magistrate can direct prosecution of the complainant under S. 476, Cr. P. C. 36 C. 72.
 3. The Magistrate holding the investigation is not disqualified from afterwards trying the case. 24 C. 167.
 4. If a Magistrate sends a cognizable case to Police under S. 202, the Police Officer making the investigation can arrest and send up a charge sheet. 2 P. 379 (382)=1923 P. 547, 1933 S. 136=34 Cr. L. J. 763 *Contra* 53 B. 339, 54 C. 303.
 5. The person to whom complaint is sent under S. 202, can import his personal knowledge in the report. 1930 M. 443=120 I. C. 69=39 Cr. L. J. 1160.
 6. Magistrate making order under S. 202 can stay proceeding pending civil case. 1934 S. 143.
 7. If the Magistrate directs inquiry of cognizable offence by Police. Police can put charge sheet for the same offence. 1934 S. 20=35 Cr. L. J. 811, 1933 S. 136=34 Cr. L. J. 763 Rel. on.
 8. A private person directed to make an investigation has all the powers of an Officer in charge of the Police Station except the power to arrest without warrant. 1923 B. 290=52 B. 448, 1932 P. 72.
- 15. Recording reasons for—**
1. If a Magistrate on examining the complainant, distrusts him, he is bound to record

Preliminary Enquiry—(contd.)

reasons before directing a local investigation. 21 C. W. N. 127, 9 A. 85, 1928 L. 88, 1926 P. 34, 1931 S. 113, 20 M. 387, 14 C. 141, 129 C. 176.

2. Omission to record reasons is mere irregularity curable under S. 537, unless it has occasioned a failure of justice. 25 M. 546, 1931 S. 113, 15 A. L. J. 642.
3. Omission to record reasons is an illegality. 27 C. 921, 14 C. 141, 40 C. 41, 1926 P. 57, *Contra* 2 I. C. 618.
4. Merely stating that Magistrate agrees with the Police report is not sufficient reason. 11 Cr. L. J. 331.
5. The reasons should not be based upon extra judicial information, but upon legal evidence or inquiry under S. 202. 13 B. 600, 6 Cr. L. J. 85.

16. Revision against—

1. High Court will not ordinarily interfere with the details and adequacy of an enquiry under S. 202. 1930 P. 30=116 I. C. 46=30 Cr. L. J. 554.
2. If the report is made by Police in a perfunctory manner and considered by Magistrate in the same manner, the High Court will interfere in revision. 19 Cr. L. J. 263.
3. The Court revising an order of refusal to issue a process need not give notice to the accused. 1926 S. 198=92 I. C. 590=27 Cr. L. J. 302.
4. If the inquiry has been carefully made and carefully considered, High Court will not interfere. 19 Cr. L. J. 263=4 P. L. W. 114.
5. In case of omission of the Magistrate to record reasons for postponing issue, High Court will interfere in revision if there was failure of justice. 55 B. 770, 1929 C. 176, 25 M. 546, 1926 P. 34, 1931 S. 113, 12 Cr. L. J. 463, 1918 P. 350—652, 18 Cr. L. J. 765.
6. Omission to examine complainant is irregular. 1929 P. 473.
7. Where the Magistrate does not record the statement himself but had the statements made before Police, High Court will interfere. 1925 P. 584.

17. Staying of proceedings.

Magistrate can postpone the issue of process and stay proceedings till the decision of cross case. 1933 S. 254=34 Cr. L. J. 891.

18. When proper.

1. When the complainant is not speaking from personal knowledge, an inquiry under S. 202 should be directed. 61 I. C. 839, 1934 R. 167.
2. Local inquiry should be ordered when there is a quarrel about boundaries. 10 A. L. J. 79.
3. It is open to Magistrate to hold inquiry in case of doubt. 1921 P. 85.
4. Inquiry can be made to ascertain the truth or falsehood of the complaint. It is not intended to supersede a regular trial. Complaint cannot be rejected on the improved allegation of accused. 55 B. 770, 29 Bom L. R. 713.
5. A Magistrate taking cognizance of the offence on Police report cannot direct local investigation by subordinate Magistrate. 43 C. 854, 17 C. W. N. 824.

19. Who can conduct— See 2—3.

1. The investigation may be made under S. 202 by any officer subordinate to the Magistrate, even though he be a clerk. 36 C. 72
2. A local investigation to a subordinate Magistrate and not to a superior Magistrate. 39 C. 1641.
3. District Magistrate cannot direct a first class Magistrate to hold inquiry under S. 202, as both are first class Magistrates. 2 P. R. 1912 Cr.
4. A Magistrate cannot order a local inquiry by a Pleader in the nature of a commission in a civil case. 18 C. W. N. 399.
5. If the offence is exclusively triable by the Court of Sessions, the local investigation should not be made by a second class Magistrate. 4 C. W. N. 305. See 6 C. W. N. 295.

*Preparation.***PREPARATION.**

1. Distinction between attempt and—. See Attempt—2.
2. Possession of means of crime.

Premeditated crime must necessarily be preceded by appropriate preparations. Possession of instruments or means of crime, *e.g.*, poison, coining instruments, house breaking implements, etc., are important factors in the judicial investigation of imputed crime. In many cases the possession of such instruments, etc., are made by statute *prima facie* presumptions of guilt. *Will's Cir. Ev., 6th Ed., 79; Best, S. 454.*

PREPARING CROSS-EXAMINATION, OPPORTUNITY FOR—. See Cross-examination—20.**PRESENCE AT OCCURRENCE.** See Abetment—36. Acts done in furtherance of common intention—9. By-standers, Eye witness, Murder—75.**PRESENTATION OF APPEAL** See Appeal—39.**PRESIDENT, MUNICIPAL COMMITTEE.** See Breach of Trust—24.**PRESIDENT OF A MEETING.**

The mere fact that accused presided at a public meeting in which revolutionary songs inciting to murder were sung, is not sufficient to charge him of abetment. 36 C. W. N. 191=1932 C. 549=138 I. C. 763.

PRESS—LIABILITY OF—. See Sedition—12, Defamation—30.**PRESS AND REGISTRATION OF BOOKS ACT (XXXV OF 1867).****Ss. 4 and 7.**

1. Person named as author in a book is not necessary to be presumed as author. The declaration under S. 4 of the Act is not evidence of the knowledge of the contents on the part of the Manager of the Press. The fact of person being the keeper of the press and the printer of the pamphlets by itself does not imply any knowledge of the contents. 47 B. 438
2. In case of change of keeper of press, fresh declaration is not necessary. 1931 O. 81.
3. A Roneo Duplicator cannot be considered a "Printing Press." Any publication produced by type-writing, duplicating or cyclostyling is not a 'newspaper.' 1931 N. 177=32 Cr. L. J. 1265. *Contra* 10 P. 492.
4. Presumptive proof under S. 7 does not apply to subsequent publication elsewhere 1935 N. 90.
5. Presumption of knowledge of contents does not apply to seditious pamphlets. 12 L. 483.

S. 13.

1. The press that is referred to under S. 13 is a press for the printing of books and papers. 57 C. 460.
2. It is for the prosecution to establish that the press was one which required a declaration and it was not in workable order. 57 C. 460.
3. Declaration in the name of Manager is no offence. 1931 O. 81.

S. 14.

A false statement, not a declaration, which is not made and subscribed before a Magistrate as provided by S. 4 cannot be said to have been made in making a declaration. 1923 L. 440=73 I. C. 689=24 Cr. L. J. 657.

S. 16.

The words "delivered out of press" are not equivalent to "printed." The work of printing might be completed before any copy was actually delivered out of press. 49 A. 315.

PRESUMPTION.**1. About compliance with law.**

1. Identification parade can be presumed to have been held in such circumstances as to be truly valuable. 23 Cr. L. J. 449.

Preliminary Enquiry—(contd.)

reasons before directing a local investigation. 21 C. W. N. 127, 9 A. 85, 1923 L. 88, 1926 P. 34, 1931 S. 113, 20 M. 387, 14 C. 141, 129 C. 176.

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*Preparation.***PREPARATION.**

1. Distinction between attempt and— *See* Attempt—2.
2. Possession of means of crime.

Premeditated crime must necessarily be preceded by appropriate preparations. Possession of instruments or means of crime, *e.g.*, poison, coining instruments, house breaking implements, etc., are important factors in the judicial investigation of imputed crime. In many cases the possession of such instruments, etc., are made by statute *prima facie* presumptions of guilt. *Will's Cir. Ev.*, 6th Ed., 79; *Best*, S. 451.

PREPARING CROSS-EXAMINATION, OPPORTUNITY FOR— *See* Cross-examination—20.**PRESENCE AT OCCURRENCE.** *See* Abetment—36. Acts done in furtherance of common intention—9. By-standers, Eye witness, Murder—75.**PRESENTATION OF APPEAL.** *See* Appeal—39.**PRESIDENT, MUNICIPAL COMMITTEE.** *See* Breach of Trust—24.**PRESIDENT OF A MEETING.**

The mere fact that accused presided at a public meeting in which revolutionary songs inciting to murder were sung, is not sufficient to charge him of abetment. 36 C. W. N. 191=1932 C. 549=138 I. C. 763.

PRESS—LIABILITY OF— *See* Seditious—12, Defamation—30.**PRESS AND REGISTRATION OF BOOKS ACT (XXXV OF 1867).****Ss. 4 and 7.**

1. Person named as author in a book is not necessary to be presumed as author. The declaration under S. 4 of the Act is not evidence of the knowledge of the contents on the part of the Manager of the Press. The fact of person being the keeper of the press and the printer of the pamphlets by itself does not imply any knowledge of the contents. 47 B. 438.
2. In case of change of keeper of press, fresh declaration is not necessary. 1931 O. 81.
3. A Roneo Duplicator cannot be considered a "Printing Press." Any publication produced by type-writing, duplicating or cyclostyling is not a 'newspaper.' 1931 N. 177=32 Cr. L. J. 1265. *Contra* 10 P. 492.
4. Presumptive proof under S. 7 does not apply to subsequent publication elsewhere 1935 N. 90.
5. Presumption of knowledge of contents does not apply to seditious pamphlets. 12 L. 483.

S. 13.

1. The press that is referred to under S. 13 is a press for the printing of books and papers. 57 C. 460.
2. It is for the prosecution to establish that the press was one which required a declaration and it was not in workable order. 57 C. 460.
3. Declaration in the name of Manager is no offence. 1931 O. 81.

S. 14.

A false statement, not a declaration, which is not made and subscribed before a Magistrate as provided by S. 4 cannot be said to have been made in making a declaration. 1923 L. 440=73 I. C. 689=24 Cr. L. J. 657.

S. 16.

The words "delivered out of press" are not equivalent to "printed." The work of printing might be completed before any copy was actually delivered out of press. 49 A. 315.

PRESUMPTION.**1. About compliance with law.**

1. Identification parade can be presumed to have been held in such circumstances as to be truly valuable. 23 Cr. L. J. 449.

Presumption—(contd.)

2. Presumption that official acts are done according to law is not enough to show that all necessary precautions to make it valuable have been taken. 1922 L. 31.
2. About human conduct.
 1. If a person, in a position to stop an illegal act being done in his house, fails to do so, Court cannot presume that he is an accessory to the act. 1925 O. 684=26 Cr. L. J. 851.
 2. Negligence cannot be presumed. Every man must be deemed to have taken ordinary care in his actions. 1925 N. 68=80 I. C. 920.
 3. Adultery may be inferred from guilty attachment and the existence of opportunities for intercourse. 33 I. C. 118.
 4. In case of possession of stolen articles found soon after theft the Court may presume that accused is guilty of theft or knew they were stolen articles, unless he gives explanation. 1924 A. 192=81 I. C. 558.
3. About non-production of evidence. See Witness—70.

Where the crown withholds relevant documents in its possession, the Court will draw adverse inference. 50 C. 276.

4. About veracity of a witness.

1. In charging the Jury the Judge should not put together the presumption of innocence of accused, with the presumption in favour of veracity of a witness. 1923 C. 769=33 C. W. N. 55.
2. Testimony given in a Court of Justice is presumed to be true until the contrary appears. 1928 C. 769. *Best on Evidence*, S. 352. *Evidence Act by Woodroffe* (8th Ed.), page 795.
3. Presumption about veracity of a witness can be rebutted in various ways, i.e., his demeanour, his keeping back something important, etc. 1928 C. 769.
4. If the onus of proving innocence is cast on the accused and the Jury is told to presume the statement of witness to be true unless defence have shown good reasons to reject his statement it is misdirection. 58 C. 1095.

5. As to certified copy. S. 79, Ev. Act.

When a certified copy of a deposition of a witness is produced Court shall presume it to be genuine and deposition is proved. 1927 P. 61, 27 C. 639.

6. As to depositions of witnesses. S. 80, Ev. Act. See Deposition.

1. The presumption mentioned in S. 80 arises only in respect of record of evidence which has been taken in accordance with law. 1933 C. 190=34 Cr. L. J. 430, 51 I. C. 666.
2. Non-compliance with the rules for recording evidence vitiates proceedings. 52 C. 159, 52 C. 499, 1926 C. 157, 49 M. 71, 52 C. 431, 42 C. 957 *Contra* 5 P. 63=1926 P. 232, 1926 R. 78, 1925 P. 114=26 Cr. L. J. 811. But according to the Privy Council ruling it has been held to be mere irregularity. 1927 P. C. 44=28 Cr. L. J. 259.
3. If the evidence of a witness is not read over or is taken in language different from one in which it is given, it is inadmissible and no secondary evidence can be led. 28 M. 308, 6 C. 762, 42 M. 561, 51 C. 236, 19 Cr. L. J. 169, 42 C. 240. But the more correct view is that it loses the benefit of S. 80 and can be proved by the person before whom the deposition was made. 45 C. 825, 1930 O. 119, 1923 N. 39=23 Cr. L. J. 500, 20 Cr. L. J. 506, 27 C. 629 (P. C.), 1929 C. 617=119 I. C. 193, 1923 O. 119, 86 I. C. 33=26 Cr. L. J. 657.
4. If the statement is not signed by the judge, S. 80 does not apply. 46 C. 895, 6 C. 762. *Contra* 60 I. C. 437.
5. There are three presumptions that arise under S. 80; first, that the document is genuine, secondly that the statement as to the circumstances under which it was taken, are true; and thirdly, that the deposition or statement or confession was duly taken. S. 80 Ev. Act. 1925 L. 122=26 Cr. L. J. 1425.

*Presumption—(contd.)***7. As to official or Judicial Act.** S. 114, ill (e), Ev. Act.

1. Court may presume that official acts were duly performed. 37 B. 415, 1930 O. 466.
2. Presumption applies to the doing of an act and does not extend to the doing of an act itself. 1934 R. 207, 1934 P. 33, 1928 P. 600=8 P. 1, 7 P. 733, 53 C. 718, 32 C. 1107.
3. Where an order is required by law to be published, the Court cannot presume its publication. 1932 C. 833, 1933 G. 347=34 Cr. L. J. 549.
4. If the publication was proved, there will be presumption that it was properly made. 1932 M. 508=33 Cr. L. J. 655.
5. There is a presumption that all formalities were complied with regarding an attachment. 1934 P. C. 217, 1923 N. 78.
6. Presumption of precaution having been taken in identification parade is hardly sufficient to render it truly valuable. 1922 L. 31=23 Cr. L. J. 449.
7. Evidence must be very strong to rebut the presumption. 45 I. C. 52.
10. Accused is entitled to be considered innocent both during Police investigation and during hearing of case. 1935 C. 101=154 I. C. 1006.
11. Merely because accused makes a false defence or uses false testimony, he is not deprived of presumption of innocence. 1934 S. 22.
12. Presumption of innocence is neither strengthened by acquittal nor weakened by conviction. 1934 A. 842=35 Cr. L. J. 1229. 1934 A. 27 Expl.

8. As to absconding accused. See Absconding—6**9. Of guilt.** See Burden of proof—1.

1. If accused does not disclose his defence but only sets up *alibi* a certain presumption arises against him as to his guilt. 1929 N. 36=29 Cr. L. J. 963.
 2. If accused has jewels of a murdered person in his possession and does not give any explanation, the presumption is that accused is the murderer. 23 Cr. L. J. 697.
- 10. Of guilt in murder cases.** See Murder—72.
- 11. Of guilty knowledge.** See Receiving stolen property—13.
- 12. Of innocence of accused.** See Presumption of innocence.
- 13. Refusal to answer question.**

1. Accused cannot defeat the ends of justice by refusing to answer questions. The Court may draw reasonable inference from such refusal. 1931 L. 178.
2. No adverse presumption can be drawn from refusing to answer irrelevant questions. 47 B. 809.

PRESUMPTION OF INNOCENCE. See Burden of proof—2.

1. There is a presumption of innocence of accused. 15 P. R. 1909 Cr., 5 P. R. 1901.
2. Prosecution must exclude all explanations of facts reasonably consistent with the innocence of accused. 1 P. R. 1914 Cr.
3. When the action of accused is open to two constructions, one criminal and the other honest, the appellate Court should not assume that it was criminal. 1924 M. 816, 1930 S. 99, 1927 P. 292, 54 M. 931, 1931 O. 385.
4. In inferior Courts the right principle is occasionally reversed and a person is presumed to be guilty the moment he is accused and every attempt on his part to prove his innocence is regarded as vexatious by the Court. 28 C. 594.
5. Presumption of innocence is not affected by the conduct of the accused in the trial, as to how he pleads or fails to plead in the proceedings. 46 A. 64.
6. If no *prima facie* case is made out, accused can safely rely on the presumption of innocence. But when a *prima facie* case is made out, the presumption of innocence is displaced and the force of suspicious circumstances is augmented, when accused offers no explanation. 1925 S. 289=26 Cr. L. J. 1063, 1927 S. 85.

Presumption of Innocence—(concl'd.)

7. In criminal cases Court should not proceed upon the assumption that accused actually did what they were required by rules to do. 1926 C. 345=91 I. C. 883.
8. Past good character does not lead to the presumption of innocence. 1928 L. 647.
9. If the *onus* of proving innocence is cast on the accused and the Jury is told to presume the statement of witness to be true unless the defence have shown good reasons to reject his statement, it is misdirection. 58 C 1095.

PREVENTION OF CRUELTY TO ANIMALS ACT (XI OF 1890).

General.

The Act does not apply to the District of Saran in Behar and Orissa. 23 Cr. L. J. 87.

S. 3.

1. Working a lean pony and using bridle with leather disc studded with nails deserves conviction under S. 3 in preference to S. 6. 1924 R. 373.
2. Torture of a cow for getting "*piri*" dye in a public place falls within S. 3. 17 C. W. N. 332=14 Cr. L. J. 132.
3. The primary test of the offence is whether the act is cruel. Merely overloading a cart beyond the maximum weight prescribed by the regulations framed is not sufficient for conviction. 56 B. 264=1932 B. 427.

S. 6.

1. A man is not guilty if the act is done in spite of reasonable precautions. 13 Cr. L. J. 274=141 C. 658, as to what is "Permits". See 10 P. 847.
2. The offence under S. 6 is punishable with fine only. 1924 R. 373.

PREVENTION OF SEDITIOUS MEETINGS ACT (X OF 1911.)

S. 6.

The word "promotion" implies some action anterior to the existence or occurrence of the thing "promoted" and therefore it cannot be said to have been "promoted". There is a distinction between the promotion and conduct of a public meeting. 1923 L. 342=76 I. C. 689=25 Cr. L. J. 225.

PREVIOUS ACQUITTAL OR CONVICTION BARRING TRIAL. S. 403, Cr. P. C.

1. Absence in the first trial. See Absence of complainant.

1. A complaint was made against A and B. A only attended the Court and was acquitted. A fresh trial of B (absent) is barred. 4 C. W. N. 345.
2. If out of the three accused, one absconded and the other two were convicted. The third accused can be tried afterwards and the trial is not barred. 36 A. 168.
3. Two persons were acquitted for conspiring with the third, who was not present at the trial. He can be subsequently tried. 41 C. 754.
4. Where three out of several accused were sent up and acquitted, the rest can be tried afterwards. 37 C. 630, 53 C. 605 *Contra* 7 C. W. N. 493.

2. Acquittal barring a trial—. See Acquittal—2.

3. Applicability of S. 403.

1. The section does not rest on the doctrine of estoppel but on the rule of common law that a man may not be put twice in peril for the same offence. 29 M. 126.
2. It would be dangerous to regard a judgment of not guilty as not fully establishing the innocence of the accused. 38 C. 559 (578).
3. Where conviction is set aside and no acquittal is in force, retrial can be ordered. 1929 A. 710=121 I. C. 248.
4. S. 403 does not apply to a refusal of Magistrate to make a complaint under S. 476, Cr. P. C. 1930 S. 315.
5. If accused is convicted for misappropriation of money on certain dates, he cannot afterwards be tried for a different sum on a date falling within same interval. 1930 M. 978=59 M. L. J. 854.

Previous Acquittal or Conviction Barring Trial—(contd.)

6. If the offence falls under two definitions, it is covered by S. 403. 1928 B. 177=109 I. C. 346=29 Cr. L. J. 522.
7. Conviction for an offence by A, B and C is no bar to trial of B, C and D. 9 P. 585.
8. Acquittal under S. 498, I. P. C., is no bar to trial for subsequent detention of the abducted woman. 1924 L. 330=74 I. C. 444.
9. Applicability of S. 403 does not depend upon additional evidence being available or not. 1921 P. 22=59 I. C. 207.
10. Acquittal for mischief precludes a fresh charge for rioting almost on the same facts. 1924 M. 478=76 I. C. 708.
11. An acquittal is immune from challenge only when the accused has been tried. 1926 C. 691=95 I. C. 79, 31 A. 317.
12. The test is whether the evidence is the same in both the trials. 1928 P. 577=110 I. C. 792=29 Cr. L. J. 761, 48 C. 78.
13. A previous order of release which does not amount to acquittal is no bar to subsequent trial. 1932 C. 871=36 C. W. N. 1038.
14. In a prosecution for conspiracy accused were convicted. Their conviction for different conspiracy is not barred under S. 403. 1935 C. 316.
15. Charge of criminal breach of trust and cheating were based on the same facts. Charge of cheating was compounded with the permission of Court, accused can be convicted under S. 405. 1936 M. 353=37 Cr. L. J. 637.

3.A. Burden of proof.

1. It is for the accused to raise the plea of previous acquittal and he can raise it at any stage. 1928 P. 577=110 I. C. 792=29 Cr. L. J. 760, 1889 A. W. N. 8, 25 I. C. 1000.
2. If the property is stolen on different dates and the accused is acquitted for receiving it, he can be tried for receiving another item and the *onus* lies on accused to show that he received them all at one occasion. 1927 S. 53=27 Cr. L. J. 1256.
3. It is for the accused to show that the previous Court was competent to try the offence. 9 P. 58,=1930 P. 26=117 I. C. 625=30 Cr. L. J. 806.

4. Charges which would have been joined.

Magistrate acquitted the accused of abetment of theft, though he found him guilty of receiving stolen property but he did not charge him with it, as he could have done it under S. 235, Cr. P. C. Held, that the second trial is barred. 1924 B. 448=86 I. C. 479=25 Cr. L. J. 831, 41 C. 1072

5. Court of competent jurisdiction.

1. The Council of Elders (Jirga) under the Punjab Frontier Regulation (IV of 1887) is a Court of competent jurisdiction under S. 403 and a person convicted by them cannot be retried on the same facts. 30 P. R. 1884 Cr.
2. A person tried by a village headman under the Burma Village Act under S. 234, I. P. C., cannot be tried again. 1 R. 49
3. The words "competent to try the offence" mean that the accused on the second occasion must show that the former Court was in a position had it chosen to try, acquit or convict the accused of the offence subsequently charged. They do not refer to the jurisdiction of the Court to try the class of offences in general. 9 P. 585=1930 P. 26=117 I. C. 625=30 Cr. L. J. 805, 37 A. 107, 17 Bom. L.R. 678 Rel. on 36 M. 308 Not Foll. 24 M. 641.
4. The trial of accused in a Native State bars their trial in British India on the same facts. 5 L. L. J. 574.
5. A trial by Court not having jurisdiction is void *ab initio* and it is not necessary to get the acquittal set aside before the accused can be retried. 8 B. 307, 6. W. R. 13, 2 W. R. 9, 53 B. 69.
6. Where a conviction is set aside on the ground that Magistrate had no jurisdiction, accused can be retried, although the appellate Court did not direct retrial in a proper Court. 29 C. 412, 39 A. 293.

Previous Acquittal or Conviction Barring Trial—(contd.)

7. Accused stood up in Court and shouted "Jai Mahabir" and beat another person with a shoe. The Court punished him for contempt and subsequently he was convicted by another Magistrate under S. 355, I. P. C. Held, that second trial is not barred, as the first Court could not try him, as there was no complaint before it. 1930 P. 26=117 I. C. 625=30 Cr. L. J. 805.
 8. A previous acquittal under S. 419, I. P. C., is no bar to trial under S. 82, Registration Act, as the first Court was incompetent to try the case without sanction. 1921 A. 205=64 I. C. 142=22 Cr. L. J. 750. See 1921 S. 137=66 I. C. 657.
 9. Absence of complaint under S. 195 (1), Cr. P. C., makes the Court a Court not of competent jurisdiction and therefore renders valueless the plea of previous acquittal under S. 403. 1927 S. 10=97 I. C. 417=27 Cr. L. J. 1105=21 S. L. R. 1.
 10. If a person is acquitted under S. 498 by a Court not competent to try an offence of bigamy, he can be tried under S. 494 and the finding of first Court is not binding on the second. 1923 L. 844=110 I. C. 333=29 P. L. R. 533.
 11. S. 403 (4) allows a second prosecution, if the offence subsequently charged could not be tried by the first Court. 25 Cr. L. J. 1087=1925 M. 711=88 I. C. 31, 110 I. C. 333, 110 I. C. 792=1923 P. 577, 18 Cr. L. J. 643.
 12. If an appellant is acquitted on the ground of want of sanction, he can be tried again. 1929 A. 940=120 I. C. 121=30 Cr. L. J. 1153, 37 A. 107.
 13. A District Magistrate took a case on his own file and stayed further proceedings but did not communicate it to the lower Court, who acquitted the accused under S. 247, Cr. P. C. Held, that this acquittal is no bar to second trial. 1929 C. 657, 34 M. 253, 7 C. W. N. 711, 4 C. W. N. 346. See 40 M. 977.
 14. If accused is convicted of rioting he can be tried for dacoity, as the first Court could not try him for dacoity. 7 M. 557.
 15. Conviction under S. 323 is no bar to a trial under S. 304, I. P. C. 43 M. 330, 5 Bom. L. R. 125, 7 P. R. 1912 Cr.
 16. A person acquitted or convicted under S. 465, I. P. C., may be tried by the Sessions Judge under S. 467, I. P. C., on the allegations that document forged was valuable security. 19 Cr. L. J. 388.
 17. If Court which tried the first offence was also competent to try the subsequent offence, the trial of the latter offence is barred under S. 403. 24 M. 641, 36 M. 308, 37 M. 236.
 18. The absence of proper complaint renders the Court "incompetent" to try the offence. If accused is acquitted under S. 498, I. P. C., on the ground that complainant was not the proper person, a second complaint by the husband is not barred. 31 A. 317.
 19. Acquittal under Ss. 365, 368, 376, I. P. C., is no bar to trial under S. 498 on the same facts, since the previous Court was not competent to try the accused under S. 498 in the absence of a complaint by husband. 17 Bom. L. R. 678.
 20. When a complaint under Ss. 409 and 477-A, I. P. C., was tried by a second class Magistrate under S. 403, I. P. C., who acquitted the accused, he can be tried again under Ss. 409-477-A, I. P. C. 23 C. W. N. 518.
 21. Mere setting aside conviction and directing accused to be committed is not acquittal. 1932 A. 409.
6. Discharge and acquittal of accused. See Complaint—12.
1. An order dismissing a complaint or discharge of accused is not an acquittal and a fresh complaint on the same facts is maintainable. 28 C. 652, 29 C. 726, 29 M. 126, 28 C. 211, 36 A. 53, 36 A. 129, 8 R. 11. See 22 A. 106.
 2. Non-appearance of complainant in summons case amounts to acquittal and bars a fresh trial. 45 A. 58, 34 M. 253, 5 P. L. T. 15, 74 I. C. 719, 40 M. 276, 14 P. W. R. 1917.
 3. Fresh conviction is not debarred by an order under S. 494 (a). 1924 P. 797=83 I. C. 689, 29 C. 726, 40 C. 71.

Previous acquittal or Conviction barring Trial—(contd.)

4. A second complaint on the same facts is not barred under S. 107, Cr. P. C. 71 I. C. 696=1923 A. 332=24 Cr. L. J. 232.
5. After the dismissal of complaint of hurt under S. 259, Cr. P. C., the complainant submitted a fresh complaint with an application to restore it. Held, that the Magistrate had jurisdiction to restore it after passing an order of discharge. 1927 M. 503=100 I. C. 384=28 Cr. L. J. 304, 29 M. 126.
6. A complaint dismissed under S. 259, Cr. P. C., can be revived on a fresh complaint. 28 M. 310, 29 M. 126, 28 C. 652, 87 I. C. 928.
7. If an application under S. 488, Cr. P. C., is dismissed for default, a subsequent application is competent. 5 R. 697=1927 R. 328=28 Cr. L. J. 912, 5 A. 224.
8. The withdrawal of the case under S. 494 (b), Cr. P. C., has the effect of acquittal and will bar a fresh trial. 12 M. 35, 40 M. 976.
9. A compromise under S. 345, Cr. P. C., has the effect of acquittal. 29 P. R. 1914 Cr.
10. S. 403, Cr. P. C., bars a second trial when the accused is acquitted and not when he is discharged. 17 A. L. J. 867.
11. When a complaint is dismissed under S. 203, a second complaint to the same Magistrate or different Magistrate of co-ordinate or inferior jurisdiction is competent. 1932 M. 369=1931 M. W. N. 1149.
12. A charge was framed against the accused. The Court finding that examination of complainant was not taken under S. 200. To remedy this defect the Court dismissed the complaint. Held, it was not acquittal and second complaint is valid 1934 A. 877=35 Cr. L. J. 1177.

7. Fresh trial on same facts for different offences.

1. An accused once acquitted, cannot be convicted for another offence on the same facts. 1928 L. 332=107 I. C. 766=29 Cr. L. J. 282, 1 Bom. L. R. 15.
2. A trial for the offence of theft of an animal, bars a trial under S. 426, I. P. C., for killing it. 1 Weir 497.
3. If accused is acquitted of mischief on the ground that the tree belongs to him, he cannot be afterwards tried for theft. 8 M. 296.
4. If the accused is first tried for *mischief* alone, he cannot be tried for rioting afterwards. 1924 M. W. N. 153=1924 M. 478=76 I. C. 708.
5. If a person commits breach of trust of different sums of money, he commits so many offences but it is not desirable that he should be tried as many times, when he could have been tried for all of them at one trial 57 C. 17, 1923 C. 179.
6. Accused was acquitted under S. 408, I. P. C. and the prosecution alleged that he made three false entries to conceal the act of misappropriation. Held, he should not be tried for falsification of account S. 477-A on the same facts. 49 C. 924.
7. A person acquitted of cheating cannot be tried again for the offence of falsification of account. 20 Cr. L. J. 667.
8. Accused was acquitted under S. 498 and was subsequently convicted under S. 363 for kidnapping two infants of the woman who were with her, when she left the house. Held, the second trial was illegal. 56 P. L. R. 1911.
9. Acquittal under S. 363 bars trial under S. 366 or 368. 20 Cr. L. J. 526.
10. Acquittal under Ss. 380—411, I. P. C., bars a trial under S. 54-A, Police Act, as the charge might have been joined before. 45 C. 727.
11. Acquittal on a charge of unlawful assembly bars a further enquiry into the offence of hurt on the same facts. 5 C. W. N. 72.
12. Acquittal under S. 363 bars a subsequent trial under S. 365, I. P. C. 24 C. W. N. 856.
13. If a person is acquitted under S. 338, I. P. C., for rashly and negligently driving a car, he cannot afterwards be tried under S. 16, Motor Vehicles Act, for driving the car without license. 2 P. L. T. 31.

Previous acquittal or Conviction barring Trial—(contd.)

14. Acquittal under S. 211 bars a trial under S. 182, I. P. C. 36 M. 308.
 15. Acquittal on a charge of forgery and abetment thereof bars a trial under S. 82, Registration Act, since the accused could have been charged under S. 82 in the first trial. 1 R. 299.
 16. Acquittal under S. 411 bars subsequent trial under S. 414. 28 A. 313.
 17. Accused was acquitted of abetment of theft, he cannot be tried subsequently under S. 411, I. P. C. 26 Bom. L. R. 440.
 18. Where the Magistrate issued summons for one of several offences alleged against an accused, and acquitted him, no fresh process could be issued against him in respect of offence already tried or of other offences. 2 C. L. J. 622.
 19. Accused was summoned under S. 426, I. P. C. and was acquitted under S. 247, Cr. P. C., for non-appearance of complainant. The District Magistrate directed that prosecution should proceed under S. 379, I. P. C. Held, that the order is illegal. 1923 C. 407=76 I. C. 293=25 Cr. L. J. 149.
 20. Accused were acquitted under S. 411 for possession of carpets, they cannot be subsequently charged for possessing postage stamps, etc., when the articles were recovered together. 3 P. 503, 1923 O. 298=83 I. C. 481.
 21. If an accused is sentenced under a special Act and the sentence under the Penal Code is an enhanced one, he cannot be tried under the latter Act, as the Court must have considered the same indirectly. 1930 C. 60=124 I. C. 69=31 Cr. L. J. 613.
 22. If accused is sent to jail under S. 108, Cr. P. C., he cannot be convicted under S. 121-A for the same offence. 1928 R. 135=30 Cr. L. J. 630.
 23. If there is conviction under S. 121-A, a fresh conviction under S. 120-B cannot be founded on the same facts. 1925 L. 157=82 I. C. 169=25 Cr. L. J. 1241.
 24. A person was proceeded against under S. 291, I. P. C., for disobedience of an order of the Court to discontinue a nuisance and was acquitted. He could be proceeded against under S. 188, I. P. C., but a complaint by Court was necessary. 1930 L. 1055=129 I. C. 224=32 Cr. L. J. 253.
 25. Acquittal on a charge of murder and abetment of murder is a bar to prosecution for culpable homicide not amounting to murder and abetment thereof. 55 B. 520=1931 Bom. 309=134 I. C. 1219=33 Cr. L. J. 62.
 26. Where a person has been acquitted of the charge of abduction, he cannot be subsequently prosecuted for the alleged rape of the female involved in the abduction case. 1930 R. 360=128 I. C. 843, 6 R. 386.
 27. Where the Magistrate was at fault in not framing a charge under both Ss. 379 and 453, I. P. C., and the accused having been acquitted under S. 453, a fresh complaint under S. 379 was made. Held, that the Court could permit a second prosecution on the same facts. 35 C. W. N. 1152=1932 C. 291.
- 8. Fresh trial on same facts for same offence.**
1. In a charge of cheating, the complainant must disclose all the evidence of deception at the first trial and he cannot institute series of trials each based on different evidence of deception. 1927 M. 444=99 I. C. 1035=28 Cr. L. J. 235, 28 A. 317.
 2. A judgment-debtor escaped from the Amin who had arrested him. He was acquitted on the complaint of the decree-holder. A second trial on the complaint of Amin is barred under S. 403. 1930 M. 785=127 I. C. 645=32 Cr. L. J. 27, 36 M. 308.
 3. Acquittal under a wrong section is a bar to further trial on the same facts. 81 I. C. 314=25 Cr. L. J. 794, 66 I. C. 657.
 4. A person acquitted under S. 247, Cr. P. C., cannot be tried again. 45 A. 58, 47 I. C. 719, 34 M. 253, 40 M. 976. See 29 M. 126.
 5. The trial of accused for receiving stolen property is a bar to second trial for receiving other articles found in his possession on the same day, unless it can be proved that the other articles were received at different times. 50 C. 594, 3 P. 503, 15 C. 511, 15 A. 317.
 6. A person acquitted on a charge of building a house without sanction of Municipal

Previous acquittal or Conviction barring Trial—(contd.)

Committee, cannot be retried because the house continues to stand. 17 P. W. R. 1917 Cr.

7. Accused assaulted A and B. He was acquitted on the complaint of A, he cannot be tried again on the complaint of B. 18 A. L. J. 85.
8. When a complaint is dismissed for failure to pay process fee under S. 204 (3), a second complaint on the same facts is competent. 130 I. C. 825=32 Cr. L. J. 603.

9. Fresh trial on same facts for distinct offence.

1. Where two offences committed are quite distinct and committed against different persons, S. 403 is no bar to prosecution for the second offence. 1929 A. 940=120 I. C. 121=30 Cr. L. J. 1153.
2. Composition with one does not operate as acquittal of the others. 1930 A. 92=120 I. C. 117=30 Cr. L. J. 1149, 9 A. 52, 29 A. 7, 36 A. 129.
3. Accused carried off a woman and were convicted of house trespass and grievous hurt. The conviction is no bar to trial under S. 365, I. P. C. 3 A. L. J. 2.
4. A previous conviction for being in possession of counterfeit coin under S. 243, I. P. C., does not bar a trial under S. 240 for passing other coins. 31 C. 1007.
5. Trial for abetment of forgery is no bar to trial for using as genuine a forged document. 40 B. 97.
6. The accused was charged under S. 409, I. P. C., for criminal breach of trust of Rs. 18,924 committed between 1st October 1921 and 1st March 1922. The charge was withdrawn. Subsequently he was charged for breach of trust of Rs. 100 committed on 30th November 1921 on the allegation that this sum was not included in Rs. 18,924 and was not known to him. Held, that the trial is not barred. 50 C. 632, 12 Bom. L. R. 226.
7. Some Police Constables were tried for wrongful confinement and were acquitted. Subsequently they were tried for rioting and convicted. Held, that the second trial was not barred. 48 C. 78.
8. A complaint under Ss. 352—504, I. P. C., was made, but the Magistrate issued process under S. 352 only and acquitted the accused. He held that a *prima facie* case under S. 504 was clear and issued process under S. 504. Held, that the second trial was not barred. 20 Cr. L. J. 43.
9. Where accused threatened 3 witnesses, the trial and conviction for threatening one witness, does not bar a second and separate trial of accused for threatening the other two witnesses. 9 W. R. 30.
10. Acquittal under S. 400, I. P. C., is no bar to trial under S. 395, I. P. C. 1 Bom. L. R. 15.
11. The offence under S. 91-B, Companies Act, has nothing to do with the breach of trust of the Bank's fund. As the accused cannot be charged in the alternative, the acquittal under the first offence is no bar to the trial of the other. 1930 L. 57=118 I. C. 650=30 Cr. L. J. 954, 23 C. 174.
12. Conviction for affray is no bar to second trial under Ss. 323 and 147, I. P. C. 1929 B. 451=118 I. C. 693=30 Cr. L. J. 965, 1925 A. 299.
13. Acquittal of accused under Ss. 114-419, I. P. C., for false personation and before a Sub-Registrar is no bar to a trial under S. 82, Registration Act. 1927 R. 303=105 I. C. 236=28 Cr. L. J. 908.
14. Acquittal under Ss. 147—325 is no bar to trial under S. 302, I. P. C., on the same facts. 94 I. C. 359=27 Cr. L. J. 615, 42 A. 128, 24 M. 16.
15. Where a woman is abducted and detained, the acquittal on a charge of abduction is no bar to the trial on a charge of detention. 1924 L. 330=24 Cr. L. J. 780.
16. Conviction for affray is no bar to subsequent conviction for causing hurt in affray. 47 A. 284=1925 A. 299=86 I. C. 64=26 Cr. L. J. 688.
17. A charge under S. 193, I. P. C., was withdrawn under S. 494 (b), Cr. P. C., and a complaint under S. 182, I. P. C., was made. Held, that the previous acquittal did not bar the subsequent trial. 1928 B. 177=109 I. C. 346=29 Cr. L. J. 522.

Previous acquittal or Conviction barring Trial—(concl'd.)

jurisdiction under S. 195, Cr. P. C. S. 403 (1) does not operate as bar to the second trial. 5 P. 452, 46 I. C. 716, 36 M. 308 Dist. from.

19. Want of jurisdiction.

If the accused is acquitted by Court who had no territorial jurisdiction, he can plead an *autre fois* acquit unless failure of justice occurred by trial in wrong Court. 1933 M. 765=56 M. 996, 30 M. 94 Rel. on. 53 B. 69=1923 B. 530 Diss. from.

PREVIOUS CONVICT RELEASE ON PROBATION—. See First offender—8.
PREVIOUS CONVICTION.

1. As bar to fresh trial. See Previous acquittal or conviction barring trial.
2. Charge of—. See Charge—22.
3. Commitment in case of—. See Commitment—23-A.
4. Evidence of—. See Security for good behaviour from habitual offenders—15.
5. Old—. See Enhanced sentence—5.
6. Proof of—. S. 511, Cr. P. C. See Enhanced punishment—7.
7. Sentence for—. See Enhanced punishment—7.

Sentence even with previous conviction must fit the crime. 1924 B. 453, 1930 L. 100.

8. To prove state of mind. See State of mind—2.**PRIMA FACIE CASE.****S. What is—.**

1. The evidence discloses a *prima facie* case when it is such that if unrebutted and if believed, it will be sufficient to prove the case against the accused. 134 I. C. 1045=33 Cr. L. J. 3=1931 C. 607.
2. A *prima facie* case only means that there is ground for proceeding. The Magistrate is not bound to issue process even if there is a *prima facie* case. 1931 C. 607=134 I. C. 1045=33 Cr. L. J. 3=36 C. W. N. 16, *Contra* 1926 C. 259.
3. Where a complaint *prima facie* discloses an offence, a Magistrate cannot hold the charge to be groundless, unless he knows the sort of evidence which is to be adduced. 1930 L. 461=123 I. C. 275=31 Cr. L. J. 481.
4. When facts alleged in the complaint disclose an offence and in the examination of complainant there are no contradictions, variations or serious and unexplained delay in instituting proceedings, there is a *prima facie* case for proceedings. 8 Cr. L. J. 342, 21 I. C. 171. 31 I. C. 650.

2. When—made out, duty of defence. See Defence—9.**PRINTER—LIABILITY OF—.** See Sediton—12.**PRISONS ACT (IX OF 1894).****Ss. 3—13.**

1. An under-trial person is a prisoner. A judicial lock-up is a prison within the meaning of Prisons Act. 4 L. 448.
2. An approver whose detention is ordered is a "Criminal Prisoner." 12 L. 635.

S. 33.

1. Accused sent a communication to the prisoner through a Jail warder. The prisoner read the communication and wrote a reply on the same paper and handed it to the warder for being carried to the second accused. Held, that the prisoner is guilty under S. 42 of the Prisons Act read with S. 107, I. P. C. 1923 M. 596=72 I. C. 609=24 Cr. L. J. 449.

2. Carrying a bundle of newspapers from a prisoner inside the Jail to one outside is an offence under S. 42. 1924 B. 385=83 I. C. 342=25 Cr. L. J. 1382.

S. 40.

Courts under whose warrants under-trial prisoners are detained in Jail or High Court have no jurisdiction to go into the question whether the Superintendent of Jail has or has not disregarded or observed the provisions of S. 40. 14 L. 182.

*Prisons Act—(concl'd.)***S. 52.**

District Magistrate and Magistrate of the 1st class as used in S. 52 do not include a Presidency Magistrate. 32 M. 303.

S. 54.

Where a medical officer suspected by the Jailor to be conveying a letter to a prisoner refuses to submit himself for search, the offence is one under S. 186, I. P. C. and under S. 54 of the Prisons Act. 14 Cr. L. J. 619.

PRISONERS' ACT (III OF 1900).

1. If a person is detained in prison he is subject to the provisions of the Prisons Act and rules thereunder. If the action of the Jail authorities is illegal or unjustifiable the Court can interfere in the interest of justice. 1931 L. 562=133 I. C. 59.
2. An order to examine a witness in Court and a consequential order for his removal can be reviewed by Court if there is some fresh material. 130 I. C. 538.

PRIVACY—INTRUDING UPON—. See S. 509, I. P. C.

PRIVATE PERSON—ARREST BY—. See Arrest—7.

PRIVATE PROSECUTOR.

1. Application for enhancement by—. See Enhancement—1.
2. Conducting prosecution by—. See Prosecution—4.
3. Revision by—. See Revision.
4. Withdrawal of case by—. See Withdrawal—1.

PRIVILEGE.**1. Communication during marriage.**

1. Confession to husband :—No statement of an incriminating nature made by accused as to her guilt to her husband can be received in evidence. 81 I. C. 271=25 Cr. L. J. 783=1923 L. 40, 10 P. R. 1914 Cr.
2. The restriction in S. 122 cannot be waived or relaxed. The disclosure by a widow of certain communications made to her by her husband immediately before his death, cannot only be not compelled but could not be permitted at all. 40 C. 891.
3. S. 122 protects the individual and not the communication, if it can be proved without putting the husband or wife into the witness box. 22 M. 1.
4. A letter was sent by a husband to his wife containing incriminating statement, which was found on house search. It was tendered in evidence. Held, that the letter was admissible against the accused. 22 M. 1.
5. The communication made by an arbitrator to his wife shortly before his death that he had accepted bribe from a party can be permitted to be disclosed in evidence subject to the requirements of S. 122. 1930 L. 280=120 I. C. 494.
6. The evidence of the wife of accused as to certain communications between her and her husband is inadmissible. 34 P. R. 1914 Cr., 218 P. L. R. 1913, 10 P. R. 1914.
7. Before admitting evidence the Court should ask the party whether he consents to the evidence being given. The consent must be express. 27 P. R. 1913 Cr.

2. Communication with counsel. Ss. 120—127—129, Evidence Act.

1. Instructions to counsel are privileged documents. 9 I. C. 509, 10 M. 28.
2. Communications made to the Pleader with the express purpose of being put in pleadings are not privileged. 8 I. C. 897, 16 I. C. 641.
3. The obligation to keep undisclosed matters which ought not to be disclosed has nothing to do with the question whether at the time of the communication there was pending litigation or any prospect of it. 84 I. C. 353, 1925 B. 1.
4. The obligation continues after the employment has ceased. 1925 Bom. 1.
5. Giving out a matter which is already a disclosed fact is not forbidden. 84 I. C. 353 =1925 B. 1=26 Bom. L. R. 887.

Privilege—(contd.)

6. A Pleader cannot disclose the contents of the will, where he is engaged to obtain a succession certificate. 31 Bom. L. R. 1046=1929 B. 414.
 7. If objection is taken to admissibility on the ground of privilege, no adverse inference can be drawn. 50 C. 898.
 8. The knowledge which a Pleader acquires through his client as to the working of stove is inadmissible in a patent action. 41 A. 125.
 9. The Court cannot rule out the evidence of a counsel as inadmissible on the ground of incompetency of the counsel to be a witness. 12 A. L. J. 285.
 10. Instructions to counsel are only privileged in the sense of being protected from disclosure to the opponent and there is no privilege as against the Court. But if the Court calls for written instructions, it cannot use them as evidence in the case. 40 C. 898.
 11. Advice given by a Pleader is privileged and the disclosure by an attorney of such advice is prohibited. 84 I. C. 353.
 12. Presence of the client's friend at the time of professional communications, does not affect attorney's obligation to keep the communication secret. 26 Bom. L. R. 887.
 13. No privilege attaches to a statement made by a party's servant, with reference to subject matter of the suit. 102 I. C. 425, 2 B. 453, 15 B. 7, 11 C. 655.
 14. Statements of witnesses recorded for the special purpose of being shown to legal advisers to ascertain whether there is a good case to go to the Court or not, is privileged. 43 I. C. 71.
 15. A Pleader cannot be charged for misconduct for refusal to disclose to the Court a professional communication made to him by his client. 14 Cr. L. J. 438.
 16. S. 125, Evidence Act, not only prohibits advice given by a Barrister, attorney, etc., but also the disclosure by an attorney of advice given by another Barrister and attorney. 1925 B. 1=84 I. C. 353.
 17. Advice given by legal adviser is privileged. 15 B. 7. See 2 B. 453.
 18. If Mukhtar is in possession of draft of incomplete statement of complainant; not meant to be filed, he can claim privilege. 1933 C. 5=34 Cr. L. J. 622. 5 Bom. L. R. 122 Dist.
 19. S. 126 is not restricted only to oral communication made to Pleader but to facts observed by him for the purpose of and in the course of his employment. 1934 L. 269.
3. Evidence as to affairs of state. S. 123, I. P. C.
1. A report submitted to the Inspector-General of Prisons under S. 900 of the Jail Manual is an unpublished official record relating to the affairs of state under S. 123. 89 I. C. 387=26 Cr. L. J. 1347, 43 C. 304.
 2. Questions referred to in S. 123 should be disallowed by the Magistrate. 12 Cr. L. J. 277.
 3. The Public Officer concerned and not the Judge is to decide whether the evidence referred to shall be given or withheld. This holds good even when the witness had access to official record and refreshed his memory before he came to give evidence. 48 C. 304, 1930 M. 342.
 4. The Head of the Department has absolute discretion to give or withhold permission and the Court cannot question the claim of privilege. 89 I. C. 387.
 5. In a prosecution for perjury, an Assistant in the office of Deputy Controller of Stationery, Calcutta, while giving evidence, did not base his knowledge on his own experience—
 which pri record of Government in respect of
 Court or witness was not prepared to let the
 C. W. N evidence was not admissible. 36
 6. It is for Court to satisfy itself that documents relate to affairs of state and their production will be detrimental to public interest. 1936 N. 25=161 I. C. 653. 1931 P. C. 254 and 1922 A. 37 Foll.

Privilege—(contd.)

7. Departmental enquiry papers are not unpublished documents relating to affairs of state. 1936 N. 25=161 I. C. 658, 40 C. 898 and 16 C. W. N. 431 Foll.
8. Court is not entitled to inspect a document to decide the objection under S. 123, S. 162, Ev. Act.
9. But where letter written by the Head of Department reaches addressee, it ceases to be unpublished document. 1933 L. 157=143 I. C. 685.
10. Police Diaries are privileged documents. 1933 L. 498.
11. Statements made before Income-Tax Collector are not privileged. 32 M. 62. But the original or certified copies of Income-Tax return cannot be produced under S. 54, Income-Tax Act. 56 B. 324.
12. There is no adverse inference if privileged state document is not produced. 40 C. 898.
- 4. Incriminating questions.** S. 132, Evidence Act. See Incriminating questions.
- 5. Information as to commission of offence.** S. 125, Evidence Act.
 1. In a criminal prosecution the witnesses for the Crown are privileged from disclosing the channel through which they received or communicated information. 42 C. 957.
 2. S. 125 protects the name of an informant and not the nature of the information initiates
 3. Privilege cannot be claimed by a detective who cannot refuse on grounds of public policy to answer a question as to where he was secreted. 42 C. 957.
 4. Non-production of a complaint when demanded merely for ascertaining informer's name is not improper, but is privileged. 37 I. C. 54.
 5. A defence counsel cannot elicit from a prosecution witness whether he is spy or informer. 42 C. 957.
- 5. Objection regarding—**
 1. If objection is taken to admissibility of evidence on the ground of privilege, no adverse inference can be drawn from it. 40 C. 898.
 2. The Court has no power to compel disclosure, if the objection is raised by the proper authority. 6 Bom. L. R. 160, 1930 M. 342.
- 7. Of Editor of newspaper.** See Defamation—30.
No privilege attaches to the profession of press higher than that of ordinary citizen. 41 C. 1023.
- 8. Of Judge and Magistrate as to his knowledge and conduct.** S. 121, Evidence Act.
 1. Evidence of subordinate Magistrate holding preliminary enquiry into a charge is admissible. 3 M. H. C. R. 372.
 2. The witness has simply a privilege of refusing to answer a question. The Court can warn him but cannot disallow question. 12 Cr. L. J. 277.
 3. A Judge who was present at a search cannot try a case. 5 C. W. N. 864.
 4. If the Judge does not object to the question, it does not lie in the mouth of any other person to assert the privilege. 3 A. 573, 3 M. 277.
 5. Judges may, if they like, testify but they cannot be compelled to answer their conduct in Court. S. 121, ill. (a) (b).
 6. A Munsif ought not to be called on to depose as to what took place before him in the course of trial. He is entitled to exemption. 6 M. H. C. R. App. 42.
- 9. Of accused.** See Examination of accused—17.
- 10. Of witness.** See Defamation—32.
- 11. Official communication.** S. 124, Evidence Act.
 1. A Government resolution reciting various opinions of Government officers, including their legal adviser, is a privileged document. 99 I. C. 293=1926 B. 590.
 2. Order by a Collector assessing income-tax is not privileged. 32 M. 62.

Privilege—(concl'd.)

3. A statement made by a subordinate to his officer regarding the apprehension of accused in the hearing of various people is not privileged. 22 C. W. N. 451.
4. Statements made by witnesses in departmental enquiry into the conduct of Police Officer are not privileged. 16 C. W. N. 431=13 Cr. L. J. 445.
5. Secondary evidence of the contents of communication made in official confidence is inadmissible. If there is no likelihood of primary evidence being given, a complaint based on such communications ought to be dismissed under S. 203, Cr. P. C. 4 P. W. R. 1910 Cr.
6. An Officer's refusal to disclose a document on grounds of public policy is final. 47 I. C. 225, 39 M. 304.
7. The trial Court has jurisdiction to decide whether an official communication is confidential. 113 I. C. 872=1928 M. 1093.
8. Documents produced and statements made under Income-Tax Act are not privileged. 32 M. 62.
9. It is for the Court to decide whether a document is a communication made to a Public Officer in official confidence. If the Court decides that it was so made then it is solely for the officer to say if its disclosure would or would not be in the public interest. 44 A. 360, 1929 O. 543, 39 M. 304, 32 M. 62.
10. Statements made by Railway employees to station master as regards theft are not privileged. 1929 O. 543.
11. The statement was made to Superintendent of Post Office that accused put steel instead of gold in the insured cover. Held, that he was bound to disclose his name. 2 Bom. L. R. 329.
12. S. 124 involves two matters, viz., whether particular document for which privilege is claimed falls within it and public interest will suffer by disclosure. The former question is for the Court to decide while the public officer is the sole judge for the latter. 1935 M. 342 (1)=41 M. L. W. 472. 32 M. 62 and 39 M. 304 Rel. on. 44 A. 360 Ref.

12. Railway communication. *See* Departmental enquiry.

13. Statements in departmental inquiry.

1. Statements made by witnesses in a departmental inquiry into the conduct of a Police Officer are not privileged and can be used to cross-examine those witnesses. 16 C. W. N. 431=13 Cr. L. J. 445.
2. B was charged with theft. The station master started inquiry and took down statements of four persons who were Railway employees. These statements were forwarded to the Divisional Superintendent who objected under S. 124, Evidence Act, to their production before the trying Magistrate, when called by the accused to cross-examine those witnesses. Held, that these communications were protected. 1929 O. 543=6 O. W. N. 937.
3. Statements recorded by a Magistrate in a departmental inquiry are not public documents, as such inquiry is not a judicial one. 58 C. 96=1930 C. 370.

14. Waiver of—

1. If there is waiver at one stage by not making any objection, privilege cannot be claimed subsequently. 72 I. C. 214.
2. Even if a person is willing to disclose the source of his information, thus waiving his privilege under S. 125, it is the duty of Judge to exclude such evidence. 40 C. 398.
3. The restriction in S. 122, Evidence Act, is not one that can be waived or which a Court can relax. 40 C. 891.
4. If the witness does not object to the question and waives the privilege it does not lie in the mouth of any other person to assert the privilege. 3 A. 573.

PRIVY COUNCIL.

1. Interference by—on appeal.

1. Privy Council will not review or interfere with the course of Criminal Proceedings,

Privy Council—(contd.)

unless it is shown that by a disregard of the forms of legal process or by some violation of the principles of natural justice, or otherwise, substantial and grave injustice has been done. 22 B. 528, 25 M. 61.

2. The Privy Council does not sit as a Court of criminal appeal. To allow criminal proceedings to be reviewed by it there must have been substantial and grave injustice done. 34 C. W. N. 599.
 3. The Privy Council will not take cognizance of a mere mistake which the Court in India has made in the exercise of its jurisdiction. 1925 P. C. 130=49 B. 455.
 4. If the Lower Court has come to a conclusion on evidence before it, the Privy Council will not disturb that conclusion. 6 L. 226, 2 L. 34.
 5. Privy Council will not interfere unless there has been some violation of the Principles of Justice or some disregard of legal principles. 48 B. 515, 1932 P. C. 234, 1922 P. C. 162=69 I. C. 631=25 C. W. N. 57, 11 L. 192, 44 C. 876.
 6. Wrong interpretation of sections of Acts does not justify interference by Privy Council. 6 L. 45=1925 P. C. 52.
 7. The Privy Council will not interfere because it would have taken a different view of the evidence. 44 I. A. 137.
 8. The Board only recommends His Majesty to exercise his jurisdiction in appeals in criminal cases upon certain very restricted grounds. 5 R. 53.
 9. Privy Council will not interfere on the ground of misdirection to Jury. 41 C. 1023, 1925 P. C. 305, 41 C. 558, 15 A. 310.
 10. Privy Council set aside the conviction for abetment of murder, which was based mainly on inadmissible evidence and when that evidence was excluded, there did not exist any reliable evidence on which a capital conviction could safely be based. 36 M. 501.
 11. Privy Council will not interfere on the ground of misappreciation of evidence. 44 C. 876.
 12. The Privy Council refused to interfere with an order of forfeiture of security under the Press Act, having found that the statute applicable to the case had been properly constructed. 52 I. C. 209=23 C. W. N. 986.
 13. If the sentence pronounced against the appellant formed an invasion of his liberty and denial of his just rights as a citizen, the Privy Council will interfere. 18 C. W. N. 98, 41 C. 1023.
 14. If a person is deprived of a constitutional or statutory right to be tried by the Jury or by some particular tribunal, the Privy Council will interfere. 44 C. 876.
- 2. Leave to appeal.**
1. Points not properly raised at the trial are not points which in ordinary circumstances deserve much consideration as grounds for special leave. 52 C. 197.
 2. It is difficult to induce the Board to advise the granting of special leave to appeal in a criminal case. 1930 P. C. 291=123 I. C. 731.
 3. Leave to appeal in criminal cases is granted only when there is grave and substantial injustice due to non-observance of some forms of legal process or violation of principles of natural justice. 1924 C. 546=83 I. C. 580, 33 B. 221.
 4. The Board is not bound to give reasons, if it refuses to advise that leave to appeal should be granted. 49 C. 845.
 5. Before granting the certificate that the case is a fit one for appeal to the Privy Council, the High Court must be satisfied that there is a reasonable ground for thinking that grave and substantial injustice may have been done by reason of some departure from the principles of the natural justice. 33 B. 221.
 6. Leave to appeal will not be granted, where upon the face of application it is plain that on the merits it is bound to fail. 12 L. 280.
 7. Where the objection, if well-founded, would go to the root of jurisdiction, the Board will interfere. 12 L. 280.

In case of contempt of Court, leave to appeal to Privy Council ought not to be

Privilege—(concl'd.)

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3. The Privy Council will not take cognizance of a mere mistake which the Court in India has made in the exercise of its jurisdiction. 1925 P. C. 130=49 B. 455.
4. If the Lower Court has come to a conclusion on evidence before it, the Privy Council will not disturb that conclusion. 6 L. 226, 2 L. 34.
5. Privy Council will not interfere unless there has been some violation of the Principles of Justice or some disregard of legal principles. 48 B. 515, 1932 P. C. 234, 1922 P. C. 162=69 I. C. 631=25 C. W. N. 57, 11 L. 192, 44 C. 876.
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10. Privy Council set aside the conviction for abetment of murder, which was based mainly on inadmissible evidence and when that evidence was excluded, there did not exist any reliable evidence on which a capital conviction could safely be based. 36 M. 501.
11. Privy Council will not interfere on the ground of misappreciation of evidence. 44 C. 876.
12. The Privy Council refused to interfere with an order of forfeiture of security under the Press Act, having found that the statute applicable to the case had been properly construed. 52 I. C. 209=23 C. W. N. 986.
13. If the sentence pronounced against the appellant formed an invasion of his liberty and denial of his just rights as a citizen, the Privy Council will interfere. 18 C. W. N. 98, 41 C. 1023.
14. If a person is deprived of a constitutional or statutory right to be tried by the Jury or by some particular tribunal, the Privy Council will interfere. 44 C. 876.

Leave to appeal.

1. Points not properly raised at the trial are not points which in ordinary circumstances deserve much consideration as grounds for special leave. 52 C. 197.
2. It is difficult to induce the Board to advise the granting of special leave to appeal in a criminal case. 1930 P. C. 291=123 I. C. 731.
3. Leave to appeal in criminal cases is granted only when there is grave and substantial injustice due to non-observance of some forms of legal process or violation of principles of natural justice. 1924 C. 546=83 I. C. 580, 33 B. 221.
4. The Board is not bound to give reasons, if it refuses to advise that leave to appeal should be granted. 49 C. 845.
5. Before granting the certificate that the case is a fit one for appeal to the Privy Council, the High Court must be satisfied that there is a reasonable ground for thinking that grave and substantial injustice may have been done by reason of some departure from the principles of the natural justice. 33 B. 221.
6. Leave to appeal will not be granted, where upon the face of application it is plain that on the merits it is bound to fail. 12 L. 280.
7. Where the objection, if well-founded, would go to the root of jurisdiction, the Board will interfere. 12 L. 280.

In case of contempt of Court, leave to appeal to Privy Council ought not to be

Privy Council—(contd.)

granted, because every Court of Record is the sole and exclusive judge of what amounts to contempt of Court. 1935 C. 419=156 I. C. 1055. 10 C. 109 (P. C.) Rel. on.

9. Improper admission or rejection of evidence upon a criminal charge like statements under S. 162, Cr. P. C. or S. 25, Evidence Act, does not necessarily amount to failure of justice entitling a petitioner to special leave to appeal. 1925 P. C. 52=6 L. 45.
10. Where on a revision from the order of conviction by Chief Presidency Magistrate, the High Court confirms the conviction, the High Court has no jurisdiction to entertain a petition for leave to appeal to the Privy Council from its judgment. 1935 C. 477=62 C. 389=39 C. W. N. 235, 21 I. C. 470, 21 I. C. 912 and 1924 C. 338 Rel. on.
11. Letters Patent (Cal.) cl. 25 and 41 has reference to original criminal jurisdiction of the High Court. 62 C. 389=1935 C. 477.
12. Proceedings for contempt of Court do not come within the Phrase "original criminal jurisdiction of this Court" in cl. 41. 1935 C. 419=156 I. C. 1055.
13. Leave to appeal to Privy Council from death sentence can be entertained by Chartered High Courts only. 1933 N. 216=34 Cr. L. J. 934, 1925 P. C. 1, 44 C. 876, 49 C. 845 Rel. on.
14. When there was a difference of opinion between different High Courts with regard to a section of Cr. P. C. special leave was granted. 1936 P. C. 253 (1).

3. Power to award costs of appeal to—

Where the case was of a civil nature and the appellant was convicted, the Privy Council directed the Crown to pay the appellant's costs in appeal. 18 C. W. N. 98.

4. Staying execution of sentence—Bail—

1. A High Court has inherent jurisdiction to stay the execution of its own order when the ends of justice require it. Where an application for special leave to appeal to the Privy Council has been lodged but not heard, High Court can grant bail. 49 A. 247, 24 M. 161, 15 P. R. 1908 Not Foll. *Contra* 1936 C. 809.
2. Stay of execution of a sentence of death pending an appeal to the Privy Council is a matter for the consideration of the Executive Government and not within the province of Judicial Committee. 42 C. 739.

PROCEEDINGS—COPIES OF— See Copy.

A third party cannot get copies of the depositions in a pending case. 1932 B. 638.

PROCEEDINGS IN LEGISLATIVE COUNCIL. See Interpretation of Statute—15.**PROCEEDINGS—STAY OF—** See Stay of Proceedings.**PROCESS FEE.**

1. In summons case. See Complaint 13-D. See S. 244, Cr. P. C.
2. In warrant case.

S. 244, Cr. P. C., provides for summoning of witnesses in summons case but in warrant case no process fee is required from the complainant. 1924 P. 695, 13 Cr. L. J. 554 *Contra* 15 Cr. L. J. 363, 1926 R. 164.

PROCESS—ISSUE OF— See Complaint—17.**PROCESS OF COURT.**

Process of Court is a general word meaning in fact anything done by the Court. 50 B. 741, 130 I. C. 533=1931 P. 81.

PROCESSION. See Police Act, Ss. 30, 31, 32, Disturbing religious assembly—Unlawful assembly—14. See S. 103, Cr. P. C.

1. Actual obstruction to procession need not be proved. It is enough to show that owing to the hostile attitude of the defendant it could not start. 44 I. C. 834, 23 M. L.J.T, 258.

Procession—(concl'd.)

2. When an illegal order of a Magistrate has been obtained restraining a procession, a suit to decree the right to carry such procession is maintainable without proof of special damages. 32 M. 478, 34 B. 571.
3. An order prohibiting procession under S. 144, Cr. P. C., on the ground that the Magistrate would not be able to prevent a breach of peace with force at his disposal is legal. 15 Cr. L. J. 30.
4. Where Hindus, in accordance with a decree obtained in their favour, applied to take procession, the order of Magistrate forbidding the procession on ground of likelihood of rioting or bloodshed is illegal. It amounts to confession of impotence on the part of authorities. 1927 M. 611=101 I. C. 893=28 Cr. L. J. 509.
5. An absolute prohibition of procession in all streets at all times under S. 154, Cr. P. C. is improper. 1932 M. 294.
6. Persons of every sect are entitled to conduct religious processions through public streets, so that they do not interfere with the manner and use of such streets by the public, and subject to such directions as a Magistrate may lawfully give to prevent obstructions of thoroughfares or breaches of the public peace. 1925 P. C. 36=47 A. 151=86 I. C. 236, 1935 A. 575=156 I. C. 595.
7. Hindus are entitled to celebrate Ram Lila and take out processions, even though not exercised before and although objected to by Mahomedans. 1935 A. 575=156 I. C. 595. 1925 P. C. 36=47 A. 151 applied.
8. Procession with music on public roads is not unauthorized. 1933 N. 277=34 Cr. L. J. 705. 1925 A. 165=47 A. 205 and 1931 A. 674=53 A. 836 Rel. on.

PROCURATION OF MINOR GIRL. S. 366-A, I. P. C.

1. Essentials and Evidence.

1. The aim of S. 366-A, is to prevent immorality. Often it may happen that a girl under 18 years of age may desire to leave her husband to better her prospects elsewhere. Such a desire would not save her helper from a conviction under S. 366-A. 119 I. C. 14=1929 A. 709 (2)=30 Cr. L. J. 985.
2. Where the accused offers the girl to several persons a fresh offence is not committed at every fresh offer. 1929 A. 585=30 Cr. L. J. 904, 1932 L. 555.
3. Any reason given by accused to move the girl from one place to another is sufficient for inducement. The girl's subsequent willingness will neither prevent the offence nor reduce its gravity. 30 Cr. L. J. 904.
4. A girl under eighteen years was taken by accused from place to place with the intention of compelling her to marry or that she may be forced or seduced to illicit intercourse. There was no evidence that the girl was compelled to accompany the accused by force or deceitful means. It was held that accused was guilty under S. 366-A and not S. 366, I. P. C. 26 Cr. L. J. 1151.
5. Merely giving shelter to a girl or taking her from one place to another without any intention or knowledge that she is likely to be forced or seduced to illicit intercourse with another person is no offence under S. 366-A. 28 P. L. R. 260.
6. A person committing illicit intercourse with a girl will not be permitted to plead that he believed the girl to be over 18 years of age. 1932 L. 555.
7. It is not necessary that girl should be a married one. 1932 L. 555.
8. Accused inducing girl between 16 or 18 years without force or fraud to go from any place with intent to have illicit intercourse with her is not guilty of any offence. 1933 C. 362=34 Cr. L. J. 341.
9. Offence under S. 366-A is a continuing offence. 1936 L. 850, 53 A. 140=1931 A. 55 Rel. on. 50 C. 1004, 54 P. L. R. 1916, 1927 L. 370 Ref. 1932 L. 555=33 Cr. L. J. 673 Not foll.

2. Jurisdiction.

An offence under S. 366-A is a continuing offence. Where the offence and abetment is committed at different places, the accused may be jointly tried in the place where the offence was first committed. 53 A. 140.

Promoting Enmity between classes

PROMOTING ENMITY BETWEEN CLASSES. S. 153-A, I. P. C.**1. Classes.**

1. Classes include races such as Indians and Europeans. 10 P. R. 1907 Cr.
2. The first ingredient in the connotation of the term classes is that the words used must point to a well-defined and readily ascertained group of His Majesty's subjects. Secondly some element of permanence or stability in the group should be present. Thirdly, the group should be sufficiently numerous and widespread to be designated a "class." 1933 B. 65=57 B. 253.
3. Word "capitalist" does not denote definite class within the meaning of S. 153-A. 57 B. 253=1933 B. 65, 1936 A. 561, 1923 L. 61=3 L. 405, 1933 C. 139.

2. Essentials and Evidence.

1. Mere disseminating matter is not sufficient. Intention to promote feelings of enmity is necessary. 54 C. 59=27 Cr. L. J. 1154=1926 C. 1133.
2. Criticism of ill-defined group cannot lead to breach of tranquility. 57 B. 253.
3. Court must look at the whole speech. 57 B. 253.
4. Where every calamity and suffering of people is attributed to Government, Zamindar and Taluqdar who are accused of indifference to the welfare of the people, accused was held guilty under S. 153-A. 1935 O. 347=36 Cr. L. J. 511.
5. Criticism of British Imperialism but no promotion of class hatred, does not fall under S. 153-A. 1933 C. 139=34 Cr. L. J. 305.
6. The offending act consists not in spreading "opinion, ideas and education" but in endeavouring to put such opinions into practice. 1936 A. 561, 1933 A. 692=34 Cr. L. J. 967=1933 A. L. J. 799.
7. "At the time, the person for whom the words were written between two communities should be considered. 59=1926 C. 1133. 47 A. 298=1925 A. 195, 49 A. 856=1927 A. 649 and 1927 L. 594 Rel. on.
8. Article can be both seditious and provocative of class enmity. 1925 S. 59.

3. Intention.

1. There must be intention to promote enmity. 10 P. R. 1907 Cr., 1927 L. 594, 10 Bom. L. R. 848, 47 C. 190. 54 C. 59.
2. Hatred need not be reciprocal. 1927 L. 594.
3. Intention will be presumed from the language and conduct of accused, who must rebut presumption. 1925 L. 16.

PROOF OF DOCUMENT FILED BY ACCUSED.

Accused has right to file document to which he was a party and the Court must consider it although they have not been proved in the regular way. 1928 M. 1135=29 Cr. L. J. 1041.

PROOF OF FACT. S. 3, Evidence Act.**1. General.**

1. Proof of fact includes when a person thinks it so extremely probable that a prudent man would, under the circumstances, act on the assumption of its existence. 1933 O. 340=34 Cr. L. J. 538, 1924 N. 335=79 I. C. 609.
2. Absolute certainty in this work-a-day world is seldom to be had in the affairs of life and we are frequently obliged to act on degrees of probability which fall very short of it. 1933 O. 340=34 Cr. L. J. 538, 1922 C. 260=66 I. C. 782.
3. The standard of certainty required is that of a prudent man acting in grave and important concern of his own. *Will's Cr. Ev., 6th Ed., pp. 318-319.* 1933 O. 340, 56 M. 231, 4 Cr. L. J. 382.
4. Except where artificial probative value is assigned to a certain fact by presumption, and the Evidence Act affords no guidance, the Judge like a prudent man has to use his own judgment and experience and cannot be bound by any rule except his judicial discretion. 40 C. 898, 1924 N. 385=79 I. C. 609.

Proof of Fact—(concl'd.)

5. What circumstances will constitute proof can never be the subject of general definition. 1924 N. 385=79 I. C. 609.

2. Evidence and—.

1. Proof is merely the *effect* of evidence. *Woodroffe Ev., 9th Ed., P. 116.*
2. When the result of evidence is assent to the proposition or event which is the subject matter of inquiry, such proposition or event is said to be proved. *Will's Circumstantial Ev., 6th Ed., P. 3.*
3. The Court is bound to base its decisions, not merely on evidence but on matters before it referred to in S. 3. 1924 N. 385=79 I. C. 609.
4. The definition of 'evidence' must be read with that of "proved" given in S. 3, Evidence Act. 1924 N. 385.

3. In criminal cases.

1. In civil cases what is required or considered sufficient is preponderance of probability, while in criminal cases the persuasion of guilt must amount to such a *moral certainty* as convinces the minds of tribunals as reasonable men, beyond all reasonable doubt. 1924 N. 385 (386)=79 I. C. 609. 4 Cr. L. J. 382.
2. Where there is no such *moral certainty*, the benefit of doubt must be given to the accused. 22 C. 313 (323).
3. It is better that ten guilty men should escape than that one innocent man should suffer. 2 Hab. P. C. 289.
4. However morally convinced a Judge may feel as to the truth of a particular fact, unless there is legal proof of its existence, he cannot take it as proved. 37 C. 467, 25 W. R. Cr. 43.
6. Conjectures cannot take the place of proof. 22 C. 313, 35 C. 1039.
7. Suspicion, however, grave is insufficient for conviction. 10 C. W. N. 219, 44 C. 662, 1931 L. 529=32 Cr. L. J. 1032.

PROOF OF INNOCENCE. *See alibi, Benefit of doubt, etc.*

1. Anything which tends to explain the accused's conduct and furnishes a motive other than guilty conscience is relevant under S. 9, Ev. Act. 62 I. C. 545=22 Cr. L. J. 52.
2. Omission to make protestation of innocence when accused of an offence or when subjected to severe treatment is relevant as conduct under S. 8 Ev. Act. 22 C. 391.
3. Accused can lead evidence that at the very time he was accused he gave an explanation of his innocence. 1935 S. 145 (165)=1935 Cr. C. 753.
4. If the accused goes to the spot after the occurrence and accompanies the dead body to the Morgue, his conduct is that of an innocent man, unless it is shown that he had no alternative but to accompany it. 1935 C. 591 (594)=36 Cr. L. J. 1254.

PROPERTY. *See Movable property, Extorting Property.***PROSECUTION.** *See Duty of prosecution.***1. Abatement of.** *See Abatement—2.***2. Burden of proof on—.** *See Duty of prosecution—2.***3. Changing grounds by—.** *See Duty of prosecution—3.***4. Conducting.** S. 495, Cr. P. C. *See Public Prosecutor.*

1. Where the District Magistrate considers that the too frequent appearance of Pleaders for the prosecution in petty criminal cases is detrimental to the interests of justice, he can refuse permission to Pleaders to appear for prosecution. 6 P. R. 1905 Cr.
2. A complainant can conduct his own case. But it is doubtful if an absolute stranger to the case can be permitted to conduct prosecution. 11 A. L. J. 313.
3. Private Vakil can be permitted to conduct prosecution. 12 M. L. J. 354.
4. It is highly irregular to allow an investigating Police Officer to conduct the case. If the accused is not prejudiced the trial will not be vitiated. 26 B. 533.

Prosecution—(concl'd.)

5. A person, whether a private complainant or not, when he is permitted to conduct prosecution, may instruct a counsel to appear. 11 B. H. C. R. 102.
 6. Prosecutor can choose his own counsel save where the Public Prosecutor takes up the case. 1925 S. 99=81 I. C. 59=25 Cr. L. J. 571, 1925 A. 301=86 I. C. 222.
 7. In case of rioting the Crown has the right to conduct prosecution in the interests of justice. A private person should not be permitted to conduct it. 18 Cr. L. J. 329.
 8. Where the Public Prosecutor desired a counsel privately engaged by the complainant to address the Court, no permission under S. 495 is necessary. 1930 M. W. N. 769.
 9. The mere fact that a Police Officer addressed the Magistrate during proceedings is no ground for transfer. 105 I. C. 230.
 10. Conducting prosecution by Police Officer who investigated the case is highly improper. 26 B. 533.
 11. Where the assistance of a counsel has once been accepted, that assistance is not excluded at any later stage. 11 B. H. C. R. (Cr. C.) 102.
 12. A woman filed a complaint under S. 354, I. P. C., and permission was given to her Advocate to conduct the prosecution. Subsequently application was put in by Police Jamadar to conduct it. The Magistrate referred the matter to D. M. for advice and set aside his first order and granted permission to Jamadar. Held, that his subsequent order was improper and should be set aside. 1935 S. 3=156 I. C. 789.
 13. A complainant's Pleader has no right to conduct prosecution without the permission of the Court. 29 P. R. 1886. But *See* S. 30 P. R. 1870 Cr.
5. **Directing—** *See* Directing Prosecution. S. 476, Cr. P. C.
 6. **Duty of—** *See* Duty of Prosecution.
 7. **Evidence for—** *See* Prosecution evidence, Evidence, witness.
 8. **Filling up gaps in—** *See* Examination of accused.
 9. **Manner of conducting—**
 1. Prosecution should be conducted fairly and squarely and no ground should be given to accused to complain. 53 C. 706.
 2. It is highly improper for persons in charge of prosecution to threaten or intimidate accused or his Pleader. 52 I. C. 54=20 Cr. L. J. 566.
 3. Sometimes it so happens that whenever an accused is brought before a criminal Court, he is presumed to be guilty and every attempt on his part to prove his innocence is taken as vexatious by Court. 28 C. 594.
 10. **Of Judges and Public servants.** *See* Prosecution of Judges, etc.
 11. **Option of—to prosecute under any law.**

If the offence falls under two separate provisions of law it is open to prosecution to choose the law under which the accused should be prosecuted. 1926 L. 385=98 I. C. 599=27 Cr. L. J. 1383.
 12. **Option of—to prosecute after retrial.**

Where a case is sent back for retrial, it is always open to prosecution to proceed or not as it may be advised. 1921 C. 257=61 I. C. 1003=25 C. W. N. 142.
 13. **Permission to conduct—** S. 495, Cr. P. C. *See* —4.
 14. **Withdrawal of—** *See* Withdrawal.
- PROSECUTION OF PUBLIC SERVANTS.** S. 197, Cr. P. C. *See* Sanction.
1. **Acting in discharge of official duty.** S. 77, I. P. C.
 1. A Magistrate or Judicial Officer who is holding a trial cannot be said to be acting in Judicial capacity, if he abuses or defames a witness or a legal practitioner appear-

Prosecution of Public Servants—(contd.)

- ing before him. 62 I. C. 825. *Contra* 9 M. 439. *See* 50 M. 754, 1933 M.W.N. 1031, 1932 O. 308.
2. A village Magistrate sent for complainant and told him that "for not appearing when summons was sent, he sentenced him to imprisonment in the chavadi" and confined him in his chavadi. Held, that sanction under S. 197 for a complaint charging the Magistrate for wrongful confinement was necessary. 52 M. 602, 17 Cr. L. J. 394. *Contra* 25 M. 15, 52 M. 347.
 3. A liquidator who appropriates to himself money coming into his custody as liquidator cannot be said to purport to act in the discharge of his duty. 1930 B. 487=32 Bom. L. R. 1134, 50 M. 754.
 4. An offence arising out of the official position by an act not purporting to be official does not necessitate sanction under S. 197. 50 M. 754.
 5. Where a Judge fabricates an entire record, sanction for prosecution is necessary 52 M. 347, 26 C. 852, 25 M. 15.
 6. "Purporting to act in discharge of his official duties" implies something in the nature of an official character attached to the act itself. The act must have been done under the cloak of what purported to be an official act. It is not enough that his capacity of public servant put him in a position to do the alleged act. 1929 C. 724=122 I. C. 627=31 Cr. L. J. 430.
 7. Where a village Magistrate uses his authority and position as a public servant to constrain a person to give a bribe, sanction is necessary for his prosecution. 2 Weir 221.
 8. A Patil (village officer) collecting subscription for Taluka Agricultural Association is not acting in the discharge of his duties, although Government encouraged such officers to collect subscription. 1931 B. 192=130 I. C. 580=32 Cr. L. J. 575.
 9. If officials cannot forget that they are officials it does not follow that all acts are committed by them in the discharge of their official duties, however little they may have to do with the conscientious discharge of those duties. 130 I. C. 580=1931 C. 192=32 Cr. L. J. 575.
 10. The act must be done in pursuance of Public Office. An officer of the P. W. D. had gone to discharge some official duty in connection with the earth work. He took a boat and lost his temper and assaulted the complainant. Held, his act was not covered by S. 197. 1935 C. 176=39 C. W. N. 288. 1929 C. 724=122 I. C. 627 Rel on 52 M. 602=1929 M. 659=30 Cr. L. J. 861 and 1931 C. 646=33 Cr. L. J. 83 Dist.
 11. The President and Health Officer of the Municipal Committee entered the house of Vice-President for inspecting new water pipe connection. They were prosecuted under S. 448, I. P. C. Held, sanction under S. 197 was necessary, although they were not authorized by Municipal Committee to enter. 1935 N. 52=1935 Cr. C. 270=18 N. L. J. 28, 26 C. 852, 1921 C. 388=22 Cr. L. J. 585, 52 M. 347=1929 M. 174, 1929 M. 659=52 M. 602, 1929 C. 724, 25 M. 15 and 1927 M. 566=50 M. 754 Ref. and discussed.
 12. A Magistrate engaged in realizing taxes threatend defaulters and at the next moment turned round and took the complainant—a stranger—to task for being near him and gave him a blow and under his orders constables gave *lathi* blows. Held, that the offence was so connected with the official act as to form part of the same transaction. Held further, that the amended section affords more protection to the Public Officers. 1935 P. 52=155 I. C. 125, 1921 C. 388=62 I. C. 825=22 Cr. L. J. 585, 9 M. 439, 1929 C. 724=122 I. C. 627, 52 M. 602=1929 M. 659, 35 I. C. 826, 1931 B. 192=32 Cr. L. J. 575, 1929 M. 172=52 M. 347.
 13. A public servant committing breach of trust in respect of money belonging to Government which passes through his hands cannot be said to be acting or even purporting to act in the discharge of his duties as such public servant. He is acting merely as a thief. No sanction is necessary. 1935 R. 263=13 R. 540=36 Cr. L. J. 1272=157 I. C. 1034.
 14. Insulting language was used by Magistrate while holding Court, to the complainant in the witness box. Held, that sanction under S. 197 was necessary. 1934 A. 978.

Prosecution of Public Servants—(contd.)

15. A zamindar requested an Executive Engineer for more liberal supply of water. He replied "Bhena, we supply water and still you complain". Complaint under S. 504 for using "Bhena" was lodged. Held, sanction under S. 197 was necessary. 1933 S. 165=34 Cr. L. J. 819, 9 M. 440 and 1933 S. 161 Rel. on.
2. **Contents and form of sanction for—**
 1. Since the action of sanctioning authority is more of the nature of executive than judicial action, the sanction need not state any reasons. 24 Cr. L. J. 116=71 I. C. 244.
 2. A sanction for prosecution for "cheating or for such other offence in connection with obtaining money from ryots" is not invalid for vagueness. 43 B. 147.
 3. A letter addressed to Magistrate is a sufficient sanction. 20 C. 905.
 4. Sanction should determine the person by whom the prosecution is to be conducted and may specify the Court before which the trial is to be held. 51 A. 377.
 5. Non-specification of place and occasion on which the offence is alleged to have been committed does not invalidate the sanction. 27 M. 54.
 6. Code prescribes no form for sanction. 27 M. 54.
 7. Sanction need not specify the offence with the same degree of precision as in charge. 1927 B. 501=106 I. C. 100=28 Cr. L. J. 1012, 13 C. W. N. 1052.
 8. Where the Local Government has specified a Court such a specification will supersede all powers of transfer conferred on High Court. 26 C. 852.
3. **Inquiry before granting sanction.** See Judicial Proceedings—3.
An inquiry held before granting sanction is a departmental and not a judicial inquiry, no oath can be administered to a witness. 23 M. 233, 27 M. 54.
4. **Judge—** See Judge, S. 19, I. P. C.
 1. Village Court executing decree by distraint is Court and the village Munsiff if he himself distrained, is a Judge, and sanction for his prosecution is necessary. 115 I. C. 53, 17 Cr. L. J. 394.
 2. When a President of a Union Board accepts or rejects nomination papers under the Election Rules, he is a Judge who cannot be prosecuted without sanction. 114 I. C. 817.
 3. A Magistrate of village Panchayat under Madras Act, II of 1920, is a Judge. 42 M. L. J. 139.
 4. Village Magistrate was charged with offence under S. 411. Sanction under S. 197 is not necessary. 1933 M. 270=34 Cr. L. J. 526.
5. **Local bodies—**
 1. No sanction is necessary to prosecute a Municipal Secretary for any wrong done. 69 I. C. 638.
 2. President of a Union Board is not a public servant being removable under S. 44, Madras Local Boards Act. 114 I. C. 817.
 3. The President of a Municipality is a public servant within S. 197 when he is not removable except by Local Government. 4 R. 123, 52 C. 227.
 4. Where a complaint was made to the District Magistrate against a member of Municipal Board that he acquired a share in a contract with the Board. He instituted inquiry under S. 202 and took possession of the Account Books of accused. Held, that the proceedings were illegal, as no sanction of Local Government was obtained. 51 A. 377.
 5. A member of Taluk Board is a public servant not removable from office except by Local Government. 52 M. 446.
 6. R, a Municipal Commissioner and Secretary of the Committee, was directed to conduct prosecution against K. He applied for search warrant, which turned out to be unnecessary. This was a complaint under S. 500, Penal Code, against R. Held, that R acted as a public servant and K could not be prosecuted without sanction. 1933 I. C. 100=28 Cr. L. J. 691.

Prosecution of Public Servants—(contd.)

7. A complaint was filed against a Municipal Commissioner, that he exercised undue influence over the Sub overseer of the Committee to compel him to purchase accused's bricks. Held, that no sanction for prosecution was necessary. 8 L. 647.
 8. When a President of Municipal Council was charged with an offence of threatening a voter with injury to property in order to abstain him from voting for a particular candidate, no sanction for prosecution is necessary. 50 M. 754=1927 M. 566.
 9. A member of District Board in U. P. appointed by Board to hold an auction sale of an impounded cattle under S. 14, Cattle Trespass Act, is a public servant who is not removable from his office except by Local Government. 88 I. C. 517.
 10. Municipal Commissioner and Municipal Engineer reported removal of road metal by contractor and were prosecuted for defamation. Sanction under S. 197 is necessary. 1934 P. 548, 1934 C. 838, 1930 L. 147, 1928 A. 756, 1932 S. 177.
 11. For embezzlement of Municipal money by Municipal President and for falsification of accounts, Government sanction under S. 197 is necessary. 1933 S. 161=34 Cr. L. J. 191. 1927 B. 432=28 Cr. L. J. 534. Rel. on. (Case law discussed).
 12. Mere fact that public servant was in the office when offence was committed does not attract the provisions of S. 197. 50 M. 754=1935 P. 52.
 13. It is a question of fact whether public servant was acting in the discharge of public duty. 1935 C. 176. See 1933 M. 268.
 14. If a Judge while preventing an offence commits an offence, no sanction is necessary. 23 M. 540.
- 6. Notice.**
- No notice before granting of sanction is necessary. 71 I. C. 244, 27 M. 54.
- 7. Public servant not removable except by Local Government.**
1. Any person whether receiving pay or not, who imposes upon himself the duties and responsibilities of public servant and is recognized as filling that position, must be regarded as such. A volunteer in Tahsildar's office is a public servant. 8 A. 201.
 2. A Tahsildar acting as polling officer was prosecuted under S. 58, Madras District Municipalities Act. Held, that no sanction was necessary. 51 M. 259.
 3. No sanction is necessary for prosecution of receiver appointed by Court for offence alleged to have been done in excess of his authority. 52 B. 898, *Contra* 42 C. 432.
 4. In a prosecution for cheating Government of a revenue Patil, sanction is necessary. 102 I. C. 342=1927 B. 432=28 Cr. L. J. 534.
 5. An organizer of co-operative societies was appointed a liquidator of "M Seed Society" by the Registrar. He misappropriated a certain sum. Held, that no sanction was necessary as the posts of organizer and liquidator are quite distinct. 1930 B. 487=32 Bom. L. R. 1134.
 6. A Forest Ranger in C.P. is not a public servant and not removable without the sanction of Local Government. 23 Cr. L. J. 397.
 7. No sanction is necessary for prosecution of a Police Patel in Bombay. 4 B. 357.
 8. No sanction is necessary for prosecution of Sub overseer in the Madras Presidency. 12 M. L. T. 351.
 9. Sanction is not necessary for the prosecution of Excise Inspector for receiving bribe, as he is removable from office by Excise Commissioner. 48 A. 264.
 10. A Police Constable or Sub-Inspector does not come under S. 197, as they can be removed by Superintendent of Police and Deputy Inspector-General of Police. 1935 M. 442=157 I. C. 24, 48 A. 264, 1934 M. W. N. 670. 33 I. C. 648 Ref.
 11. In Rangoon Police force, a Sub-Inspector cannot be removed except by Local Government and therefore sanction to prosecute is necessary. 1935 R. 165=36 Cr. L. J. 957. 1934 R. 238
 12. If the Local Government delegates its power to an officer to appoint yet the sanction must be of local Government, to prosecute. 1936 L. 781. 1934 R. 238=36 Cr. L. J. 77 and 33 I. C. 648=17 Cr. L. J. 168 Foll.

Prosecution of Public Servants—(contd.)

13. Leave of Court to prosecute receiver is not necessary as he is not a public servant. 1934 B. 306. 52 B. 898=1928 B. 493 Kel. on. *Contra* 46 C. 432, 30 C. 721.

14. Member of District Board is a public servant. 55 A. 798, 1932 O. 308.

8. Revision against order for—

1. The granting of sanction under S. 197, Cr. P. C., is clearly not a judicial but an executive act. High Court cannot interfere in revision against such an order. 2 L. 305, 27 M. 54, 26 C. 532.

9. Sanction when necessary. See—1.

1. Sanction of Local Government is necessary for prosecution of any Judge if a complaint is made against him as such Judge whether he is or he is not removable from office without the sanction of the Government. 6 M. H. C. R. 21.

2. Sanction is necessary when the criminal act done is an official act or under the cloak of what purports to be an official act. It is not enough that his capacity of a public servant put him in position to do the alleged act. 1929 C. 724=31 Cr. L. 7. 430.

3. Where a Judge fabricates an entire record his act is such as can be done by a public servant only. Sanction under S. 197 is necessary. 52 M. 347=1929 M. 172=115 I. C. 248=30 Cr. L. J. 396.

4. Where the sanction has been informally applied for and refused, the enquiry cannot proceed. 1931 C. 646=35 C. W. N. 782.

5. For prosecution of village headman for offences under Ss. 193—204 and 471 in relation to proceedings of Panchayat Court concerning election, no sanction of Local Government is necessary. 133 I. C. 3=1931 M. 402.

6. A village Munsif was charged under Ss. 330, 343, 348, I. P. C., for wrongfully confining some persons and torturing accused to extort confession. Held. no sanction was necessary under S. 33. 1932 M. 214.

7. When sanction for substantive offence is given, no fresh sanction is necessary for abetment of that offence. 30 C. 905.

8. Sanction of local Government is necessary even if the Magistrate exceeded his powers in carrying his official duty. 1935 M. 519.

10. Taking cognizance and trial without sanction.

1. S. 197 prohibits taking cognizance of an offence committed by Judge or public servant. The preliminary examination of the complainant is not invalid in the absence of sanction. 7 M. H. C. R. 182, 3 C. W. N. 17.

2. Summoning the accused or taking evidence against him without sanction is illegal. 7 B. H. C. R. 61.

3. Sanction cannot be used to validate a trial on a complaint already laid without sanction. 71 I. C. 244, 9 B. 288, 42 B. 172.

4. Taking the statement of the complainant and forwarding the same for enquiry to a Sub-Divisional Magistrate is taking cognizance of the offence. 132 I. C. 783=32 Cr. L. J. 991=1931 O. 392.

5. It is not open to Court to proceed in respect of a different offence not mentioned in sanction. But if charge of such different offence is founded on the same facts, there is no bar. 30 C. 905.

6. Sanction obtained after commencement of proceedings is insufficient. 42 B. 172, 9 B. 288, 1923 M. 338, 1920 P. 237, 1933 S. 161.

7. Proceedings in the absence of sanction are illegal. 42 B. 172, 9 B. 288, 51 A. 377, 1927 B. 432, 1931 C. 646, 4 P. R. 1919.

11. Transfer of case against Judge or public servant. S. 526 (7), Cr. P. C.

✓ Where the Local Government has specified a particular Court for the trial of Judge or public servant, High Court cannot transfer the case to any other Court. 25 C. 852.

12. Who can give sanction for—

1. Where the prosecution under S. 161, I. P. C., was instituted against a Zaildar with-

Prosecution of Public Servants—(concl'd)

out the sanction of the Local Government but with the sanction of Chief Engineer, although the Local Government had delegated the power of appointment, suspension and removal of a Zaildar to the Chief Engineer from 4th January 1917. Held, that Local Government alone could give sanction. 72 I. C. 523.

2. Where sanction is granted to prosecute a person for a substantive offence, no fresh sanction is necessary for abetting that offence. 30 C. 905.
3. Under the present Law only Local Government can give sanction. It cannot be delegated to any person. 1927 B. 432.
4. The District Magistrate can sanction the prosecution of a 2nd Class Magistrate. 4 P. R. 1919 Cr.

PROSECUTOR. See Private Prosecutor.

A Court ought not to take the roll of a Prosecutor. 26 Cr. L. J. 1236.

PROSECUTOR'S WIFE—IF PERSON IN AUTHORITY. See S. 24, Evidence Act.**PROSTITUTE.**

1. Buying or selling minor for prostitution. See Prostitution (buying and selling).
2. Disorderly house by—. See Public Nuisance—12
3. Rape on—. See Rape—21.
4. Removal of— See Public Nuisance—34.
5. Syphilis—communicating of—.

Where a prostitute communicated syphilis to a man who had sexual intercourse on the strength of her misrepresentation that she was free from disease, she was guilty of cheating. 11 B. 59.

6. Visiting Dak Bungalow.

A prostitute, by visiting Dak bungalow, at the request of a person staying there, but against whom there is no evidence of any impropriety of speech, gesture or act or annoyance, is not guilty under S. 290, I. P. C. 2 N. W. P. H. C. R. 349.

PROSTITUTION—(BUYING OR SELLING MINOR FOR) Ss. 372-373, I. P. C.**1. Adoption of daughter by dancing girl**

1. Where a dancing girl adopted a daughter, she is not guilty, if the girl was to be brought up as a daughter, although the girl may have the choice of matrying or following the profession of prostitute. But she would be guilty if she was adopted in order to follow the profession as a minor. 12 M. 273, (1885) 1 Weir 373 *Contra* 23 M. L. J. 493.

2. Adoption of daughter by a dancing girl is invalid and constitutes an offence. 4 B. 545, 14 Bom. L. R. 1129, 23 M. L. J. 493. See 4 Bom. L. R. 116.

3. A dancing girl purchasing a minor for prostitution is guilty. 23 M. 159.

2. Age of girl

The prosecution must prove beyond doubt that the girl is under 18 years of age. 35 C. W. N. 316

3. Burden of proof

Where all the circumstances went to show that the intention of the accused was to employ a girl as a prostitute as soon as she was physically ready for the purpose, the *onus* is on the accused to prove that he intended to wait until the age of majority had been reached. 1922 C. 539=24 Cr. L. J. 104.

4. Completion of offence.

Where a minor married girl was, with her husband's consent, brought from Kashmir to Bombay and was kept in the brothel, the offence was completed in Bombay. What took place in Kashmir was only a preparation. 1927 B. 666=101 I. C. 593=28 Cr. C. J. 465.

5. Dedication to temple—Dev Dasi.

1. Dedication of a minor girl to a temple as dancing girl amounts to disposal for pur-

Public Gambling Act (III of 1867)—(contd.)

7. The presumption raised by the Act is not as strong when the gambling takes place openly on the Dewali occasion as when it takes place at other times in a private house. 1922 O. 224=71 I. C. 62=24 Cr. L. J. 14.
 8. It must be established that the owner or occupier takes a fixed commission. Although the odds 50 to 1 are scarcely fair they are not such as to make the owner's loss impossible. Discount from winners is not commission. 1923 A. 192=76 I. C. 969=45 A. 258.
 9. The law does not contemplate the confiscation of money found on the person of the accused convicted under Ss. 3 and 4 of the Act. 41 A. 366.
 10. If there is a fair presumption under S. 6 that the person is the occupier or has the use of a room within S. 3 as a common gaming house, the issue of a warrant is not illegal. 56 I. C. 234.
 11. A person simply allowing the use of his house to gamblers during a Dewali festival without any idea of demanding rent, etc., cannot be said to keep a common gambling house within Ss. 3 and 4. 50 I. C. 171=20 Cr. L. J. 281.
 12. For keeping a common gambling house the prosecution must prove that the accused is the owner or occupier of the house and that instruments of gambling were kept or used in it for profit or gain. 57 I. C. 810.
 13. A warrant issued for the search of any house which the Police Officer might think proper to search is illegal. 35 A. 1, 5 L. L. J. 429.
 14. The keeper of a gambling house and the players therein may be jointly tried. 19 I. C. 949=14 Cr. L. J. 293, 1929 A. 937=120 I. C. 266=31 Cr. L. J. 35, 1927 L. 699=104 I. C. 441, 1923 A. 88=71 I. C. 507, 1922 L. 359=1922 L. 458=68 I. C. 845=6 P. R. 1919 Cr. *Contra* 1924 O. 403=81 I. C. 186=35 P. R. 1914.
 15. Where from the method of business the chance of loss to booth keeper is extremely rare and almost nil, the offence of keeping a common gaming house is complete. 47 A. 405, 46 A. 447.
 16. The mere fact that small sums are set aside for remunerating those who minister to the comfort of the persons assembled, does not show that such payments represent any advantage to the person occupying or keeping the house. 62 I. C. 322=22 Cr. L. J. 498.
 17. 'Cowries' are place a ... of gaming. Finding of cowries does not make the ... P. R. 10 ... Cr.
 18. Accused ... a ... There was no proof of *mal* or profit. Held, his ... A. 35 Cr. L. J. 354.
 19. "Ring game the mischief ... society entertainment does not fall within ... L. J. 1258.
 20. Where the F the evidence ... attempt to implicate the accused, 109.
 21. If the ... no presumption can be drawn again
 22. A private ... caste is not ... entered by members of only one ... S. 52=36 Cr. L. J. 865.
 23. A person who be said to use ... on a public road cannot ... he habitually uses that spot. 37 Cr. L.
 24. If there is ... absence of finding that the house is a common ... conviction. 1936 N. 138=37 Cr. L. J. 586.
- S. 4.**
1. On a conviction under ... seized in the house is legal under S. 8. 41 A.
 2. "Found" under S. 4 does ... course of a lawful search by the Police" or arrested ... N. 118=62 I. C. 332, 35 P. R. 1894 Cr. dissented.

Public Gambling Act (III of 1867)

PUBLIC GAMBLING ACT (III OF 1867).

General.

1. In order to bring the case under the Act it is not essential to prove that profit is certain to result. 49 A. 562=1927 A. 480=101 I. C. 474=28 Cr. L. J. 442.
2. Section 562, Cr. P. C., does not apply to Gambling Act. 1922 O. 224=71 I. C. 62.
3. An accused has the right to examine the Magistrate issuing the warrant as a witness. The case should not be tried by the Magistrate issuing the warrant. 1924 L. 247=24 Cr. L. J. 633, 1934 A. 987 (2)=36 Cr. L. J. 293.

S. 1.

1. A bullock run surrounded by low walls is a place within the meaning of the Act. 38 A. 47.
2. A Government office can become common Gaming house when persons gamble there for profit. 1928 A. 215=108 I. C. 568=29 Cr. L. J. 448.
3. Advertisements and accounts of "Satta" Gambling are 'instruments of gaming'. 49 A. 562=1927 A. 480=101 I. C. 474, 1924 A. 338.
4. Books used for the purpose of registering and gaming transaction would be "instruments of gaming" e.g., book regarding *Kachi Khadi* and *Teji Mandi* transactions. 55 B. 367=1929 B. 157=116 I. C. 251.
5. Kauries are instruments of gaming. 1925 O. 674=26 Cr. L. J. 1609.
6. Telegrams and documents which enable gamblers to settle differences but could not be deciphered are not instruments of gaming and if found in a house would enable a Court to presume that the house was a common gaming house. 1923 A. 386=76 I. C. 28=25 Cr. L. J. 92.
7. "Common gaming house" can be interpreted to mean a house in which articles used as a means or for the purpose of carrying on or facilitating gaming, are kept. 1922 A. 61=65 I. C. 852=23 Cr. L. J. 196.
8. Anything which assists gaming would be instrument of gaming, e. g., slips of papers. 1933 A. 554=34 Cr. L. J. 1244, 65 I. C. 852, 46 A. 447, 49 A. 562.
9. "Common gaming house" is wide enough to include a public road. 1936 N. 78.

S. 2.

1. Gaming in a boat which was on the Benares side of the mid-stream of the Ganges is no offence because by a Government Notification the Act did not apply there. 1925 A. 518=88 I. C. 5=26 Cr. L. J. 1061.
2. The Act applies to Cantonment of Ambala but not to the Saddar Bazar. 38 P. L. R. 432.

S. 3.

1. Mere finding of instruments of gambling in the house does not justify conviction. 45 A. 258=1923 A. 192=76 I. C. 969=25 Cr. L. J. 297.
2. For a conviction under S. 3 it should be proved that the accused is the owner or occupier of the house. 1229 O. 151=116 I. C. 57=30 Cr. L. J. 557.
3. A conviction under S. 3 based on legal evidence is not vitiated merely because of the defects and irregularities in the warrant. 1927 L. 699=28 Cr. L. J. 825, 35 A. 1, 28 A. 210, 1924 A. 214 Foll. 1924 L. 247 Expl.
4. When the place to be searched was not stated in the body of the warrant when it was signed by the Magistrate, the warrant is illegal. 1924 L. 247=73 I. C. 521=24 Cr. L. J. 633.
5. To issue warrant to raid houses at the time of Dewali is highly undesirable as the Police are merely encouraged to run in number of perfectly innocent persons in order to get a reward. 1930 O. 403=32 Cr. L. J. 82=128 I. C. 65.
6. When the owner of a house had a small pot in front containing a few annas and there was no reason to suppose that the sums presented his profits which is known as "Nal" and the sums staked were quite trifling, held, that it was a case of Dewali gambling in a private house and no offence was committed. 1930 O. 403=32 Cr. L. J. 82.

Public Gambling Act (III of 1867)—(contd.)

7. The presumption raised by the Act is not as strong when the gambling takes place openly on the Dewali occasion as when it takes place at other times in a private house. 1922 O. 224=71 I. C. 62=24 Cr. L. J. 14.
 8. It must be established that the owner or occupier takes a fixed commission. Although the odds 50 to 1 are scarcely fair they are not such as to make the owner's loss impossible. Discount from winners is not commission. 1923 A. 192=76 I. C. 969=45 A. 258.
 9. The law does not contemplate the confiscation of money found on the person of the accused convicted under Ss. 3 and 4 of the Act. 41 A. 366.
 10. If there is a fair presumption under S. 6 that the person is the occupier or has the use of a room within S. 3 as a common gaming house, the issue of a warrant is not illegal. 56 I. C. 234.
 11. A person simply allowing the use of his house to gamblers during a Dewali festival without any idea of demanding rent, etc., cannot be said to keep a common gambling house within Ss. 3 and 4. 50 I. C. 171=20 Cr. L. J. 281.
 12. For keeping a common gambling house the prosecution must prove that the accused is the owner or occupier of the house and that instruments of gambling were kept or used in it for profit or gain. 57 I. C. 810.
 13. A warrant issued for the search of any house which the Police Officer might think proper to search is illegal. 35 A. 1, 5 L. L. J. 429.
 14. The keeper of a gambling house and the players therein may be jointly tried. 19 I. C. 949=14 Cr. L. J. 293, 1929 A. 937=120 I. C. 266=31 Cr. L. J. 35, 1927 L. 699=104 I. C. 441, 1923 A. 88=71 I. C. 507, 1922 L. 359=1922 L. 468=68 I. C. 845=6 P. R. 1919 Cr. *Contra* 1924 O. 403=81 I. C. 186=35 P. R. 1914.
 15. Where from the method of business the chance of loss to booth keeper is extremely rare and almost nil, the offence of keeping a common gaming house is complete. 47 A. 405, 46 A. 447.
 16. The mere fact that small sums are set aside for remunerating those who minister to the comfort of the persons assembled, does not show that such payments represent any advantage to the person occupying or keeping the house. 62 I. C. 322=22 Cr. L. J. 498.
 17. 'Cowries' are not instruments of gaming. Finding of cowries does not make the place a gaming house. 3 P. R. 1896 Cr.
 18. Accused admitted gambling in a house. There was no proof of *net* or profit. Held, his conviction was illegal. 1936 A. 109=35 Cr. L. J. 354.
 19. "Ring game" kept as one of the items in a variety entertainment does not fall within the mischief of the Act. 1935 L. 225=36 Cr. L. J. 1258.
 20. Where the Police had made a previous unsuccessful attempt to implicate the accused, the evidence must be unimpeachable. 1936 A. 109.
 21. If the residents of the locality are addicted to gambling no presumption can be drawn against the accused. 1936 A. 109.
 22. A private room with a paraphernalia of a club and rented by members of only one caste is not *prima facie* a common gaming house. 1935 S. 52=35 Cr. L. J. 865.
 23. A person who is simply caught on one occasion gambling on a public road cannot be said to use the same as a common gaming house, unless he habitually uses that spot. 37 Cr. L. J. 588=1936 N. 78.
 24. If there is evidence of gambling with cowries, mere absence of finding that the house is a common gaming house will not vitiate the conviction. 1936 N. 138=37 Cr. L. J. 586.
- S. 4.
1. On a conviction under S. 4 an order for forfeiture of money seized in the house is legal under S. 8. 41 A. 272.
 2. "Found" under S. 4 does not necessarily mean "found in the course of a lawful search by the Police" or arrested in the course of such search. 1921 N. 118=62 I. C. 332, 35 P. R. 1894 Cr. dissented from.

Public Gambling Act (III of 1867)—(contd.)

3. When at the time of search 'cowaries' were found in the house there is presumption that the house was used as a common gaming house and it can be rebutted if the object of the person was merely to indulge in a common friendly amusement with a view to have pastime, the idea of making any gain being entirely foreign to the mind of entire party. 1925 O. 674=90 I. C. 713=26 Cr. L. J. 1609.
4. For a conviction under S. 4 it is not necessary that the accused should have been arrested in the gambling house, but prosecution must prove that he was actually seen in the house. The mere fact that the accused was seen going from the direction of gambling house to his own house is insufficient. 1930 L. 314=32 Cr. L. J. 65.

S. 5.

1. A search warrant issued under S. 5 by a First Class Magistrate is not invalid by reason of the fact that the house to be searched is situated outside the limits of the Tahsil in respect of which he has been appointed Sub-Divisional Officer 34 A. 597.
2. Warrant should be issued on credible information. A Police report is *prima facie* credible information. 14 Cr. L. J. 293=19 I. C. 949.
3. A search warrant issued by a Magistrate to a Police Officer was endorsed to another Police Officer who conducted the search. Held, that the search is legal. 42 A. 385.
4. Credible information under S. 5 may not be on oath. 1929 L. 720=116 I. C. 455.
5. S. 103, Cr. P. C., does not apply to warrants under S. 5. 1929 A. 937=31 Cr. L. J. 35, 1922 L. 458 and it was made by scaling wall at night. 1934 O. 90.
6. Credible information as to actual gambling, how game is played and how toll is levied, is necessary for issue of warrants. 62 I. C. 322.
7. An Assistant Superintendent of Police is not authorised under S. 5 to search a place without a warrant. 1925 A. 301=86 I. C. 832.
8. Where the Superintendent Police issued the warrant and he signed it certifying that he had reason to believe, etc. Held, that the only interpretation to be placed on warrant is that he acted upon credible information within S. 5. 7 L. 310.
9. The information that the house is going to be used as common gaming house does not justify the issue of warrant. 1921 A. 410=19 A. L. J. 692.
10. Money found upon search of persons cannot be forfeited. 8 L. 320=27 Cr. L. J. 951, 44 Bom. 686, 41 A. 366.

S. 6.

1. The presumption under S. 6 does not arise if the warrant is illegal. 1930 A. 740, 50 A. 412=1927 L. 699=104 I. C. 441, 1933 L. 234.
2. When the warrant is vague and indefinite as to place or person and is not addressed to a definite Police Officer it is illegal and no presumption under S. 6 arises. 1924 A. 128=73 I. C. 518=24 Cr. L. J. 630.
3. Where a Magistrate raids a house and finds instruments of gaming and a "nai" (a wooden box containing some money) the presumption is that the place was a common gaming house. 1929 L. 720=30 Cr. L. J. 625, 42 A. 470.
4. Direct evidence of taking commission is not necessary. 45 A. 671.
5. Unless there is something on the record to show that the officer who conducted the search or issued the warrant, did so in pursuance of the belief that it was used as "common gaming house", no presumption under S. 6 arises. 1936 A. 109=35 Cr. L. J. 354.
6. Court can draw presumption from the finding of cards, etc. 1933 A. 574. But see 1936 A. 109.

S. 8.

- S. 8 justifies the seizing and forfeiting of money found on the table or on the floor or other places in the house but not on the persons of the men arrested. 22 Cr. L. J. 618, 1924 P. 42=77 I. C. 177.

S. 10.

1. A prosecution can proceed only against some of the persons found gaming or present

Public Gambling Act (III of 1867)—(contd.)

in common gaming house and can call others who are not prosecuted as witnesses. S. 10 does not apply to such persons. 14 Cr. L. J. 293.

2. Persons illegally arrested cannot be examined on oath as witnesses by the Magistrate. 1925 A. 301=86 I. C. 832=26 Cr. L. J. 896.

3. Presumption that persons present at the time of raid were there for gaming cannot arise if the warrant was upon information that gaming was likely to take place. 1934 A. 524 (2)=35 Cr. L. J. 878.

4. Co-accused can be tendered pardon. 1934 O. 90.

12.

1. Ring game is not a game of mere skill. 34 A. 96, 110 I. C. 674. See 1935 L. 225.

2. Dart game is a game of chance. 1934 N. 225. See 62 C. 865.

3. Roll up of table game is a game of chance. 1934 N. 225.

13.

1. The premises of a railway station to which the public has no right to go is not a public place. 57 I. C. 931.

2. A public place is one which is in full view of the public and one to which the public has access. 1930 O. 391, 51 I. C. 971 and 1922 O. 196 Dist.

3. A public place must be a place either open to public or actually used by the public. The mere publicity of the situation is not sufficient. 49 A. 913.

4. A *serai* used as a stand for hackney carriages and resorted to by public is a public place. 1926 L. 149=29 I. C. 975.

5. A blind alley removed from a highway is not a public place. 1923 L. 278=68 I. C. 848=23 Cr. L. J. 624.

6. A foot-path though a private grove used by the public as of right is a public place. 1922 O. 196=68 I. C. 611=23 Cr. L. J. 579.

7. The bank of a canal is not a public place. 1921 L. 141=3 L. L. J. 53.

8. Gaming at a place near a public street and exposed to public view but which was not a part of the public street is not an offence under S. 10. 104 P. L. R. 1920.

9. A private property though not dedicated to the public use may yet become public according to its locality and the actual use it is put to. 14 Cr. L. J. 670.

10. An accused was found gambling in a graveyard which was a private property but was used by the public on the occasion of fairs without interference. The visitors on such occasions penetrated all parts of the graveyard. Held, that the accused was gambling in a public place. 44 A. 265.

11. When the place is owned by a private person and there is dedication to the public, the question whether or not it is a public place depends on the character of the place and the use to which it is actually put. 1925 N. 123=81 I. C. 897=25 Cr. L. J. 1073

12. The public must have lawful excess to the places by right, permission, usage or otherwise. 1925 N. 123=81 I. C. 897.

13. In order to constitute public place, it is necessary that the public actually go there as of right or on sufferance of the proprietors. A place which is in full view of the public as they pass to and fro, is also freely accessible to the public and belongs to public is a public place within S. 13. 1927 L. 672=104 I. C. 230.

14. A private place open to public view is not a public place. 49 A. 913.

15. Under S. 13 a double punishment of fine and imprisonment cannot be legally imposed. 1927 L. 672=104 I. C. 230=28 Cr. L. J. 790.

16. "Thara" situated outside a public street is not a public place. 11 P. P. 1890 Cr.

17. Open place belonging to a private person but used by public e. g., "travellers" is not a public place. 9 P. R. 1905 Cr.

18. Gambling in a temple situated near a thoroughfare is not gambling in a public place. 13 P. R. 1882 Cr., 11 P. R. 1890 Cr.

Public Gambling Act (III of 1867)—(contd.)

19. The fact that on previous occasion the premises of the club had been raided and certain persons other than those charged now were found there and convicted is not relevant. 1935 R. 233=36 Cr. L. J. 1223.
 20. Articles ranging in value from two pice to about one rupee and there were tickets equal to the number of articles. Each ticket was available for one anna. Held, it was not gambling but lottery. 1933 A. 482 (1)=34 Cr. L. J. 1128 (2).
 21. Mere publicity or its visibility from public place does not make the place a public place. 1934 A. 17=35 Cr. L. J. 564.
 22. A low lying *nala* which is quite away from a road running parallel to it is not a "Public place". 162 I. C. 866=37 Cr. L. J. 712.
 23. Although dart game is not a gambling game, side betting upon the result of throwing the dart amounts to gambling. 62 C. 865=1936 C. 184.
- S. 15.**
Legality of previous conviction cannot be determined by Court trying a subsequent case. 41 P. R. 1885 Cr.
- S. 16.**
1. Reward out of fine levied under Ss. 3 and 4 to an informer is competent. 2 P. R. 1870 Cr.
 2. Reward out of fine levied under Ss. 3 and 4 to a police officer is illegal. 2 P. R. 1870 Cr.
 3. Reward out of fine is not competent on conviction under S. 13, Gambling Act, 1867. 18 P. R. 1891 Cr.

PUBLIC GOOD. See Defamation—36.**PUBLIC NUISANCE.** S. 268 to S. 294 A., I. P. C. and S. 137 to S. 143, Cr. P. C.

1. Adulteration of food and drink. Ss. 272-73, I. P. C. See Adulteration.
2. Animals—Negligent conduct with regard to—. S. 289, I. P. C. See Biting by dog.
 1. Domestic animals are presumed to be docile and gentle and it is for the prosecution to show that the accused's handling of them was negligent. This may be proved by the evidence of general ferocity of the animal and knowledge on the part of the accused. 42 I. C. 913.
 2. It must be proved that accused's omission was negligent or with knowledge of the probable danger. 35 I. C. 815=18 Bom. L. R. 632.
 3. It is not necessary to prove that the animal had bitten or injured before. It is enough to show that to the knowledge of the owner, it had evinced a savage disposition, *e. g.*, attempted to bite. (1885) S. J. L. B. 353.
 4. A buffalo belonging to the complainant was attacked by accused's buffalo and a leg was broken. It was proved that the animal had a year before attacked two other buffaloes. Held, that it must be shown that animal was of a savage disposition against a human being. 1884 B. U. C. 197.
 5. A buffalo attacked a woman and gored her to death. It was proved that on several occasions it attacked people and notwithstanding this, the accused let it out to graze in open field. Held, that both owner and the herdman were guilty under S. 289. 3 N. L. R. 90.
 6. Omission to take care of a dog, who bit the complainant causing three incised wounds in the forearm is an offence under S. 289 and not S. 323. 1923 R. 147=81 I. C. 53=25 Cr. L. J. 565.
 7. Allowing a vicious animal to be at large knowingly raises presumption that the person letting it loose knows that there is probable danger to human life or limb. 35 I. C. 815.
 8. The mere fact that a pony kicked a child is not sufficient. The pony should be proved to be vicious and the accused to be cognizant of it. 3 M. H. C. R. 33.
 9. There should be evidence that negligent keeping would probably lead to danger to human life or of grievous hurt. 3 M. H. C. R. 33.

Public Nuisance—(contd.)

3. Annoyance. S. 268, I. P. C.

The sort of annoyance which S. 268 contemplates is not the kind of annoyance which the religious idea of a class of people may suffer, on account of innocent act of another like music by Hindus at the time of worship. 1931 A. 674.

4. Arbitration in proceedings of— See Arbitration—3.

5. Bona fide claim. Ss. 133—139-A., Cr. P. C.

1. When in a proceeding under S. 133 a person denies the existence of public right and which denial is *bona fide*, the Magistrate's jurisdiction is ousted but if the denial is a mere pretence, the Magistrate can make his order final. 4 P. 783=1926 P. 170=91 I. C. 41, 108 I. C. 577, 28 C. 98, 1924 P. 418=73 I. C. 802, 14 C. 564, 2 C. 278, 22 Cr. L. J. 459.

2. A long user may be taken to be a *bona fide* claim to oust Magistrate's jurisdiction. 1928 P. 268=108 I. C. 559=29 Cr. L. J. 422.

3. A person who denies a claim of *bona fide* right is raised, except when it is seriously disputed. 50 A. 871, 45 A. 656, 4 C. 278.

4. Where a person *bona fide* erected a building on land which had been in his possession for a number of years and the building obstructed the view of the Home Signal from the Distant Signal in a Railway line. Held, that the claim being *bona fide* one, the order for removal of building could not be maintained. 61 I. C. 517=22 Cr. L. J. 389.

5. If the claim put forth is *bona fide*, the parties should be left to take proceedings in a Civil Court. 61 I. C. 157, 1932 O. 11=120, 1925 A. 311=86 I. C. 809, 13 C. 564, 17 C. 562, 1932 A. 366, 42 C. 158, 4 L. 224, 25 C. 278. 2 P. R. 1903. See 49 C. 682.

6. If there is *bona fide* dispute as to the existence of public right, the powers under Ss. 133—137 as regards obstruction to public way cannot be exercised by the Magistrate. 4 Bom. L. R. 687, 15 Bom. L. R. 57, 22 B. 988, 11 C. 8.

7. If an order is made to remove an obstruction from a public way and the petitioner claims it as a private way, the Magistrate first must enquire if the claim is *bona fide*. 42 C. 153, 25 C. 869, 31 C. 979, 23 C. 499, 3 C. W. N. 345, 7 C. W. N. 117.

8. Question of *bona fide* is one of fact and the Magistrate must take the evidence adduced by each side. 23 C. W. N. 744, 20 Cr. L. J. 556.

9. A *bona fide* claim should be set up at or before the hearing and not afterwards. 15 C. 564, 1 C. L. J. 434, 7 C. W. N. 117.

10. If the Magistrate did not put the question under S. 139-A as to whether public right was denied and he ordered the production of prosecution evidence. Held, that the order was illegal. 1931 L. 62=130 I. C. 834=32 Cr. L. J. 621.

6. Building likely to fall. S. 133, Cr. P. C.

1. There must be evidence that the state of building likely to fall is dangerous in *praesenti* and not *in futuro*. 5 P. R. 1590 Cr.

2. A Magistrate cannot order the owner to repair his house which is standing in its own compound at a distance from the public road. 29 A. 501.

3. That the building might become dangerous by another man altering the adjoining premises in future or undermining the building in question, is no ground for taking action under S. 131. 5 P. R. 1590 Cr.

4. Where the user of the premises gives rise to nuisance, the person liable under S. 290, I. P. C., is the occupier for the time being and not the proprietor. 46 C. 515.

5. For negligent conduct in pulling down or repairing building. See S. 293, I. P. C.

7. By fire. S. 235, I. P. C.

1. A person who smoked a fire close to half pressed cotton bales may be punished under S. 235 if his act could be held to be so negligent as to have endangered the cotton bales. 1878 B. H. C. 134.

Public Nuisance—(contd.)

2. Accused who was in a marriage procession, let off fireworks while it was marching past the complainant's loft thatched with straw and which caught fire. Held, that he was guilty under S. 235. 5 B. H. C. R. 67, 1925 A. 301 (2)=86 I. C. 222.
3. There is no danger in letting off fire-balloons. (1899) P. J. L. B. 628.
4. The owner of the house in which fire originates is not guilty without proof of actual carelessness or illegal omission. (1881) S. J. L. B. 134, (1891) S. J. L. B. 569.

8. Collection of crowd.

1. Accused a toy dealer exhibited mechanical toys and drew a huge crowd in front on the public road, causing obstruction. He was held guilty under S. 293. 35 B. 363, 1924 A. 568=83 I. C. 695=26 Cr. L. J. 135. See 1829 L. 801.
2. Where a person was selling Satta ticket at his shop and 10 or 15 persons collected there. Held, he is not guilty because 10 or 15 persons do not obstruct the traffic. 1929 L. 801=1929 Cr. C. 368, 28 I. C. 110.
3. Person responsible for the collection of crowd is more responsible. 1924 A. 568=83 I. C. 695.

9. Continuance of—after injunction. S. 291, I. P. C.

1. For a conviction under S. 291 there should be evidence of previous injunction, or order of Magistrate to stop it and of the continuance of nuisance after injunction to stop it. (1886) B. U. C. 295, 8 A. 99.
2. The Court must see whether the injunction issued by a Magistrate is legal. 6 C. 88.
3. A general proclamation to the public at large, without naming the accused, though it may have been issued under S. 144, Cr. P. C., is not such an injunction, the disobedience of which is punishable under S. 291. 8 A. 99.
4. If a person is acquitted under S. 291 for disobedience of an order to discontinue nuisance, he can be prosecuted under S. 188, I. P. C. A complaint under S. 195, Cr. P. C., is not necessary and S. 403, Cr. P. C., is no bar. 1930 L. 1055=129 I. C. 224=32 Cr. L. J. 253 (1).

10. Cremation of dead body.

1. If persons are entitled to use a particular spot dedicated for cremation in the usual manner they cannot be convicted for public nuisance, although their act caused material annoyance and discomfort to the persons near the place. 19 M. 464, 25 M. 118.
2. Accused cannot be convicted on the ground that cremation caused discomfort to Thiruvadauthoral people who were near the place on that occasion. 25 C. 425.

11. Danger or obstruction in a public way. S. 283, I. P. C. See—29.

1. Proof of obstruction to the road so as to cause danger or injury to any person using the road is necessary for conviction. 1925 L. 153=31 I. C. 195=25 Cr. L. J. 707.
2. Where building materials are supplied by a contractor who places them on a public road, the person for whom they are supplied is not guilty unless he has sanctioned the act. 1921 A. 192=61 I. C. 59=19 A. L. J. 125=22 Cr. L. J. 331.
3. A path which lies over a private land and which is used by villagers even of other villages is not a 'public way' within the meaning of S. 233, unless there is evidence of universal user. 31 Cr. L. J. 859=125 I. C. 600=1930 C. 286=33 C. W. N. 915.
4. Where the accused pleaded to be excused admitting that he obstructed the road under mistake, without admitting that danger or injury was caused to any person, the conviction under S. 233 is bad. 1925 L. 153=31 I. C. 195.
5. Where no actual danger, obstruction or injury to any person is occasioned, it is preferable to proceed under S. 290, I. P. C. 20 M. 433, 33 M. 305.
6. A conviction under S. 233, I. P. C., does not justify the passing of an order under S. 133, Cr. P. C. 3 C. L. J. 360.
7. Where the accused spread out his bad smelling fishing net, so as to cause obstruction

Public Nuisance—(contd.)

to passers by, the High Court quashed the conviction on the ground that it must be proved that obstruction was in fact caused. 4 M. 235, Dissented from in 38 M. 305. See 20 M. 433.

8. Placing a bamboo stockade across a tidal navigable river for the purpose of fishing and leaving narrow opening for the passage of boats is an offence under S. 283. 14 C. 656, 20 C. 665.
9. Actual obstruction to an individual may be proved by inference. 38 M. 305, 25 C. 275.
10. A side of the road was occupied by the charroy of the accused and Sub-Inspector who was riding along was obstructed. Held, that accused was guilty under Ss. 283—290 although obstruction was caused by negligence of accused. 1935 A. 746 (1) = 36 Cr. L. J. 873 = 156 I. C. 39, 17 I. C. 574 Diss. from.

2. Disorderly House.

1. A prostitute cannot be removed from her house in a respectable neighbourhood because of her profession, unless she made it the resort of bad characters and filled it with noisy revellers at night. 24 W. R. 68.
2. In the absence of any statutory provision, the mere keeping of a house for gambling, lottery or betting is not a public nuisance, unless there is evidence of any actual annoyance to the public. 14 M. 364, 1 Weir 240, 1 Weir 242, 16 P. R. 1867 Cr., 7 C. W. N. 710.
3. A common gaming house may be a public nuisance if there is actual annoyance to the public. 7 Bom. H. C. R. 74

3. Encroachments.

1. Encroachment on a public way is itself nuisance and the sufficient width of the road cannot be pleaded as defence. 6 P. 428 = 1927 P. 265 = 105 I. C. 238, 1930 A. 721.
2. Persons cannot take law into their hands and pull down terrace on encroached area to abate nuisance. 57 M. 351 = 1934 M. 95. 46 M. 605 and 51 B. 487 Rel on.
3. Owners raised platforms in front of shops for shopkeeper's convenience. It is public nuisance. Persons renting the platforms are not guilty. 1936 A. 156.

4. Essentials and Evidence for— S. 290, I. P. C.

1. Where the Criminal Court ordered to remove a nuisance and Civil Court issued an injunction to the complainant not to interfere with the alleged nuisance, the person ordered to remove it is non-guilty, since the Criminal Court is bound by order of Civil Court. 34 P. W. R. 1917 Cr.
2. Encroachment on the public way when there is no evidence that it causes danger to the public, is punishable under S. 290, I. P. C. 6 P. 428, 1930 A. 721.
3. A joint owner is liable for nuisance caused by his property. 52 M. 79.
4. The injury which constitutes public nuisance must be to the people in general and not to a particular class of people 50 A. 871. 34 A. 345 Dist.
5. Encroachment however small upon the public street is an offence. 6 L. 203, 20 M. 433, 14 C. 656. 20 C. 665 Diss. from.
6. A common nuisance cannot be excused on the ground that it is of advantage to the accused. 34 A. 345.
7. A Lambardar of a village used to make sanitary arrangements for a fair every year. In one year he failed to do so. Held, he is not guilty. 11 P. R. 1875 Cr.
8. Injury resulting from the straying of one's cattle into other people's garden is not a public nuisance. 6 W. R. 71, (1894) 1 Weir 244.
9. The fact that one person complains of nuisance is sufficient, provided the nuisance is one which affects him and others. 21 A. L. J. 772.
10. Where the accused caused annoyance and obstruction to the public by gambling on the thoroughfare, they were guilty under S. 268. 28 I. C. 110.
11. A prostitute, by visiting a Dak Bungalow, at the request of person staying there, but against whom there is no impropriety of speech or gesture, is not guilty under S. 290. 2 N. W. P. H. C. R. 349.

*Public Nuisance—(contd.)***15. Explosives—Negligent conduct with regard to—** S. 286, I. P. C. *See* S. 337, I. P. C.

1. A gun or revolver, though it uses a cartridge which is an explosive does not thereby become an explosive substance itself. 23 A. 461, 1 Weir 235.
2. An Assistant Collector left a loaded revolver on the platform and his peon handled it, one chamber went off and a constable was wounded. He was convicted under S. 285 but conviction was quashed on the ground that revolver was not an explosive substance. 1 Weir 235. *See* 8 M. 421.
3. A pellet from the accused's gun struck the complainant who was working in the field. He is not guilty under S. 236 but under S. 337 if there is evidence of negligence or rashness. 28 A. 461 (464).

16. Fencing tank.

Where a tank is used as a reservoir for water, a Magistrate can order to have it fenced to prevent accidents, but where it is proved to be injurious to the health, he can cause it to be filled up. 10 W. R. 27, 2 W. R. 36.

17. Filling up excavations.

An order to fill up and bring into one level with adjacent land, excavations made for taking mud for the manufacture of bricks, is illegal, although he can order them to be fenced. 22 B. 714, 51 A. 489.

18. Fouling water of reservoirs or springs. S. 277, I. P. C.

1. A well is an example of a spring and a tank or a cistern is an example of a reservoir. A river is neither a spring nor reservoir and therefore S. 277 does not apply to it. 2 C. 383, 4 M. 229, 1 Weir 230, 6 Bom. L. R. 52.
2. If a person bathes in a tank not set apart by any lawful order for bathing purposes, it is not a nuisance under S. 277. 1 Weir 228 (1878).
3. Unless the accused was aware that the water of a tank was used for drinking purposes, the bathing will necessarily foul it. 1 Weir 229 (1896).
4. A mere angling in a tank the water of which is used for drinking purposes only, is not a nuisance, unless the bait used is of a foul kind. 1 Weir 231 (1882) and (1883).
5. Cultivating paddy in the bed of a tank, the water of which is used for drinking purposes, is a nuisance. (1881) 1 Weir 229.
6. Water can be fouled by spitting, and accused spitting in a public well is guilty under S. 277, I. P. C. 40 I. C. 298=13 N. L. R. 68=11 Cr. L. J. 650.
7. Water can be fouled by watering or washing cattle or by washing himself or his clothes therein. 2 Bom. L. R. 1078.
Throwing branches of trees for fishing purposes or depositing rubbish makes the water foul. 2 C. 383.

19. Injunction pending enquiry. S. 143, Cr. P. C.

1. An injunction under S. 143, Cr. P. C., can be issued only when there is imminent danger or fear of injury of a serious kind to the public. 21 W. R. 86.
2. No injunction can be issued, when the danger has passed away. 1 W. R. 8.
3. Order without drawing up proceedings, without taking evidence and without giving opportunity to opposite party to substantiate his case is illegal. 1935 C. 108 (2).

20. Jury in cases of— Ss. 135 to 139, Cr. P. C. *See* Jury.**21. Kiln.**

Removal of lime kiln is not justified if it does not affect the public health. Mere discomfort is insufficient. 1932 A. 159, 1 L. 163.

22. Latrine in a private place.

1. S. 133 is not applicable to latrine in a private compound. 1935 A. 926, 1928 A. 128=29 Cr. L. J. 233.
2. Where the latrine becomes nuisance, the order should be to stop the latrine rather than to demolish it. *Ibid.*

Public Nuisance—(contd.)**22-A. Letting off clean water on public road.**

Whether letting of clean water on public road is public nuisance will depend on the quantity and frequency of water and the locality and the opinion of people using the road. 1932 M. W. N. 111.

23. Machinery—Negligent conduct with regard to— S. 287, I. P. C.

Government Inspector pronounced two boilers to be unsafe if worked at a higher pressure than 85 lbs. The accused got qualified Engineers, who worked them at 100 lbs. pressure. Held, he is criminally responsible for any accident due to the errors of his employees, when he discarded employees who contended for safety and accepted one who agreed to take the risk. 9 P. R. 1905 Cr.

24. Noise.

1. A noise by Chawkidar for keeping the thieves away is not public nuisance. 1926 O. 414=27 Cr. L. J. 1020=96 I. C. 876.
2. A noise injurious to physical comfort of community is nuisance. 32 C. L. J. 42.
3. Noise of mill is nuisance to the locality. 1934 N. 193 (1).

25. Notice and its service. S. 134, Cr. P. C.

1. Where the parties had information of the order under S. 133, it is immaterial that the mode in which it was brought to their notice was not in strict accordance with S. 134, Cr. P. C. 2 P. R. 1900, 4 L. 224 (229), 5 W. R. 4.
2. If service of the conditional order under S. 133 is effected in the manner provided by S. 71, Cr. P. C., regardless of the question whether it could be served in the manner provided by Ss. 69 and 70, the service is defective. 1926 C. 1208=94 I. C. 907=31 C. W. N. 148.
3. Where the persons against whom order was made were residents of a *Mohalla*, and the order instead of being served personally was stuck up in a conspicuous place of the *Mohalla* and the parties came to know of the order. Held, that service though irregular, did not affect its validity. 4 L. 224, 16 C. 9.
4. If the order cannot be served in the manner provided for service of summons under Ss. 70-71, Cr. P. C., then the publication of a Proclamation under S. 134 (2) may be resorted to. 935 C. 251=39 C. W. N. 141=60 C. L. J. 474.

26. Object and scope of S. 133, Cr. P. C. S. 133, Cr. P. C.

1. The provisions of chapter X, Cr. P. C. (Public Nuisance) should be so worked as not to become themselves a nuisance to the community at large. 17 P. R. 1888.
2. S. 133 deals with conditions of things at the time when the order is made. It is not meant to apply to what may happen at some indefinite time in future or under quite abnormal circumstances. 1 L. 163, 5 P. R. 1890, 1924 A. 667.
3. S. 133 should not be used as a substitute for litigation in the Civil Courts in order to obtain settlement of private disputes. 37 A. 26, 91 I. C. 59.
4. S. 133 is not intended for longstanding obstructions but for an unlawful obstruction lately built in a public place. 1930 L. 361=31 Cr. L. J. 167, 1926 A. 157.
5. There is no provision for re-construction of an obstruction which has once been removed by S. 133. 1925 C. 399=85 I. C. 357.
6. S. 133 does not apply to a case where there is a *bona fide* dispute as to the existence of a public way, such a dispute can be decided by a Civil Court. 22 Cr. L. J. 700.
7. S. 133 deals with public nuisance only. An application for removal of obstruction of a private path does not lie under this section. 1925 O. 130=25 Cr. L. J. 1113.
8. S. 133 is intended purely in the interest of the public. 37 A. 26.
9. S. 133 can be applied to a dispute between two villages in respect of the right of digging and clearing watercourse for irrigation purposes. 25 P. W. P. 1912 Cr.

27. Obscene acts and songs. S. 294, I. P. C.

1. A conviction under S. 294, I. P. C., for uttering obscene abuse in a public place, may amount to a conviction for an offence involving a breach of the peace within the meaning of S. 106, Cr. P. C. (1904) U. B. R. 4.

2. A love song is not necessarily obscene unless it suggests coarse and indecent associations. A *lavni* is not necessarily an obscene song rather it is sacred among *Marhattas*. 4 B. H. C. R. 25.
3. A sentence of three months' imprisonment under S. 294, I. P. C., is unduly severe. 1923 R. 253=2 Bur. L. J. 98.
28. Obscene books, etc. Ss. 292 293. See Obscene books.
29. Obstruction to public way. S. 133, Cr. P. C. See—11.
 1. Obstruction to a public road is nuisance though no practical inconvenience is caused. 23 A. 84.
 2. The motive for obstruction is absolutely irrelevant. 23 A. 159.
 3. Where proceedings are instituted against a number of persons for various acts of unlawful obstruction to a public way, the order should state accurately with regard to each person the specific obstruction made by him, which he is required to remove. 44 C. 61.
 4. The obstruction must be permanent and not temporary. 6 Bom. L. R. 358.
 5. A cattle market situated in a congested part of the town can be removed, when cattle had to pass through congested lanes and inconvenience was caused to the public. 22 Cr. L. J. 582=62 I. C. 822.
 6. A solid and vigorous branch of a tree 15 feet high cannot cause obstruction to public road. 22 A. L. J. 436.
 7. Obstruction must be caused to a public way, river or channel. 50 A. 871, 36 A. 209, 22 B. 988, 5 C. 875, 25 W. R. 4, 15 W. R. 67.
 8. An obstruction to private path, drain or channel does not come under S. 133. 4 Bom. L. R. 882, 36 A. 209, 5 W. R. 58.
 9. The fact that the residents of a particular village have a right to take cattle across a field is not sufficient to constitute a public right of way. 1906 A. W. N. 190.
 10. A Railway land is not necessarily a public place. 1923 P. 540=74 I. C. 1047.
 11. A *chabutra* obstructing a public way can be removed and it is no defence that there is a sufficient space for public to walk. 1930 A. 751, 6 P. 428.
 12. An obstruction at 15½ feet over a country road is not an unlawful obstruction. 1924 A. 667=83 I. C. 664.
 13. An order for removal of a dam constructed across a public river can be passed. 54 I. C. 407.
30. Offensive trade or occupation. S. 133, Cr. P. C.
 1. In order to bring a trade or occupation within the operation of S. 133, it must be shown that the interference with the public comfort was considerable and a large section of the public was affected injuriously. 20 P. W. R. 1911 Cr.
 2. Keeping a house of public entertainment is not by itself an offensive trade. 47 P. R. 1888.
 3. The proprietor of a cremation ground who puts his land at the disposal of any one who wishes to cremate a dead body is not carrying on any trade or occupation, although his tenant sells woods dearly for cremation. 25 C. 425.
 4. The working of a rice husking machine throughout night in a residential quarter is a public nuisance, being injurious to the comfort of the whole neighbourhood. 9 P. R. 1904 Cr.
 5. Cultivation of maize, *jawar* or *bajra* within a short distance from the town is not an injurious occupation. 39 P. R. 1889.
 6. Opening up a rival market in a village and dragging customers and exchanging abuses does not fall under S. 133. 2 Weir 62, 14 M. L. J. 207.
 7. For removal of prostitutes and disorderly houses. See Disorderly houses,—Prostitutes.
 8. If the lime kiln has no effect on public health, its removal is not justified. 1932 A. 159, 1 L. 163.

Public Nuisance—(contd.)

9. An act found to be injurious to the physical comfort of the neighbours must be held to be so to the physical comfort of the community. 1931 A. L. J. 912, 57 I. C. 829, 34 C. 73, 25 C. 425.

31. Orders which cannot be passed under S. 133, Cr. P. C.

1. A general order prohibiting the public to frequent the roads and places of a certain village between certain hours. 13 C. L. R. 231.
2. An order to close a graveyard. 12 C. W. N. 70.
3. An order directing construction of a new drain. 1900 A. W. N. 138.
4. An order regarding the custody of children. 2 Weir 66.
5. An order on a person to lop off branches of a tree of his which overhung a certain house and were thus dangerous in affording facility to thieves. 1883 A. W. N. 222.
6. An order prohibiting persons to drink the water of a certain well. 1893 A. W. N. 145.
7. An order directing a person not to cultivate his land. 1 A. L. J. 615.
8. An order directing filling up pits from which mud for manufacturing bricks has been taken out. 51 A. 489, 22 B. 714
9. An order forbidding the inoculation of children during an outbreak of smallpox by their parents and guardians. 23 I. C. 205=15 Cr. L. J. 253.
10. An order to remove obstruction to a channel not used by the public. 36 A. 209.
11. Person raising his low land and causing overflow of rain water into other lands cannot be proceeded against under S. 133, Cr. P. C. 1933 C. 150=34 Cr. L. J. 679, 36 A. 209.

32. Placing charpoy on the road. S. 283. See—11.**32-A. Poisonous substance—Negligent conduct with regard to— S. 284, I. P. C.**

- A Police Sergeant took over a desk containing poisonous powders and other powders and did not take precautions to guard against misuse of the poison. It was by mistake issued to an Inspector who died. The Sergeant is guilty under S. 284. 16 P. R. 1882 Cr.

33. Procedure. Ss. 133—137 Cr. P. C.

1. A Magistrate cannot make an order under S. 133 absolute without recording evidence and simply on the basis of a local inspection made by him. 49 A. 475, 44 C. 61, 23 C. W. N. 1054=50 I. C. 658, 1922 A. 265.
2. The Magistrate can refer the matter for disposal to another Magistrate except when Jury is demanded. 6 P. 428, 42 C. 158, 17 C. 562, 25 C. 278.
3. If proceedings are instituted against many persons, the order should state clearly, with regard to each person, the specific obstructions made by him which he is required to remove. 1923 L. 187=105 I. C. 220.
4. An order without giving a party sufficient opportunity to adduce his evidence is bad. 1928 C. 96=104 I. C. 635, 1928 C. 879=116 I. C. 38+=33 C. W. N. 201.
5. If a person proceeded against sets up title to the land, the Court cannot pass a summary order but must proceed in accordance with S. 137. 49 A. 453.
6. The enquiry should be like that of a summons case and evidence must be recorded. 1927 S. 26, 24 C. 395, 1924 L. 392, 32 P. R. 1917, 31 A. 453.
7. The order for removal of building cannot be passed on the ground, that the petitioner was convicted under S. 341, Cr. P. C., in respect of the same building. 1924 L. 128=5 L. L. J. 81, 32 P. R. 1917 Ref.
8. A matter under S. 133 cannot be decided by arbitration even though the parties agree to such a course. 22 Cr. L. J. 327, 42 C. 702, 21 C. W. N. 925.
9. The procedure is illegal where the evidence was taken by one Magistrate and final order was passed by another. 47 B. 89.
10. Magistrate can make a notice under S. 133 absolute when the person proceeded against does not appear. 1922 A. 335=76 I. C. 826=25 Cr. L. J. 266.

Public Nuisance—(contd.)

11. A Magistrate is not justified in going behind the order of his predecessor under Ss. 133 and 137 and coming to a decision as to its legality. 1923 C. 589=72 I. C. 77, 25 C. 425, 10 W. R. 27 Cr.
12. It is improper to revive proceedings under S. 133 which has begun four years before and dropped. 1921 B. 29=62 I. C. 877=22 Cr. L. J. 605.
13. Order under S. 133 can be modified. 1925 A. 310=86 I. C. 219.
14. Jurisdiction of Civil Court is barred when the order is conditional but not when it is absolute. 51 A. 1025=1929 A. 833=121 I. C. 560.
15. Where the accused appears in Court, the first duty of the Magistrate is to ask him whether he denied the existence of public right in the path way. If he omits to ask him, the procedure is wrong in law. 57 C. 368.
16. A Magistrate cannot make a conditional order absolute without recording evidence as in summons case. 32 P. R. 1917 Cr., 42 C. 702, 31 A. 453, 1927 A. 825=101 I. C. 897, 49 A. 475, 8 L. L. J. 557=99 I. C. 92.
17. If the Court makes the order final without recording evidence, the whole trial is vitiated. 11 L. 247=1930 L. 662, 49 A. 475, 95 I. C. 944.
18. High Court can confirm or modify the order under S. 137. 1929 A. 220.
19. If the Magistrate is satisfied, that the road is not a public one, he can drop proceedings. 8 C. 883, 1 C. L. R. 486, 15 W. R. 67.
20. An order under S. 147. Cr. P. C. (Easements) cannot be passed in proceedings under S. 133. 15 C. W. N. 667=12 Cr. L. J. 43.
21. A person proceeded against under S. 133 has a right to show cause or apply for jury. He cannot claim both these reliefs. 10 Cr. L. J. 494.
22. A Magistrate who calls upon the person proceeded against to produce his evidence first and considering that evidence, makes the order absolute, acts illegally. He has a right to hear the evidences as in summons case. 31 A. 453, 32 P. R. 1917 Cr., 147 P. L. R. 1901, 24 C. 395, 11 Bom. 375.
23. A Magistrate can refer the complainant to local bodies in case of removal of lime kiln. 1932 A. 159.
24. If the Magistrate omitted to put the question whether the public right was denied and ordered the production of evidence, the order is illegal. 1931 L. 62.
25. If the Magistrate does not take the statement of accused or record evidence as in summons case the procedure is illegal. 132 I. C. 800.
26. The inquiry under S. 139-A is summary and it is not intended that first party should adduce evidence to contradict the case. 58 C. 461.
27. The provisions of Chapter X, Cr. P. C., should be worked so as not to become themselves a nuisance. 17 P. R. 1888 Cr.
28. S. 133 applies to occupations or trades in themselves injurious to health or physical comfort, but not to innocent trades in the course of which a public nuisance is committed. 47 P. R. 1888 Cr.
29. Court is not under obligation to force a particular party into Civil Court. It has inherent powers to stay proceedings. 1935 A. 79=152 I. C. 737=36 Cr. L. J. 144. 1929 A. 20=30 Cr. L. J. 670 Foll.
34. **Prostitute—Removal of—** S. 133, Cr. P. C.
 1. A prostitute who behaves orderly and quietly cannot be removed on the ground of her bad character. 24 W. R. 68.
 2. The mere existence of houses of prostitutes by the roadside, cannot affect the physical comforts of the passers by. 5 C.W. N. 566.
 3. If the prostitutes living near the public road are soliciting passers by, they can be stopped under S. 133. 2 P. R. 1900 Cr.
 4. Soliciting passers by is not a public nuisance within the meaning of S. 259, Penal Code. 22 A. 113.

Public Nuisance—(contd.)

35. **Rash Driving.** See *Rash Driving*.

36. **Rash Navigation.** S. 280, I. P. C.

1. It is the primary duty of steam vessel to keep out of the way of vessels lying at anchor and where a launch runs into a cargo boat at anchor, it is in itself *prima facie* evidence of negligent navigation. 12 I. C. 846=4 Bur. L. J. 140.
2. Contributory negligence can be taken into account, not as a defence, but for the purpose of determining causation and fixing a measure of the liability of the accused. 15 C. W. N. 835=11 I. C. 130.

37. **Repetition of—** S. 143, Cr. P.C.

1. S. 143, Cr. P. C., empowers a Magistrate to prevent the continuing of public nuisance. 19 M. 464.
2. A person will be bound by an order under S. 143 only when order is issued to him personally and not by a proclamation addressed to the public generally. 8 A. 93, 2 W. R. 32.
3. Order under S. 143 cannot be passed against a person who is not party to prior proceedings. 1935 A. 79=152 I. C. 737=36 Cr. L. J. 144, 1928 A. 300=29 Cr. L. J. 445=108 I. C. 565 Rel. on.

38. **Spreading infection or disease** Ss. 269-270, I. P. C.

1. The accused failed to take proper sanitary precautions at his brickfield with the result that cholera broke out. Held, he is not guilty even when he broke the conditions of license. 1923 R. 140=25 Cr. L. J. 586=81 I. C. 74.
2. The accused was residing in a plague-stricken area and was asked not to leave the shed but travelled by train. Held, he is guilty under S. 269. 22 P. R. 1902 Cr., 18 I. C. 269, 7 M. 276.
3. The accused removed a plague-stricken person to a house where several persons were living and one of whom caught the infection. Held, he is guilty. 18 I. C. 269.
4. But if the accused had brought a plague-stricken patient to an unoccupied house or adopted some other means to safeguard the inmates, he would not be guilty under S. 269. 43 M. 344, 24 C. 494.
5. Accused was travelling by train while suffering from cholera. Held, he was guilty and his companion who purchased a ticket for him and accompanied him was guilty of abetment. 7 M. 276.
6. A mother of a child suffering from smallpox refused to part with her child, who had been ordered to be removed to the hospital, she was held not guilty. 24 C. 494, 53 I. C. 689=20 Cr. L. J. 785.
7. A prostitute had connection with the Prosecutor to whom she communicated syphilis. Held, she was not guilty under S. 269 because she could not spread it without the complicity of the Prosecutor, but may be guilty of cheating if there was misrepresentation or of hurt. 11 Bom. 59.

39. **Stay of Proceedings.** S. 139 A., Cr. P. C.

Accused constructed a dam across a public channel and notice was issued. Magistrate found that there was no reliable evidence in support of denial by accused. Held, that refusal to stay proceeding till the decision of Civil Court was rightly ordered. 1934 A. 131=151 I. C. 897.

40. **What is and what is not—** Ss. 268, 290, I. P. C.

1. Skinning a dead animal is not a public nuisance. 25 I. C. 352=15 Cr. L. J. 660.
2. Placing a *charpoy* temporarily on the road is not a public nuisance. 17 I. C. 574.
3. Attracting crowd by exhibiting interesting articles is not public nuisance. 1929 L. 801, 28 I. C. 110, 1928 M. 1235 and 14 M. 364 Dist.
4. Noise by *chawkidar* for keeping the thieves away is not a public nuisance. 1926 O. 414=96 I. C. 876=27 Cr. L. J. 1020.
5. Easing in a public street is public nuisance. 1924 A. 194=25 Cr. L. J. 332.

Public Nuisance—(contd.)

11. A Magistrate is not justified in going behind the order of his predecessor under Ss. 133 and 137 and coming to a decision as to its legality. 1923 C. 589=72 I. C. 77, 25 C. 425, 10 W. R. 27 Cr.
12. It is improper to revive proceedings under S. 133 which has begun four years before and dropped. 1921 B. 29=62 I. C. 877=22 Cr. L. J. 605.
13. Order under S. 133 can be modified. 1925 A. 310=86 I. C. 219.
14. Jurisdiction of Civil Court is barred when the order is conditional but not when it is absolute. 51 A. 1025=1929 A. 833=121 I. C. 560.
15. Where the accused appears in Court, the first duty of the Magistrate is to ask him whether he denied the existence of public right in the path way. If he omits to ask him, the procedure is wrong in law. 57 C. 368.
16. A Magistrate cannot make a conditional order absolute without recording evidence as in summons case. 32 P. R. 1917 Cr., 42 C. 702, 31 A. 453, 1927 A. 825=101 I. C. 897, 49 A. 475, 8 L. L. J. 557=99 I. C. 92.
17. If the Court makes the order final without recording evidence, the whole trial is vitiated. 11 L. 247=1930 L. 662, 49 A. 475, 95 I. C. 944.
18. High Court can confirm or modify the order under S. 137. 1929 A. 220.
19. If the Magistrate is satisfied, that the road is not a public one, he can drop proceedings. 8 C. 883, 1 C. L. R. 486, 15 W. R. 67.
20. An order under S. 147. Cr. P. C. (Easements) cannot be passed in proceedings under S. 133. 15 C. W. N. 667=12 Cr. L. J. 43.
21. A person proceeded against under S. 133 has a right to show cause or apply for jury. He cannot claim both these reliefs. 10 Cr. L. J. 494.
22. A Magistrate who calls upon the person proceeded against to produce his evidence first and considering that evidence, makes the order absolute, acts illegally. He has a right to hear the evidences as in summons case. 31 A. 453, 32 P. R. 1917 Cr., 147 P. L. R. 1901, 24 C. 395, 11 Bom. 375.
23. A Magistrate can refer the complainant to local bodies in case of removal of lime kiln. 1932 A. 159.
24. If the Magistrate omitted to put the question whether the public right was denied and ordered the production of evidence, the order is illegal. 1931 L. 62.
25. If the Magistrate does not take the statement of accused or record evidence as in summons case the procedure is illegal. 132 I. C. 800.
26. The inquiry under S. 139-A is summary and it is not intended that first party should adduce evidence to contradict the case. 58 C. 461.
27. The provisions of Chapter X, Cr. P. C., should be worked so as not to become themselves a nuisance. 17 P. R. 1888 Cr.
28. S. 133 applies to occupations or trades in themselves injurious to health or physical comfort, but not to innocent trades in the course of which a public nuisance is committed. 47 P. R. 1888 Cr.
29. Court is not under obligation to force a particular party into Civil Court. It has inherent powers to stay proceedings. 1935 A. 79=152 I. C. 737=36 Cr. L. J. 144. 1929 A. 20=30 Cr. L. J. 670 Foll.
34. **Prostitute—Removal of—** S. 133, Cr. P. C.
 1. A prostitute who behaves orderly and quietly cannot be removed on the ground of her bad character. 24 W. R. 68.
 2. The mere existence of houses of prostitutes by the roadside, cannot affect the physical comforts of the passers by. 5 C.W. N. 566.
 3. If the prostitutes living near the public road are soliciting passers by, they can be stopped under S. 133. 2 P. R. 1900 Cr.
 4. Soliciting passers by is not a public nuisance within the meaning of S. 268, Penal Code. 22 A. 113.

Public Nuisance—(contd.)**35. Rash Driving.** See **Rash Driving.****36. Rash Navigation.** S. 280, I. P. C.

1. It is the primary duty of steam vessel to keep out of the way of vessels lying at anchor and where a launch runs into a cargo boat at anchor, it is in itself *prima facie* evidence of negligent navigation. 12 I. C. 846=4 Bur. L. J. 140.
2. Contributory negligence can be taken into account, not as a defence, but for the purpose of determining causation and fixing a measure of the liability of the accused. 15 C. W. N. 835=11 I. C. 130.

37. Repetition of— S. 143, Cr. P.C.

1. S. 143, Cr. P. C., empowers a Magistrate to prevent the continuing of public nuisance. 19 M. 464.
2. A person will be bound by an order under S. 143 only when order is issued to him personally and not by a proclamation addressed to the public generally. 8 A. 93, 2 W. R. 32.
3. Order under S. 143 cannot be passed against a person who is not party to prior proceedings. 1935 A. 79=152 I. C. 737=36 Cr. L. J. 144, 1928 A. 300=29 Cr. L. J. 445=108 I. C. 565 Rel. on.

38. Spreading infection or disease Ss. 269-270, I. P. C.

1. The accused failed to take proper sanitary precautions at his brickfield with the result that cholera broke out. Held, he is not guilty even when he broke the conditions of license. 1923 R. 140=25 Cr. L. J. 586=81 I. C. 74.
2. The accused was residing in a plague-stricken area and was asked not to leave the shed but travelled by train. Held, he is guilty under S. 269. 22 P. R. 1902 Cr., 18 I. C. 269, 7 M. 276.
3. The accused removed a plague-stricken person to a house where several persons were living and one of whom caught the infection. Held, he is guilty. 18 I. C. 269.
4. But if the accused had brought a plague-stricken patient to an unoccupied house or adopted some other means to safeguard the inmates, he would not be guilty under S. 269. 43 M. 344, 24 C. 494.
5. Accused was travelling by train while suffering from cholera. Held, he was guilty and his companion who purchased a ticket for him and accompanied him was guilty of abetment. 7 M. 276.
6. A mother of a child suffering from smallpox refused to part with her child, who had been ordered to be removed to the hospital, she was held not guilty. 24 C. 494, 53 I. C. 689=20 Cr. L. J. 785.
7. A prostitute had connection with the Prosecutor to whom she communicated syphilis. Held, she was not guilty under S. 269 because she could not spread it without the complicity of the Prosecutor, but may be guilty of cheating if there was misrepresentation or of hurt. 11 Bom. 59.

39. Stay of Proceedings. S. 139-A., Cr. P. C.

Magistrate and notice was issued. Magistrate support of denial by accused. Held, order of Civil Court was rightly ordered.

1934 A. 131=151 I. C. 897.

40. What is and what is not— Ss. 268, 290, I. P. C.

1. Skinning a dead animal is not a public nuisance. 25 I. C. 352=15 Cr. L. J. 660.
2. Placing a *charpoy* temporarily on the road is not a public nuisance. 17 I. C. 574.
3. Attracting crowd by exhibiting interesting articles is not public nuisance. 1929 L. 801, 28 I. C. 110, 1928 M. 1235 and 14 M. 364 Dist.
4. Noise by *chawkidar* for keeping the thieves away is not a public nuisance. 1926 O. 414=96 I. C. 876=27 Cr. L. J. 1020.
5. Easing in a public street is public nuisance. 1924 A. 194=25 Cr. L. J. 332.

Public Nuisance—(concl'd.)

6. Slaughtering of cattle in a village in a particular area is not necessarily a public nuisance. 1929 L. 252=116 I. C. 705=30 Cr. L. J. 660. See 10 A. 44.
7. Allowing prickly pear to spread on to a road used by the public is a public nuisance. 52 M. 79.
8. Closing channel outlet with the result that villages were inundated and crops were damaged, is a public nuisance. 1927 O. 122=99 I. C. 939.
9. Bare solicitation of chastity even in a public place is not a public nuisance. 22 A. 113.

PUBLIC PLACE. See Gambling Act, S. 13.

PUBLIC PROSECUTOR. See Certificate—5, Duty of Prosecution, Prosecution, withdrawal—2.

1. Appeal against acquittal by—. S. 417, Cr. P. C.

1. Only the Public Prosecutor can file an appeal against acquittal. The Legal Remembrancer is a Public Prosecutor. 23 C. W. N. 96, 46 C. 544.
2. A private prosecutor can neither present an appeal under S. 417, Cr. P. C., nor apply in revision. 14 M. 363, 7 C. 447, 1927 N. 170=102 I. C. 219.

2. Appointment of—. S. 492, Cr. P. C.

1. It is highly objectionable to appoint the Magistrate who in the first instance had tried and convicted the accused, to be Crown Prosecutor to conduct an inquiry subsequently directed in the same case. 8 B. H. C. R. 126.
2. District Magistrate appointed a Sub-Inspector to be Public Prosecutor and directed him to withdraw the case. Held, withdrawal through Sub-Inspector is not a legal one but is for the executive authority to decide. 1930 S. 156=31 Cr. L. J. 684.
3. Omission to appoint Public Prosecutor in a Sessions trial is a curable irregularity. 35 P. R. 1887 Cr.
4. It is the duty of Government to make adequate provisions for conduct of Sessions cases. 16 P. R. 1884 Cr.

3. Certificate of—for prosecuting approver. See Certificate—5.

4. Changing grounds by—. See Duty of prosecution—3, Certificate—5.

5. Conducting examination of accused. See Examination of accused—19.

6. Duty of—. See Duty of prosecution.

1. There should be on the part of Public Prosecutor no eagerness for or grasping at conviction. He is not to aggravate the case against prisoner. He is to do justice between the Crown and the accused. 1924 N. 243=83 I. C. 723=26 Cr. L. J. 163, 8 B. H. C. R. 126 (153), 1923 L. 264.
2. Public Prosecutor is to represent not the Police but the Crown and he should discharge the duty fearlessly and fairly with a full sense of responsibility. 42 C. 422 (428), 8 Pat. 279=1929 P. 275.
3. Prosecution should be conducted fairly and squarely and no ground should be given to the accused for a complaint. 53 C. 706.
4. It is the duty of Public Prosecutor to disclose to the defence any facts which will help accused in his defence. 1933 R. 378.

7. Duty of—to produce whole evidence. See Duty of Prosecution—4, Witness—70.

1. In a capital case, it is the duty of the Crown to place before the Court all material irrespective of the question as to whether they help or go against the accused. 8 P. 279=1929 P. 275=116 I. C. 770.
2. Public Prosecutor must produce all witnesses before Sessions Judge, who were examined by Committing Magistrate. 3 L. 144.
3. Prosecution must produce all witnesses excepting those who are unnecessary or untruthful. 1924 M. 239=75 I. C. 987=25 Cr. L. J. 75

8. Right to conduct Sessions trial by—. S. 270, Cr. P. C.

1. It is highly undesirable that Police Officers should conduct prosecution. 13 W. R. 18.

Public prosecutor—(concl'd.)

2. If the complainant engages a counsel, Public Prosecutor can always avail of his service. 11 B. H. C. R. 102.
3. An Advocate of High Court may conduct prosecution without being authorized by District Magistrate. 23 W. R. 14.
4. Where the counsel engaged by the complainant was desired by Public Prosecutor to address the Court, permission under S. 495 was not necessary. 1930 M. W. N. 769.
5. Omission to appoint Public Prosecutor in a Session trial is an irregularity curable by S. 537, Cr. P. C. 35 P. R. 1887 Cr.
9. **Withdrawal of case by—** See Withdrawal.
10. **Right to appear for defence.**

When the District Magistrate considering that a complaint against a Forest Officer was false, appointed Public Prosecutor to appear for the defence. Held, that appointment was legal, though not desirable, when Court permitted it. 1930 N. 150=122 I. C. 442, 1926 B. 218.

PUBLIC SERVANT.**1. Abetting an offence by—** S. 116, I. P. C.

1. Accused was charged with having abetted an offence of bribery and the person abetted was the Civil Surgeon. Held, that as Civil Surgeon was not a public servant whose duty it is to prevent commission of such offences, the latter part of S. 116, as to the enhanced punishment, did not apply. 21 W. R. 9, 3 P. 647.
2. S. 116 applies to doing or forbearing to do any official act. 51 M. 86.
3. Where a person is accused of abetment of bribing a Head Constable of Police, the second part of S. 116 is not applicable, as the offence under S. 161, I. P. C., is not cognizable by the Police and is not one the commission of which it is the duty of Head Constable to prevent. 1928 L. 840=29 Cr. L. J. 601.
4. When a doctor in charge of a Government hospital has already decided to discharge a patient but that patient is still in hospital, offer of bribe to him is punishable under S. 116, first part 1930 M. 671=31 Cr. L. J. 1088.
5. A Pleader sending a private circular to other Pleaders inviting them to send him cases, offering to share with them fee of the cases is guilty of abetment of an offence under S. 36, Legal Practitioners Act, and is punishable under S. 116, I. P. C. 7 A. 498.

2. Abetting taking bribe by— See Bribe—1.**3. Absconding to avoid service of summons issued by—** S. 172, I. P. C. See Absconding to avoid service of summons.**4. Assault on—** S. 353, I. P. C. See Assault on public servant.**5. Breach of trust by—** See Breach of trust—25.**6. Bribe to—** See Bribe—13.**7. Buying or bidding for property by—** S. 169, I. P. C.

1. Where a Sub-Inspector purchased a pony which had been impounded, he should be convicted under S. 169, I. P. C. and S. 19, Cattle Trespass Act, and not under S. 406, I. P. C. (1871) 16 W. R. 52 Cr.
2. A public servant purchased in auction waste paper, bidding for it under an assumed name. Held, that in the absence of any rule forbidding the employees in the office to bid at such sales, the conviction for cheating was bad. 23 A. W. N. 231.

8. Causing grievous hurt to deter. S. 333, I. P. C.

1. Two village watchmen arrested one F on suspicion that he was in possession of stolen property. He was rescued by his friends, on the way to Police Station. Held, watchmen were not members of the Police force and had no authority to arrest. 14 A. L. J. 789.
2. The deceased assaulted the constable and beat him only after he had fired at one of them and caused him serious injury. The accused wanted to snatch his gun, lest

Public Servant—(contd.)

he should fire again. Held, no offence under S. 333 was made out. 1922 L. 75=71 I. C. 665.

9. Causing hurt to deter. S. 332, I. P. C.

1. Blow with an umbrella to a public servant falls under S. 332. (1875) 24 W. R. 67.
2. Playing cards is not an offence and does not come within S. 34, Police Act. An assault by persons playing cards on a Constable who prohibited them, is not an offence under S. 332 but under S. 323. 1926 L. 250=92 I. C. 889.
3. If the public servant is acting *bona fide*, but not in the legitimate exercise of his public functions, the offender is not liable under S. 332 but under S. 323 or 352 only. 83 I. C. 899=25 Cr. L. J. 195.
4. A Constable was invited to keep peace in a wrestling match organised by Municipal Board. He interfered with the wrestling and thereupon the Police was hustled and their uniforms were torn, an offence under S. 332 was committed. 1926 A. 168=92 I. C. 224.
5. Where there are serious irregularities in connection with a house search and a Constable is assaulted, the accused is guilty under S. 323 and not S. 332. 1930 P. 387=125 I. C. 784=31 Cr. L. J. 937.
6. If the attached property passed into the possession of attaching officer peacefully, it is not permissible to remove the attached property from his custody, although the warrant was illegal. 83 I. C. 899.
7. A collector is not authorized to set fire to reeds standing on the private property in order to facilitate the deposit of soil or silt excavated from the canal bed. Resistance is no offence. 1927 L. 706=105 I. C. 817=9 L. L. J. 424.
8. Separate sentences under Ss. 147—332 are not illegal. 95 I. C. 600, 49 B. 916.
9. Under S. 32, Police Act, a Police Officer shall be deemed to be always on duty in the area to which he is appointed. 18 S. L. R. 221.
10. If the accused did not know that the persons confined were Public Servants, the accused are not guilty. 1924 A. 645=85 I. C. 245.
11. In case of mere scuffle, a fine is quite sufficient. 18 P. R. 1910 Cr.
12. In conducting search, if a Police Officer ignores to bring with him search witnesses under S. 103, Cr. P. C., resistance to search is not illegal. 17 A. L. J. 1047.
13. A Constable carrying out on order, which had ceased to have effect, is not acting in the discharge of his duties. 40 A. 28.
14. An Excise Officer in searching the house of a person on suspicion, brought no search witnesses and directed a constable to scale the outer wall of the house. Accused assaulted and beat them. Held, that he was guilty under S. 323 and not S. 332. 37 A. 353, 8 S. L. R. 1.
15. A warrant of arrest was handed over to a Constable to arrest D. After he left, it was discovered that D. was in another village. The Officer in charge of Thana made a copy from the book of the Thana and endorsed it to some Constables with the direction to arrest D. They were assaulted and beaten. Held, that the accused were guilty under S. 323 and not S. 332. 18 A. 246.
16. If the public servant was acting for his own private work, no offence would be committed. 161 P. L. R. 1911.
17. In the discharge of his duty as such public servant does not cover an act done by him in good faith under colour of his office. 18 A. 246, 28 C. 411, 3 C. W. N. 605, 37 A. 353.
18. When there was possibility of accused having been roughly treated and beaten under order from Public Servant, S. 332 does not apply. 1933 L. 162=34 Cr. L. J. 460.
19. A vaccinator knocked at the door and admission was not refused and he entered the house. Held, that the implied consent to enter the house must be presumed. Person obstructing or assaulting is guilty under S. 332, I. P. C. 1935 A. 160=36 Cr. L. J. 356=153 I. C. 469. 28 A. 481 Dist.

Public Servant—(contd.)

20. A sentence of fine under S. 332 is adequate, if accused acted in sudden anger and were poor. 1934 N. 117 (1)=35 Cr. L. J. 760.

10. Criminal breach of trust by—. *See* Breach of Trust—25—27.

11. Defamation by—. *See* Defamation—44-B.

12. Definition of—. S. 21, I. P. C.

A. The following are public servants :—

1. Convict warder. 83 I. C. 342.
2. A Revenue or Police Patel. 21 B. 517.
3. A Tax collector of Municipality. 1 P. 423.
4. A Patwari. 68 I. C. 157.
5. A Police Officer belonging to Finger Print Bureau and in the pay of Government. 1924 L. 355=69 I. C. 445.
6. Municipal Conservancy Officer of Calcutta Corporation. 1930 C. 665.
7. A P. W. D. Lascar distributing water from a canal to villagers. 48 M. 867.
8. A member of Madras City Police Force. 46 M. 90.
9. A warder of Jail. 119 I. C. 762.
10. A member of Taluk Board. 52 M. 446.
11. A member of Municipal Committee. 122 I. C. 258.
12. A manager of Court of Wards. 21 A. 127 *Contra* 28 C. 344.
13. A Municipal Inspector. 13 M. 131.
14. A Sanitary Inspector. 21 M. 428.
15. A lambardar collecting land revenue. 1935 Pesh. 189.
16. A candidate peon getting no pay or remuneration entrusted with a service of warrant. 1933 P. 187=12 P. 184=34 Cr. L. J. 391. 8 A. 201 Foll.

B. The following are not public servants :—

1. An unpaid apprentice of Government. 15 C. W. N. 319.
2. A village chowkidar. 3 L. 440.
3. A peon of Court of Wards. 7 M. 17.
4. A Municipal water tax collector. 1 A. L. J. 125.
5. A Podder of Bank of Bengal. 4 C. 376.
6. A goods clerk of Railway. 9 P. R. 1898 Cr.
7. A Municipal Committee. 122 I. C. 258.
8. A Municipal Councillor after the Bombay District Municipalities Act, as amended by Act 26 of 1930. 1932 S. 177.
9. The chairman of Co-operative Credit Society. 1935 B. 36=36 Cr. L. J. 532.

C. The requisites of a public servant :—

1. Any person whether receiving pay or not, who chooses to take upon himself duties and responsibilities belonging to the position of public servant and performs those duties and is recognized as such, is a public servant. 8 A. 201.
2. Any person who in fact discharges the duties of the office is a public servant, whatever legal defects there may be in his right to hold the office. (1871) 16 W. R. 27.
3. Whether a Manager in the office of a Municipality is a public servant is a question of fact and cannot be raised for the first time in revision. 51 M. 86.
4. A holder of some position or office however humble, to whom in some degree are delegated certain functions of Government, is a public servant. 18 P. R. 1918 Cr.
5. Any person appointed to some office for the performance of some public duty is a public servant. 28 C. 344.
6. The clause (10) of S. 21 "for any secular common purpose of any village, town or district" governs the whole section. It must be for public purpose that the money was received or expended. 1935 B. 36=36 Cr. L. J. 532=154 I. C. 600.
13. Departure without leave of—when summoned. *See* S. 174, I. P. C.
14. Destroying landmarks fixed by—. S. 434, I. P. C. *See* Mischief—2

Public Servant—(contd.)

15. **Disobedience to order duly promulgated by—** S. 188, I. P. C. See Disobedience to order duly promulgated.
16. **Disobedience to summons issued by—** S. 174, I. P. C. See Disobedience to order on summons.
17. **Disobeying direction of law to cause injury.** S. 166, I. P. C.
 1. A Postal servant should be charged under S. 47, Post Office Act and not under S. 166. 1 Weir 72.
 2. A peon represented the notice as warrant and arrested the person. Held, he was guilty under S. 166. 11 Cr. L. J. 400=6 I. C. 773.
 3. The charge should specify the particular direction of law disobeyed. 34 P. R. 1890.
18. **Disobeying direction of law to save offender—** S. 217, I. P. C.
 1. For offences under Ss. 217-218 it is not necessary that accused should have knowledge that an offence has been actually committed. 1932 C. 850=33 Cr. L. J. 657, 11 C. 619 and 3 C. 412 Rel. on.
 2. Section does not extend to general obligation not to stifle a criminal charge. 1 M. 266.
 3. The criminality consists not in saving a guilty man from punishment but in obstructing the proper course of justice. 3 C. 412.
 4. The intention must be to save from judicial and not departmental punishment. 19 W. R. (Cr.) 40.
 5. Intention may be to save a Public Servant. 19 A. 305 overruling 6 A. 42.
 6. A Police Officer arrested certain persons on suspicion and kept them in the village and did not send them to Police Station. He is not guilty if they escaped. 18 P. R. 1871.
 7. A Police Constable retaining property found in search and failing to report it to his superior is guilty under S. 217. 29 I. C. 85=16 Cr. L. J. 453.
 8. An illiterate Police Patel tore off a Panchnama prepared in respect of a rape on girl. Held, he was not guilty. 15 Bom. L. R. 578.
19. **Escape from custody suffered by—** S. 223, I. P. C. See Escape.
20. **Framing incorrect document by—** S. 167, I. P. C.
 1. Amin, entrusted with the execution of a warrant for the attachment of movable property made a false report with a certificate, falsely stating therein that certain persons forcibly rescued the attached property, while in fact it was released by amicable arrangement is guilty under S. 167. (1892) 1 Weir 74.
 2. Preparing copy of a document is not a document under S. 167. 15 P. R. 1879 Cr.
 3. A *Patwari* making an incorrect copy of an entry in his *Roznamcha* for a plaintiff in a suit is guilty under S. 167. 32 P. R. 1872 Cr.
 4. An official, however humble, who deliberately tampers with official record and issues false copies deserves a deterrent punishment. 1926 P. 719=99 I. C. 63=28 Cr. L. J. 31.
 5. Offence under S. 167 is included in the offence under Ss. 467—471 and therefore conviction under both these sections is illegal. 99 I. C. 1-2.
 6. Certain cartmen reported a dacoity to Station House Officer, who falsely recorded their statement that there had been no dacoity "as they had previously stated to the Inspector." It was intended to shield the Inspector. Held, he was guilty under Ss. 218—167, I. P. C. 12 I. C. 222=2 M. W. N. 64.
21. **Framing incorrect record by—** S. 218, I. P. C.
 1. A Sub-Inspector framing first information report and diary incorrectly to save two persons from punishment is guilty under S. 218. 27 C. 144, 20 A. 307, 1930 L. 159=123 I. C. 841=31 Cr. L. J. 584.
 2. Where a public servant was required to produce certain documents and being unable to produce them, he fabricated and produced similar documents, he was held not guilty under S. 218. 5 A. 372, 5 A. 553, 118 I. C. 232

Public Servant—(contd.)

3. Where the intention of the accused was to stave off the discovery of the previous fraud and save himself or the actual perpetrator of that fraud from legal punishment he was guilty. 8 A. 653. See 42 M. 558 and 83 I. C. 338.
 4. A Police Officer destroyed a report of dacoity and framed a false report of the commission of totally different offence to which he obtained the signature of complainant and which he endeavoured to pass off as original, he was guilty under Ss. 204—218, I. P. C. 20 A. 307.
 5. Where a Police Inspector entered in his diary that certain cartmen told him that "they were not beaten by dacoits" while in fact they told him that "they were beaten by dacoits" is not sufficient to maintain conviction under S. 218. But when he destroyed certain records which falsified it, he was guilty. 2 M. W. N. 44.
 6. A Head Constable searched the house of a suspect in a theft case and found some clothes claimed by the complainant. A search list was prepared but he destroyed it and substituted it for a statement withdrawing complaint. Held, he was guilty. 23 Bom. L. R. 823.
 7. A village Munsif who submitted a false calendar in which he purported to have convicted a certain person of theft was not guilty under S. 218. (1899) 1 Weir 197.
 8. When an accused in an investigation recorded statements which were not made to him or destroyed statements which were actually made to him or made a record of circumstances which did not transpire before him, was not guilty under S. 218. 1928 L. 461=85 I. C. 861=26 Cr. L. J. 837=7 L. L. J. 331.
 9. For the purpose of a charge under S. 218, the actual guilt or otherwise of offender alleged as sought to be screened from punishment is immaterial. 1925 L. 461.
 10. It is sufficient if commission of cognizable offence has been brought to the notice of accused officially. 1930 L. 159=31 Cr. L. J. 584=123 I. C. 841, 86 I. C. 861.
 11. It is not necessary to prove the intention to screen any particular person. It is sufficient if he knows it to be likely that justice will not be extended and that some one will escape punishment. 63 I. C. 145=22 Cr. L. J. 609=1921 Bom. 115, 3 C. 412.
 12. Where a Patwari, in order to save the trouble of taking down the evidence, was directed by a Revenue Court to prepare a written statement according to his papers and file it and where he made such a statement on oath, he was held not guilty under S. 218 but under S. 193. 1929 A. 374=30 Cr. L. J. 874.
 13. It is not necessary that incorrect document should be submitted to another person, or be used by the writer. Mere preparation of incorrect document with the knowledge that it is likely to cause loss to the public is an offence. 13 P. R. 1881 Cr.
 14. A Police Officer suppressed a document which was entrusted to him to forward it to superior officer and made a false entry in the diary that it was so forwarded. Held, he was guilty under S. 218. 19 A. 305 Overruling. 6 A. 42.
 15. It is not necessary that person intended to be saved should be in fact guilty. 3 C. 412.
 16. S used to make record, when abstract was made or read to him by D. D made and read false abstract. Held, that D was guilty of abetment of an offence under S. 218, although S had no guilty knowledge. 7 N. W. P. H. C. R. 134.
 17. Where a Patwari knows that a particular person is in possession and makes a false entry in the Khasra he is guilty under S. 218. 1935 A. 938.
- 22. Forging a certificate given by—** S. 466, I. P. C.
- Alteration in certificate of names and age is an offence of record. 2 L. B. R. 316.
- 23. Forgery of Register of birth, marriage or others kept by—** S. 466, I. P. C.
1. If a Judge fabricates any record in a pending case he is guilty under S. 466. 52 M. 347.
 2. Intent to defraud is essential under S. 466. 8 P. L. R. 1903, 13 P. R. 1895.
 3. S. 466 applies to forging of a Register of marriage, although the Register is a private one, viz., kept by a *Kazi*. (1891) 1 Weir 541.

Public Servant—(contd.)

4. Document purporting to have been made by a public servant notwithstanding the illegality of the seal and signature, is a document under S. 466. (1866) 3 W. (Cr.) 95.
 5. If a man signs his name to a document, makes himself thereby responsible for it, as he was the original drafter of it. 48 A. 542.
 6. Alteration of the time of unloading of goods by a Station Master is no offence. Cr. L. J. 1233.
 7. Fabricating a document purporting to be a notice under the seal and signature of Deputy Collector falls under S. 466. 14 C. 513.
 8. Alteration of Government correspondence is an offence under S. 466, 27 B. L. R. 1391.
 9. A person charged under S. 465 cannot be convicted under S. 466. 18 I. C. 81.
 10. Unless the addition or alteration is made fraudulently or dishonestly there is no forgery. 5 C. W. N. 609.
- 24. Furnishing false information to.— S. 177, I. P. C.**
1. S. 177 does not apply to any falsehood told to a public servant, but to such statements only as he is legally bound to make. 14 M. 484.
 2. "For the purpose of preventing the commission of offence" relates not to commission of offences generally, but to the commission of some particular offence. 15 C. 386.
 3. When there is no legal obligation to give information, no offence is committed. 14 M. 484, 1936 A. 788, 25 P. R. 1894, 4 M. 144 Dist.
 4. Attempting to obtain recruitment in Police by giving false information is not guilty under S. 177. 6 A. 97 *Contra* 7 A. W. N. 268.
 5. Making false representation in a memorandum of appeal is no offence, as it is not required by law to be verified. 17 P. R. 1879 Cr., 41 P. R. 1881 Cr.
 6. A charge under S. 177 within the meaning of S. 40, Income-Tax Act, can be legally tried only at the place where verification is made. 45 M. 839.
 7. The essence of offence under S. 52, Income-Tax Act, and S. 177, I. P. C., lies in the verification of an untrue statement. 120 I. C. 435.
 8. The intelligence must be true or believed to be true. 13 C. W. N. 191.
 9. A Police Constable employed on round duties falsely informed his officers that certain notorious bad characters were in the house. Held, he was guilty under S. 177. 15 C. 386.
 10. If a person who is not legally bound to furnish information, furnishes false information, he is not guilty. 1934 L. 626.
 11. Where no notice is given under S. 22 (2), Income-Tax Act, the assessee is not bound to make a return. No offence is committed if false return of income-tax is given. 1934 L. 626.
 12. If the assessable income is deliberately kept out of return by lawyer and persists in maintaining false defence, he should be given deterrent punishment. 1933 R. 292.
- 25. Giving false information to.— See False information.**
- 26. Illegal act of.— See Right of private defence, S. 99.**
- 27. Illegal purchase or bid for property sold by.— S. 185, I. P. C.**
1. A person who bids for the lease of a ferry sold at a public auction and fails to complete the sale is guilty under S. 185. (1865) 3 W. R. 33 (Cr.)
 2. A person who bids at the auction of the right to sell drugs within a certain area under a false name and when the sale was confirmed in his favour denied that he had made any bid, was guilty under S. 185. 37 A. 128.
 3. A person bidding on behalf of Sub-Inspector, Police, for a pony for which he could not bid under S. 169, I. P. C., is guilty under S. 185. 16 W. R. 52.
 4. If the *bona fide* bidder is unable to deposit earnest money, he cannot be prosecuted under S. 185. 1934 O. 186.

Public Servant—(contd.)

28. **Insulting or interrupting—during Judicial proceedings.** See Contempt of Court.
29. **Keeping persons in wrongful confinement by—** S. 220, I. P. C.
1. Knowledge that a commitment is contrary to law is a question of fact and not of law and must be proved to justify conviction. 9 B. H. C. 346 (1872).
 2. It is only when there has been excess of legal powers of arrest that it becomes necessary to consider whether public servant has acted corruptly or maliciously. 10 B. 506.
 3. Proof of unlawful commitment to confinement will not of itself warrant the legal inference of malice. (1872) 9 B. H. C. 346.
30. **Making an illegal order maliciously by—** S. 219, I. P. C.
1. Maliciously means and implies an intention to do an act which is wrongful to the detriment of another. 15 A. L. J. 106=39 I. C. 495
 2. Where a village Munsif passed a decree which was contrary to law, he was guilty of maliciously pronouncing a decision. 15 A. L. J. 106.
 3. Malice must be proved and not presumed. 9 B. H. C. (Cr. C.) 346.
31. **Negligently suffering escape of prisoner from custody.** S. 223, I. P. C. See Escape.
32. **Non-attendance in obedience to order of—** S. 174, I. P. C. See Disobedience to order or summons.
33. **Obstructing—in the discharge of his duties.** S. 186, I. P. C.
1. For obstruction there should be some overt act. Mere passive conduct is not penal. 15 M. 221.
 2. Mere threat or threatening language is not obstruction. 6 Bom. L. R. 254, (1894) 1 Weir 621.
 3. A District Judge ordered a house to be searched. The defendant shut the door and would not admit the Commissioner. A crowd collected and the Commissioner thinking it unsafe to carry out the order by force, left the place. Held, that no offence was committed. 15 M. 221.
 4. Rescuing a person from the custody of peons of Court is an offence under S. 186. 22 C. 596, 22 C. 759.
 5. There is no right of private defence against an illegal attachment by a public servant acting in the good faith under the colour of his office. 21 M. 296, 21 M. 78, 13 M. 148, 19 M. 349.
 6. A person escaping from the custody of a process-server and shutting himself in a room is not guilty. 9 L. 214.
 7. A cart owner refusing to give his cart on hire to a Government Officer is not guilty. (1872) 9 B. H. C. 165.
 8. A person objecting to the search of house without using force is not guilty. 2 Bom. L. R. 541.
 9. Where a Patwari refused to allow a Qanungo to go through his books and to check them it was held that it was an act of insubordination only and not a criminal act. 26 Cr. L. J. 597.
 10. A person objecting to the search of his house by the Police without using force or threatening language or other overt act of obstruction is not guilty under S. 186. 1932 R. 21=9 R. 601.
 11. Obstruction to Sanitary Inspector examining food believed to be adulterated is an offence under S. 186, I. P. C., though not an offence under Ss. 21—12 (2) of Bengal Food Adulteration Act. 59 C. 234.
 12. A judgment-debtor anticipating an order of attachment removed his goods to another's premises. The executing officer tried to seal up those premises and was obstructed. Held, that the owner of premises in obstructing him was not guilty. 1932 P. 279=11 P. 493.

Public Servant—(contd.)

13. If the public officer is only carrying out official instructions, which are not patently illegal, any resistance to him amounts to an offence under S. 185, I. P. C. 1932 P. 276.
14. Actual obstruction to the public servant is not necessary. A mere threat which causes a public servant to abstain from duty is sufficient. 1932 C. 871.
15. Endorsement made by Tahsildar on the report of process-server amounts to complaint. 1933 O. 281=34 Cr. L. J. 614.
16. Resistance to illegal warrant is no offence. 1933 A. 759, 1932 A. 692, 49 P. R. 1905 Foll.
17. Mere threat will not amount to obstruction unless accompanied by overt act or show of physical force. 1933 A. 759.
18. Mere threat must be of such a nature as to affect public servant to cause him to abstain from proceeding with execution of his duties. 1933 A. 759. 1932 C. 871 Foll. 38 A. 506 and 11 Cr. L. J. 721 Expl. 1928 L. 827 and 1924 L. 238=24 Cr. L. J. 59† Dist.
19. If notice to furnish security and the order of attachment are not consolidated, the warrant under O. 38 R. 5, Cr. P. C., is illegal. 1933 A. 759.
20. Protest unless strongly worded and verging on threat with likelihood of its being carried out immediately is not obstruction. 1932 R. 21, 38 A. 506, 8 I. C. 823, 37 I. C. 46, 2 Bom. L. R. 541, 15 M. 221 Ref. 1 Bur. L. T. 23 Diss.
21. According to S. 114, Evidence Act, when attachment is proved, the presumption is that all necessary formalities were complied with, unless contrary is proved. 1935 A. 436=1935 A. L. J. 390, 1934 P. C. 217=15 L. 836=151 I. C. 221.
22. Refusal to show goods to octroi officer acting within authority amounts to obstruction, punishable under S. 186 and assault on him under S. 332, I. P. C. 1935 S. 245.
- 34. Obtaining valuable thing without consideration by—.** S. 165, I. P. C. See Bribe.
- 35. Omission to assist a public servant.** S. 187, I. P. C.
 1. If a person is required to attend at a search and fails to do so without a reasonable cause, he is guilty. 38 M. L. J. 27, (1898) P. J. L. B. 406.
 2. A Police Officer called upon accused to help in arresting persons who were supposed to be dacoits and hiding in a forest. His omission to help is not punishable. 42 A. 31+.
 3. A person refusing to attend and act as a Punch with reference to a certain wood illegally cut in a reserved forest is not guilty. 22 B. 769.
 4. A Magistrate directed a land-holder to find a clue in a case of theft within 15 days and assist the Police. Held, that order was illegal. 3 A. 201.
 5. Accused refused to assist a Police Constable in burying a dead body of a man who died of cholera and who had no relations. Held, they were not guilty. 6 C. P. L. R. 5 (Cr.).
 6. S. 187 punishes a person who is bound by law to render assistance to a public servant and refuses to help. 26 M. 419.
- 36. Omission to apprehend accused by—.** See Omission to apprehend accused.
- 37. Omission to produce document before—.** S. 175, I. P. C.
 1. A person is not legally bound to produce original registered document before a Registrar to compare it with the copy, which he thinks to have been tampered with. If he omits to produce it, he is not guilty under S. 175. 2 C. L. J. 621.
 2. A receiver appointed under Bengal Land Registration Act is not a public servant under S. 175. 29 C. 236.
 3. Where an accused while on his trial for offences under Ss. 471—193, I. P. C., being directed to produce an incriminating document did not produce it and in consequence the prosecution failed. Held, that he was not legally bound to produce it and was not guilty under S. 175. 12 C. W. N. 1016, 8 C. L. J. 320.

Public Servant—(contd.)

4. When it was doubtful which of the two accused had the document, they could not be convicted. The prosecution must prove that accused had the document. 4 P. L. W. 65.
5. A party to a suit, who fails to comply with the order for production or inspection of document cannot be punished under the Penal Code. 15 P. R. 1910 Cr.
6. A person who merely produces a document in obedience to a summons from Court and says that it was given to him by another person and the document was found to be false, he was not guilty under S. 471. 36 M. 392.
8. **Omission to give information to—** S. 176, I. P. C. See Omission to give information to public servant.
9. **Personating a—** S. 170, I. P. C.
 1. For a conviction under S. 170 a fraudulent or dishonest intention is immaterial. 3 L. B. R. 222.
 2. It is necessary that act done or attempted to be done should be such as might legally be done by a public servant personated. 27 A. 294.
 3. Where the accused obtained admission to a Railway platform on a pretence that he was a C. I. D. Officer, without purchasing ticket, he was not guilty under S. 170. 3 P. L. J. 389, 4 P. L. W. 39.
 4. Where a person pretending to be a Police Officer, reprimanded some villagers on account of bad roads and obtained some money, he was guilty. (1865) 2 W. R. (Cr.) 29.
 5. A person personating a Police Officer tried to extort money from a fruit seller, he was guilty. 27 A. 294.
 6. Where a village Revenue Officer in good faith exercised the powers of a village Magistrate in his absence, he was not guilty. (1881) 1 Weir 74.
 7. Where one *Kulkarni* performed certain Ministerial Official duties in connection with a record on behalf of another, held, he was not guilty. 9 Bom. L. R. 222, 705.
 8. A C. I. D. constable pretending to be Police Officer and as such officer demanding production of *Rahdari* papers is guilty under S. 170, I. P. C. 1935 L. 92= 1935 Cr. C. 87.
10. **Prosecution of—**S. 197, Cr. P. C. See Prosecution of Judge and public servants.
11. **Refusing to be sworn by—** S. 178, I. P. C.
 - A witness in a Civil case is entitled to payment of his expenses before he gives evidence. If he is not paid, he is not bound to appear at all in answer to summons, and it is no offence to refuse to give evidence on the ground of insufficient payment of expenses before the Judge has decided that the payment was sufficient. (1907) U. B. R. 9 (P. C.)
12. **Refusing to answer question to—** S. 179, I. P. C. See Ss. 121 to 132, Evidence Act.
 1. Where a witness though persistently asked by Court to give certain information, persisted in giving an indirect answer, he was guilty under S. 179. 1925 A. 239= 84 I. C. 706=22 A. L. J. 1100.
 2. Where a Court asks a witness the name of his grandfather to which the witness replies that he does not remember, it is not refusal to answer under S. 179. 1926 L. 240=92 I. C. 428=27 Cr. L. J. 252.
 3. An accused being charged before a Court said that he would not make a reply and remained silent, he is not guilty of any offence. 47 M. 396.
 4. If a Judge asks question with a view to take criminal proceedings against the witness, the witness is not bound to answer them and is not punishable under S. 179. 10 B. 185.
 5. A person who is examined by a Police Officer under S. 161, Cr. P. C., is not legally bound to speak the truth. 23 M. 544, 27 P. R. 1908 Cr.
 6. It is doubtful whether a person who refused to take oath, can be punished for refusing to answer questions put to him. 7 C. L. J. 63.

Public Servant—(contd.)

7. Where the question for the refusal to answer which the witness was sought to be tried under S. 179 had no bearing on the facts of the case, his prosecution is injudicious. 81 I. C. 951.
 8. A complainant is not a witness punishable for refusing to answer. 13 B. 600 *Contra* 1935 A. 267.
 9. A witness was asked about the result of a case, who replied that he did not know. Held, conviction under S. 179 was not justified. 1934 A. 136=149 I. C. 1061.
 10. Where the Court desires to examine the complainant as a witness and he refuses to give evidence on the pretext of pain in stomach, he is guilty under S. 179. 1935 A. 267=153 I. C. 907, 13 B. 600 *Dist.*
 11. If the Court puts irrelevant questions to complainant under S. 200, like, who wrote the complaint or who gave him legal advice and he refuses to answer, he is not guilty. 13 B. 600.
- 43. Refusing to sign statement before—** S. 180, I. P. C.
1. An accused who refuses to sign his statement made at his trial, when required by Court to do so, commits no offence. 4 B. 15, 3 L. B. R. 199.
 2. But when an accused refuses to sign a statement recorded under S. 364, Cr. P. C., he is guilty. 39 A. 399.
 3. Inquest report is not a statement and refusal to sign it is no offence. 1910 M. W. N. 366.
 4. A witness is not bound to sign his deposition in a civil case. 8 P. R. 1912 *Cr.*
 5. Where a witness is bound to sign his deposition, it is only after the evidence has been read over to him and he has admitted it to be correct and has refused to sign it, that he will be guilty under S. 180. (1881) 1 A. W. N. 403.
 6. Accused refused to answer questions put to him and refused to sign his statement. Held, he was guilty under S. 180. 1935 A. 652=157 I. C. 146.
- 44. Resistance to taking property by—** S. 183, I. P. C.
1. If the public servant attaching the property has not got the warrant with him, the taking of property is unlawful 27 A. 258.
 2. Where a Court peon removed movable property without giving any option to the judgment-debtor to provide safe custody for the property, the subsequent taking back of the property by the judgment is not an offence. 47 C. L. J. 188.
 3. Resistance to attachment under an expired warrant is not illegal. 10 C. 18.
 4. Resistance to attachment under a warrant not signed by the Judge is not illegal. 21 Cr. L. J. 372.
 5. Resistance to attachment under a defective warrant is no offence. 49 P. R. 1905 *Cr.*
 6. Resistance to attachment by a village watchman without the requisite written authority is not illegal. 25 C. 274.
 7. Resistance to attachment of property of third person who is not judgment-debtor is justified. 1932 M. W. N. 247.
 8. In case of resistance to public servant acting *bona fide* in excess of authority, there can be no prosecution under S. 183. 1935 B. 233=37 B. L. R. 362.
 9. Operation of S. 183 cannot be extended to acts not strictly justifiable by law. 1935 B. 233=1935 Cr. C. 658, 21 M. 78 *Diss.*
- 45. Right of private defence against—** See Right of private defence.
- 46. Sanction for prosecution of—** See Prosecution of Judges and public servants.
- 47. Taking gratification to influence—** See Bribe—17.
- 48. Threat of injury to—** S. 189. See Threat of injury to public servant.
- 49. Threat of injury to desist a person from applying to the protection of—** S. 190, I. P. C.
1. A threat for the institution of a civil suit for a mere declaration of right against a person who is objecting to that right is not an injury under S. 190. 92 I. C. 863=1926 A. 277.

Public Servant—(concl'd.)

2. Where a clergyman knowing that a civil suit was pending against a person for the possession of certain church property, excommunicated him for withholding it, it was held that clergyman was guilty under S. 190. 8 M. 140.
50. **Unlawfully engaging in trade by—** S. 168, I. P. C.
 1. Lending money at interest does not amount to "unlawfully engaging in trade." 22 P. R. 1903 Cr.
 2. A Police Officer carrying on a shop contrary to S. 10, Police Act, is guilty under S. 168. 19 Cr. L. J. 152.
 3. A vice-chairman of a Municipal Board gave contract to a man without money and supplied him his private money and after passing his bill realized back his money. Held, he was guilty under S. 168. 7 N. L. R. 53.
 4. Engaging in trade means habitually buying and selling. 43 I. C. 440.
51. **Using criminal force to—** See Assault on public servant.
52. **Wearing garb of—** S. 171, I. P. C.
 1. Where accused was carrying a Police jacket under his arm, with intent that it should be believed that he was a Police Constable, he was not guilty as he was not wearing it. (1904) U. B. R. 3.
 2. Where a person is convicted of wearing garb of a Police Constable and of personating him and orders a person to be kept in custody, only one sentence ought to be passed under S. 71, I. P. C. (1888) B. U. C. 405.

PUBLIC SERVANTS ACT. (38 of 1850).

The Commissioners appointed under the Public Servants Act, 1850, are a Court though they generally tender advice. A complaint by them is necessary under S. 195, Cr. P. C. 12 L. 391.

PUBLIC MEETING. See Unlawful Assembly—15.**PUBLIC STREET—STOPPING USE OF—** See Wrongful restraint.**PUBLIC WAY.** See S. 283, I. P. C. See Public Nuisance—11—29.**PUBLICATION.** See Defamation—35.**PUBLISHER—OF SEDITIOUS MATTER—** See Sedition—16.**PUFFING.** See Cheating—27.**PUNCTURED WOUND.** See Wound—31.**PUNISHMENT.** See Sentence.

There can be no twice punishment for the same offence. 1932 N. 174.

PUPIL. See Teacher.**PUSH—DEATH BY—** See Culpable homicide—21.**PUTREFACTION.****1. Definition of—**

Putrefaction means the destruction of nitrogen-containing substances, brought about by the influence of microbes, with the production of foul-smelling gaseous products. *Taylor's Med. Jur., 1928, Vol. I, P. 243.*

2. Circumstances influencing the progress of—

- A. *Temperature of the air.* (a) The process is found to go on most rapidly in a temperature varying from 70° to 100° F. (b) It will commence, other circumstances concurring, at any temperature above 50° F. but it appears to be wholly arrested at 32° F. (c) The dead body may thus be preserved for a considerable time in snow, ice, or in frozen soil; but if after removal it is exposed to a temperature between 70° and 100° F, the ordinary putrefactive changes are stated to take place with more than their usual rapidity. (d) At a high temperature, again *i.e.*, about 212° F, putrefaction is arrested. (e) The effect of temperature is strikingly seen in the influence of season. A dead body exposed to air during summer when the thermometer is above 60° or 70° F., may show more putrefactive changes in twenty-

Putrefaction—(contd.)

four hours than a similar body exposed for a week or ten days in winter. *Taylor's Med. Jur.* 1928, Vol. I, P. 252. (f) Putrefaction in open air is generally accomplished in a month. *Ryan's Med. Jur.* 1836, P. 500.

- B. Influence of moisture.** (a) Unless the animal substance is at least damp, putrefaction cannot take place. (b) The animal solids, however, commonly contain sufficient water for the establishment of the process. In human body weighing 150 lbs. there are about 100 lbs. of water. (c) The soft organs differ much from each other in regard to the quantity of liquid contained in them, and therefore is the degree in which they are prone to putrefaction. Thus the brain and the eye are in this respect contrasted with the teeth, bones, hair, and nails. The fluids of the eye are rapidly decomposed while the teeth and hair may remain for centuries unchanged. (d) If the organic substance is dried, putrefaction is arrested. *Taylor's Med. Jur.*, Vol I, P. 253.
- C. Influence of Access of Air.** (a) Air, apart from its temperature, influences decomposition according to whether it is dry or moist, at rest or in motion. Dry air thus retards decomposition by desiccating the tissues exposed to it, and if the dry air be in motion the effect is still more marked. (b) When bodies are hermetically sealed in lead coffins, such anaerobic microbes either do not gain access to the corpse, or soon cease their action, for such corpses are often found very little decomposed even after long periods. *Taylor's Med. Jur.*, 1928, Vol. I, pp. 254-255.
- D. Influence of light.** As microbes work better in the dark, it is possible that light may have some influence by some of its constituent rays, or rather by some rays associated with ordinary sunlight. *Taylor's Med. Jur.*, 1928, Vol. I, P. 255.
- E. Influence of the state of the body.** (a) Fat and flabby bodies are observed to undergo putrefaction more readily than those which are thin and emaciated, probably because they retain heat better and the tissues are more moist. (b) Those parts which at the time of death are affected by wounds or bruising rapidly pass into a state of putrefaction, due to the more ready entry of organisms into the lacerated part. (c) Children are said to decompose more readily than adults, but the bodies of newly born infants who have not been fed resist putrefaction for long periods. (d) The bodies of chronic alcoholics undoubtedly have a tendency to rapid putrefaction, though alcohol, *in vitro*, has slight antiseptic power. *Taylor's Med. Jur.*, 1928, Vol. I, P. 255; *Ryan's Med. Jur.*, 1836, P. 503.
- F. Influence of the Cause of Death.** (a) The bodies of persons who have died from acute diseases have been observed to putrefy more readily than those of persons who have died from wasting and chronic disease. (b) It has been also remarked that the bodies of plethoric persons who have died suddenly while in good health have undergone rapid decomposition. (c) In persons who have died from asphyxia, as by drowning, suffocation, or strangulations, the bodies are observed to putrefy with great rapidity; and, as a general rule, all those parts of the body which at the time of death are irritated, congested, or inflamed, are rapidly attacked by the putrefactive process. (d) In death from prussic acid, morphine, and other vegetable poisons, putrefaction generally commences early, and progresses with rapidity, while strychnine has been supposed to exercise a retarding power. (e) Some poisons, by chemically combining with animal matter appear to confer on it the power of resisting putrefaction at least to a very great degree. This is now a well-known property of arsenic, and this poison is largely employed as an antiseptic. When a solution of it is injected into the arteries of a dead body, it tends to preserve it for a long time from putrefaction. (f) Chloride of zinc, a powerful irritant poison, is another well-known preservative. It retards putrefaction apparently by combining with the tissues. *Taylor's Med. Jur.*, 1928, Vol. I, pp. 255-256-257.
- G. Influence of chemical substance.** (a) Unslaked lime, if placed on the body and freely slaked, will develop a considerable amount of heat. This heat is insufficient to cause destruction, but on the contrary, it has a tendency to delay putrefaction and to preserve the body. (b) Slaked lime and chlorinated lime have also been used in an attempt to destroy tissues, but they act as antiseptic substances and thus inhibit the growth of micro organisms and delay destruction of the body. *Taylor's Med. Jur.*, 1928, Vol. I, pp. 255-256-257.

Putrefaction—(condt.)

H. *Influence of burial in earth.* (a) Unless the body has been buried in metal, or converted into adipocere, it is not probable that any of the soft parts will be found, in a soil favourable for decomposition, after ten or twelve years. *Taylor's Med. Jur.*, 1928, Vol. I, P. 260. (b) If the ground is elevated or on an acclivity, it will commonly be dry, and decomposition will be retarded, if a body is buried in a low situation, or in a valley, the soil being generally damp, decomposition will be hastened. (c) A dry and absorbent soil retards putrefaction; and thus bodies buried in the sands of Egypt become often perfectly desiccated, and resist the process for a long series of years. (d) In sand, gravel, or chalks putrefaction goes on more slowly than in other soils. (e) In marl or clay, if air has access, the process takes place more quickly. *Ibid*, P. 261. (f) The deeper the grave the longer putrefaction is retarded. *Ibid* P. 262. (g) Bodies buried in shallow graves are subject to the fluctuations of temperature which take place during the day and night, and throughout the seasons of the year; they are therefore most favourably placed for the rapid progress of putrefaction. (h) According to the most accurate observations, the diurnal changes of temperature extend to about two or less feet in depth below the surface, while the seasonal changes are perceptible to the depth of six feet. Bodies buried below this depth putrefy slowly, owing to the uniform and comparatively low temperature which is maintained there. *Ibid* (i) Putrefaction is more rapid in bodies buried naked than in those which have been buried wrapped in clothes. *Ibid*, P. 262. (j) The process is less rapid when the body is interred in close coffin; and when the latter is formed of an imperishable material: such as lead closely sealed, putrefaction is speedily arrested; and the deceased may be recognised after the lapse of many years. *Ibid*, P. 262, *Ryan's Med. Jur.*, 1836, P. 506.

3. In water.

(a) The researches on drowning made by Casper and Kanzler show that, while the lower part of the body may be in a tolerably fresh condition, the face, beard, neck, and upper part of the chest may present a reddish colour passing into patches of a bluish green, first seen on the temples, ears, and naps of the neck, thence spreading to the face and afterwards to the throat and chest. These changes may be observed in summer when a body has remained in water from eight to twelve days, and in winter for a longer period. *Taylor's Med. Jur.*, 1928, Vol. I, P. 254. (b) The head of a drowned person is sometimes much discoloured from putrefaction when the rest of the body is in its ordinary condition. (c) Decomposition undoubtedly takes place more slowly than in the atmosphere, owing to the low temperature and to the fact that the free access of air is cut off. *Ibid*, P. 215. (d) Putrefaction in water is not, in general, completed sooner than six weeks. It is more rapid in running than in stagnant water. *Ryan's Med. Jur.*, 1836, P. 501.

4. In air.—See—(2) (1).

Putrefaction in the open air is generally accomplished in a month. The conversion of the colouration of the skin into green, commences within first four or five days after death; the epiderm is detached in two days afterwards; the green tint now becomes brown. Air which is very dry and hot, desiccates and mummifies the body, whilst warm and humid air very much hastens its decomposition. Young infants resist putrefaction in the open air much longer than adults. *Ryan's Med. Jur.*, 1836, P. 500.

5. Effect of—on marks of wounds.

1. Putrefaction, unless advanced to the last stage, cannot entirely destroy marks of violence when attended by physical injury to parts such as abrasions or lacerations of the skin, laceration or crushing of the muscles with fracture of the trachea or larynx, protrusion of the tongue, accompanied by marks of indentation or laceration by the teeth. *Taylor's Med. Jur.*, 1928, Vol. I, P. 306.
2. In such cases, a safe medical opinion may be formed in spite of the decomposed state of parts, but it is otherwise with superficial marks unattended with mechanical injury. These are precisely the appearances which occasion mistakes, as they may be really due to post-mortem changes, and not to violence. It is true that life may be destroyed by a slight degree of mechanical pressure, and the injury thus occasioned may be masked or obliterated by putrefaction. If the body is not decomposed, we may act safely; if decomposition has advanced to a great degree,

Putrefaction—(concl'd.)

whether generally or locally, it would be unsafe to base on opinion or superficial discolorations. *Ibid.*

6. Changes of colour of body.

In about 24 hours, often earlier, a green patch appears on the abdominal wall in the right iliac region and spreads to the whole of abdominal wall and then to the face and considerably later to the limbs. At the same time decomposition of the blood causes staining of the walls of the vessels and show through the skin as dark brown steaks. *Lyon's Med. Jur. 1935, P. 123.*

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QUANTUM OF EVIDENCE. See Evidence—34. Witness—73.

QUASHING PROCEEDINGS. See Revision.

QUEEN'S COINS. See Counterfeiting coins.

QUESTIONS.

1. **Defamatory—by Counsel or Judge.** See Defamation—44.

2. **Incriminating—** See Incriminating question.

3. **Leading—** See Leading questions.

4. **Objections to—** See Objection by Counsel.

5. **Refusal to answer—** See Refusal to answer question, Public Servant—40.

6. **Scandalous—** See Scandalous questions.

7. **To accused.** See Examination of accused—11.

QUESTIONS BY COURT. S. 165, Ev. Act.

1. Judge's power to put questions to a witness is limited under S. 165. 57 M. 635, 1934 M. 199, 10 B. 185, 1927 R. 74, 70 I. C. 278.
2. The section enables the Judge to obtain evidence not in itself receivable, but which is indicative of better. 57 M. 635=1934 M. 199.
3. It is not proper for the Court to examine witnesses unless pleaders on either sides have omitted to put some material questions. 6 C. 279.
4. Power given under this section is to be exercised to clear up obscurities, to fill up lacunæ to supplement deficiencies and generally to elicit truth. 47 C. 1043, 5 L. 476.
5. The Court has no power to order the production of a document which is not relevant and the production of which is not ordered to obtain proof of a relevant fact. 57 M. 635=1934 M. 199.
6. It is not open to a Court to disregard the provisions of S. 162, Cr. P. C., and question a witness regarding statement made to Police, with a view to discredit him. 1932 M. W. N. 625, 58 C. 1009, 1926 C. 147.
7. Judge is precluded from making his ground of decision on evidence which is not relevant. 56 I. C. 807.
8. Court cannot base his judgment on the documents made by Police and signed by witnesses unless duly proved. 1927 L. 79.
9. A Magistrate told a witness "Recollect, or else I will send you into custody." Held, he acted improperly. 8 A. 672.
10. Parties are not, as of right, entitled to cross-examine a witness on the answer made to Court questions. 11 Bom. H. C. 165, 23 C. 387.

QUESTIONS BY JURY OR ASSESSORS. S. 166, Ev. Act. See Questions by Court.**R****RAILWAY ACT (IX OF 1890).**

General See Cheating—5 (by Railway Passenger).

1. The Railway Company has the right to exclude from Railway premises all persons excepting those having business with them. 36 P. R. 1911, 21 B. 525, 26 B. 669, 33 B. 345.

Railway Act (IX of 1890)—(contd.)

2. The offence committed on Railway Station Bhatinda is triable by Ferozepore Courts. 7 P. R. 1915 Cr.
3. Mere travelling in a train without pass or ticket is not an offence under the Railway Act unless there is dishonest intention to defraud the Railway Company. 20 A. 95.
4. A person travelling without ticket commits no "offence." 11 C. W. N. 100.

S. 3.

1. Staff quarters or any residential buildings cannot be deemed to be a part of Railway and the fact that the place happens to be between the two lines makes no difference. 1927 A. 646=103 I. C. 104=28 Cr. L. J. 648.
2. Railway includes all Stations, offices, warehouses, etc., constructed for the purpose of or in connection with a Railway Company. 36 P. R. 1911.
3. Traffic does not include persons going to a Railway Station to see a friend off. 36 P. R. 1911.

S. 42.

The Railway can have reserved accommodation for a particular class, e. g., Europeans and Anglo-Indians. 1923 B. 1, 42 A. 327.

S. 47.

1. The rules contained in time-table part II, order VII although not made under S. 47, are within the power of the Company so long as they are not inconsistent with the Railway Act 11 Cr. L. J. 568.
2. The rule forbidding the hawking and exposure for sale of goods on any station by any person is not *ultra vires*. 1935 S. 91.

S. 101.

1. Breach of rule of the Railway Company without evidence that it endangers the safety of passengers is not sufficient for conviction. 1924 O. 250.
2. If the offence falls under S. 101, Railway Act, and 353, I. P. C., the accused can be punished under one Act only. 38 I. C. 433=18 Cr. L. J. 321.
3. Where a train is stopped outside the distant signal, the omission of the Guard to place detonators to protect the train is a disobedience of rule 9 of the G. I. P. Railway. 21 I. C. 996.
4. If a passenger train is shunted on a Railway line by an erroneous line of a point in a station yard, the safety of the persons in the train or about the yard, is endangered within the meaning of S. 101. 41 I. C. 646=18 Cr. L. J. 822.
5. Omission to set points and lock them properly is an offence under S. 101. 6 L. 324, 1924 A. 438=81 I. C. 705.
6. Failure to whistle at the approach of a small bridge is no offence. 1933 A. 891.
7. A person charged under S. 101, for disobeying Railway rule requiring him to stop engine near signal, cannot be convicted for disobeying rules regarding maintaining vacuum. 1933 S. 225=148 I. C. 66.
8. It is not the duty of driver to stop train merely because wayfarer shout to him. 1933 P. 94.
9. A station master allowed train contrary to rules to run over loop line instead of main line. He acted on signal from pointsman. One of the points was not properly set and collision took place. Held, he was not guilty as he relied upon the signal of pointsman. 1936 A. 745.

S. 102.

The ticket holder is a passenger even before he has actually boarded the train. 26 P. R. 1910 Cr.=200 P. L. R. 1910.

S. 108.

1. S. 108 is intended for the protection of the personal safety of the passengers who are travelling by train. The mere fact that the accused left his coat containing valuables is not a reasonable and sufficient cause within the meaning of S. 108.

Railway Act (IX of 1890)—(contd.)

Accordingly if he pulls the communication card for that purpose, he cannot be convicted. 1926 B. 288=95 I. C. 98.

2. Where a person without sufficient cause pulls the emergency chain, he is liable under S. 108 and not under S. 121. 1930 B. 160, 43 B. 103.
3. Pulling the communication chain to remove the over-crowding is a sufficient cause under S. 108. 1930 B. 160, 1922 P. 8=65 I. C. 321=1 P. 260.
4. A had instituted a civil suit against B and was travelling in the same compartment with his account books. B threw account books through the window when the train was in motion. A pulled the alarm chain and stopped the train. Held, A had sufficient and reasonable cause to stop the train. 8 L. 196.
5. Under S. 108 the risk of danger, of loss and discomfort to the other passengers and secondly where there is necessity or occasion for pulling the card has arisen from the fault of Railway administration and thirdly the importance of the line and train has to be considered. 1927 A. 647=105 I. C. 679.
6. Pulling chain when passenger dropped valuable article is no offence. 1936 P. 499.

S. 109.

"Passenger" in S. 109 includes class of passengers. 51 C. 168, 18 I. C. 788=1924 C. 687.

S. 112.

1. To constitute an offence under S. 112 (b) it is not necessary that the used ticket should be relevant to the journey which the passenger wished to undertake. 1928 S. 191.
2. Accused pleaded guilty to the charge of travelling without ticket but said that he did not purchase ticket because the train was about to start. Held, that the conviction is bad. 57 I. C. 825.
3. Where a passenger is found with a ticket of a previous date he is not guilty under S. 112. 35 I. C. 665.
4. Using a season ticket of another falls under S. 112. 1933 B. 412.

S. 113.

1. Imprisonment in default of payment cannot be inflicted under S. 113 of the Railway Act. Amount can be only recovered by attachment and sale of movable property. 20 M. 385, 18 B. 440, 5 N. L. R. 151 (152), 35 P. W. R. 1910 Cr.
2. To justify arrest without warrant in case of travelling without ticket it must be shown that there was refusal to pay the sum charged and that the name and address of the person was unknown or incorrect. 1929 C. 730=29 Cr. L. J. 366.
3. Before a penalty imposed under S. 113 (1) can be imposed there must be requisition on the passenger under S. 69. No civil suit lies. 50 B. 215.
4. An application under S. 113 (4) is not a prosecution for criminal offence and the Magistrate cannot fine the defaulter or order imprisonment. Magistrate can only direct him to pay a fare and excess charge. 6 R. 619=1929 R. 11, 1930 S. 162.
5. High Court cannot revise an order under S. 113 (4). 1930 S. 162, *Contra* 1933 B. 59.
6. An intention to defraud is not necessary under S. 113. 1933 B. 59.
7. A person travelling in a higher class for want of accommodation in the lower class without the permission of Railway authorities falls under S. 113. 1933 B. 59=34 Cr. L. J. 239.

S. 114.

1. S. 114 applies to purchasers and transferees of tickets and not to transferors alone. 1935 S. 90, 23 S. L. R. 39 overruled.
2. Accused can be let off under S. 562, Cr. P. C. 1935 S. 90.

S. 118.

1. Person intentionally standing on foot-board of a moving train is guilty. 31 P. R. 1905.
2. Person refusing to leave Ice-vendor's compartment is guilty. 1936 A. 439.

S. 120.

1. A passenger can be ejected only under the circumstances specified under S. 120. 44 C. 279.
2. The word "person" in S. 120 of the Act includes Railway officials and Railway guards. 44 I. C. 329, 1934 P. 52 (1)=35 Cr. L. J. 205 (1).
3. S. 120 does not apply to Railway servants as the latter portion refers to removal of offenders. 1929 S. 249=118 I. C. 197.
4. Selling of fish in retail, contrary to the orders of Railway authorities is an offence under S. 120 (b). 48 C. 1042=1921 C. 537=62 I. C. 876.
5. Travelling without ticket is not one of the circumstances mentioned in S. 120 as justifying removal from a Railway, where there is no evidence that the persons were travelling with fraudulent intent. 1923 L. 71=68 I. C. 846.
6. Conviction under S. 120 is legal although complainant does not remember the exact words. 1936 A. 140.

S. 121.

1. Abuse or insult does not necessarily constitute obstruction to Railway servant in the discharge of his duty. 1923 L. 71=68 I. C. 846.
2. It must be proved that obstruction or resistance was offered to the Railway servant in the discharge of his duties as authorized by law. 1925 L. 650=6 L. 467.
3. Pulling the emergent brake is an offence under S. 121 and not under S. 120. 44 C. 279.
4. Refusal to pay excess fare does not amount to obstructing Railway servant in the discharge of his duty. 1933 M. W. N. 874.

S. 122.

1. A person entering the Railway line without the leave of Railway administration is guilty under S. 122. 4 P. R. 1914 Cr.
2. If the entry is lawful, subsequent unlawful act will not make the original entry unlawful. 48 I. C. 896, 103 I. C. 104.
3. If a Station Master leaves the platform gate open and a person who enters may be lawfully ordered to leave the premises but as he has not entered unlawfully, he is not guilty under S. 122. 1925 P. 535
4. A ticket-holder cannot trespass on line. 152 I. C. 615, 34 Cr. L. J. 291.
5. A person entering on platform without ticket or permission is not a trespasser and his entry is not unlawful. 56 A. 254=1933 A. 891.
6. A person entering with permission for committing offence is not guilty under S. 122. 56 A. 254.

S. 125.

The owner of a cattle straying on a Railway line is not guilty under S. 125 for the negligence of his keeper. 34 A. 91.

Ss. 126 to 129.

1. Lying on rails is no offence under S. 126 but under S. 128. Where several persons lay on the rail, the conviction should be under S. 129 (b), Penal Code, for conspiring to commit an offence under S. 128, Railway Act. 1930 M. W. N. 1264.
2. S. 149, I. P. C., is confined to offences under the Penal Code and so a conviction under Ss. 127, 128 of Railway Act with reference to S. 149 is illegal. 52 M. 882.
3. On account of overcrowding in the compartment, the accused pulled the communi-

Railway Act (IX of 1859)—(concl'd.)

tion chord, stopped the train and sat before the engine and delayed the train 80 minutes. Held, he was guilty under S. 128. 130 I. C. 384=1931 O. 85.

S. 130.

1. In view of provisions of S. 29-B, Cr. P.C., only a District Magistrate has jurisdiction to try an offence under S. 130. 1928 L. 909=110 I. C. 589, 1936 S. 185.
2. An offence under S. 130 read with S. 126 (a) is not exclusively triable by a Court of Sessions. 43 B. 888.
3. Throwing stone at Railway train falls under S. 130. 1936 S. 185.

S. 137.

Goods Clerk employed to assist Police is a public servant. 9 P. R. 1898.

RAILWAY PASSENGER—CHEATING BY—. See Cheating—5.**RAILWAY SERVANT.** See Death by negligence—8.

A Railway booking clerk took Rs. 17 instead of 17 pice and retained them. He, after inquiry refunded it to the prosecutor. Held, he was guilty under S. 403, I. P. C. 1 N. W. P. H. C. R. 475.

RAILWAY WORKSHOP. See Factories Act.**RAFFLE.** See Lottery.**RAPE.** S. 376, I. P. C.**1. Abetment of—.**

1. If a husband invites and instigates others to ravish his wife, he is guilty of abetment. 2 St. Tr. 401 (418).
2. Where the act of abetment which might be imputed to alleged abettor prior to his presence at the time of rape by the actual perpetrator of the crime, the case does not fall under S. 114. 1932 L. 483=33 Cr. L. J. 564, 42 C. 422, 27 C. 566 Ref.
3. On a charge of rape, a conviction for abetment of rape is valid, without amendment of the charge. 1935 A. 935, 1925 A. 448 and 1926 A. 227 Dist.

2. Age of accused for—.

1. Under the English law a boy under the age of fourteen years is presumed to be incapable of committing rape. 1 Hab. P. C. 631, 2 Q. B. 600 (1892), but he can be convicted as a principal in the second degree for aiding and abetting. Recorded cases show that boys of fourteen are not always impotent. *Taylor's Med. Jur.*, 1928, P. 102.
2. In India Chevers stated that a boy of thirteen or fourteen years of age was found guilty of rape. A lad of fourteen was convicted of rape on a girl of the same age and in another case a boy only ten years of age. See Chevers "*Med. Jur. for India*" P. 463; *Taylor's Med. Jur.* 1928 P. 102; *Lyon's Med. Jur.* 1935, P. 371.
3. A boy of 10 years of age who has attained sufficient maturity of understanding can be convicted of attempt to commit rape. 1935 R. 393, 42 I. C. 175=18 Cr. L. J. 943 and 37 A. 187 Rel. on. where a boy of 12 years was so convicted.

3. Attempt at—. See Assault on woman, S. 354, I. P. C.

1. Although a boy of 12 is physically incapable of committing rape, he can be guilty of attempt. 42 I. C. 175=18 Cr. L. J. 943, 37 A. 187, 1935 R. 393.
2. A lad of 18 made a naked girl of 5½ years sit on his thighs. There was no bleeding from the private parts, though there was redness at the entrance to the vagina and her hymen was intact. Held, he is guilty of attempt. 1927 L. 222=100 I. C. 116=28 Cr. L. J. 244.
3. Accused put his finger in the private part of the complainant. There was no mark of semen on her *pyjama* nor any marks on the male organ. Held, he is guilty of attempt only. 1923 L. 167=73 I. C. 513=24 Cr. L. J. 625.
4. A lady travelling alone in a train woke up and found the accused sitting on her berth. She tried to reach the communication chord but he caught hold of her and began to unbutton his trousers. After another struggle accused apologised for

Rape—(contd.)

molesting her. Held, he is guilty under S. 354 and not of attempt to commit rape. 1925 R. 247=96 I. C. 260=27 Cr. L. J. 916, 19 Cr. L. J. 155.

5. Accused went to the roof of his neighbour and catching hold of his daughter, undid the string of her *pyjama*. He was seen struggling when her mother came up in answer to her daughter's cries and he ran away. Held, he is guilty under Ss. 376—511. 1927 L. 580=103 I. C. 199=28 Cr. L. J. 663=28 P. L. R. 575.
 6. Accused stripped the girl nearly naked and laid upon her, when her cries attracted people to the spot, he is guilty of attempt. 42 P. W. R. 1910 Cr.
 7. Pulling of a woman by the arm with a request for sexual intercourse is not an offence under Ss. 376—511 but under S. 354. 1 Weir 347.
 8. An indecent assault upon a woman does not amount to an attempt to commit rape, unless the Court be satisfied that the conduct of the accused indicated a determination to gratify his passions at all events and in spite of all resistance. 5 B. 403, 96 I. C. 260, 19 Cr. L. J. 155.
 9. Accused took off the clothes of a woman, whom he threw on the ground and sat down beside her. Held, he is guilty under S. 354. 16 P. W. R. 1912 Cr.
 10. Accused threw the girl down, put sand in her mouth and getting on her chest was going to have intercourse but was prevented from doing so by arrival of other persons. Held, he was guilty of attempt to commit rape. 1933 L. 1002 (1)=147 I. C. 560, 8 I. C. 257.
4. By husband— S. 561, Cr. P. C.

Where the District Magistrate took cognizance of the offence of rape by husband, the fact that the investigation had been conducted by a subordinate Police Officer (not a Police Inspector) the irregularity did not vitiate the proceedings. 1895 A. W. N. 9.

5. Charge.

1. Joinder of charge under S. 376 against one of the accused with charges under Ss. 356—147 against others along with him is a misjoinder which is illegal. 1922 L. 410=77 I. C. 997=25 Cr. L. J. 533.
2. Accused charged under S. 356, I. P. C., can be convicted of rape. 1932 A. 580.

6. Charge for rape after acquittal for abduction.

A person acquitted of abduction should not be charged for rape of the female involved on the ground of public policy. 32 Cr. L. J. 205=1930 R. 360, 5 R. 386.

7. Complaint. To relatives, etc. S. 8, Ev. Act.

1. On a failure of charge of rape, Court cannot start prosecution for adultery without the complaint of the husband. 19 I. C. 716, 13 P. R. 1883 Cr.
2. If the girl did not complain to any one for some time or omitted to disclose it during Police investigation on a report made for another offence, there are sufficient grounds for discrediting her subsequent complaint for rape. 54 P. L. R. 1916=34 I. C. 1004, 17 P. W. R. 1916
3. If an aggrieved person does not make a complaint but only makes a statement, the statement is not relevant under S. 8, as it does not explain or accompany any conduct. Ill. (j) Ill. (k) S. 8, Ev. Act.
4. If a girl on whom rape has been committed goes to her relatives straight after the occurrence and complains on her own initiative, the statement will be complaint under S. 8, but if she only answered questions put to her, her statement will be hearsay. 1920 P. 58=26 Cr. L. J. 1475=89 I. C. 1043.
5. If a girl, immediately after the rape, is seen crying and on being asked by witnesses, says that she has been ravished, the statement is admissible as explaining her act of crying. 1925 N. 74=25 Cr. L. J. 1214=82 I. C. 142. See 1925 P. 58=26 Cr. L. J. 1475.
6. If the statement of the girl is excluded from the case the evidence of witnesses that she had charged the accused with rape is inadmissible under S. 157, Ev. Act. 1926 P. 58.
7. The mere fact that the statement is made in answer to a question is not of itself

Rape—(contd.)

sufficient to make it inadmissible as a complaint. 1921 L. 258=4 L. L. J. 491
See 1926 P. 58=26 Cr. L. J. 1475.

8. Communication of gonorrhoea or syphilis.

1. If one of the parties is suffering from venereal infection and the other is not, the probabilities are very high that disease will be communicated to the other party. This relationship of cause and effect is much easier to establish or refute in the case of gonorrhoea and syphilis than of any other venereal trouble. In such cases examination of the accused affords excellent evidence, either confirmatory of his guilt or strongly suggesting his innocence. The above should not be admitted as furnishing corroborative evidence of rape, except,—(a) when the accused party is labouring under gonorrhoeal discharge, (b) when the date of its appearance in a child is from the third to the eighth day after alleged intercourse, and, (c) when it has been satisfactorily established that the child had not suffered from any such discharge previously to the assault. It may be said, however, that all these conditions may exist, and yet the accused be innocent, for a child may, either through mistake or design, accuse an innocent person. *Taylor's Med. Jur.*, 1923, pp. 122-123. *Lyon's Med. Jur.*, 904, pp. 256-257.
2. Gonorrhoea or syphilis cannot manifest itself immediately after congress, and therefore, if found on the female within twenty-four hours, is a strong proof against her chastity and in favour of the accused. *Ryan's Med. Jur.*, 1836, P. 314.
3. The fact that accused was suffering from gonorrhoea and the other party was not infected with the disease is by no means conclusive of his innocence. 29 Cr. L. J. 12=106 I. C. 348.

9. Consent.

1. In a rape case the question of consent does not arise when the girl is under 10 years of age. 106 I. C. 348=27 Cr. L. J. 12.
2. If the girl was *virgo intacta* up to the date of occurrence it is very strong proof against the committing of rape with consent of the victim. 1925 L. 613=89 I. C. 1056=26 Cr. L. J. 1488.
3. Where the circumstances show that the accused was copulating with a woman of 20 with her consent and when found out in the act, she naturally concocted the story of rape to save her face. Held, that the accused is not guilty. 1927 L. 858=9 L. L. J. 337.
4. Accused was acquitted where he denied intercourse but Court found intercourse with consent. 12 I. C. 848.
5. Evidence of resistance is a good guide to determine consent. 1924 L. 659=75 I. C. 986=25 Cr. L. J. 74.
6. Consent must not be obtained by fraud or fear. 1 W. R. 21.
7. The mere presence of semen on the loin cloth of woman is not sufficient proof that she was a consenting party unless there was spermatozoa in the vagina. 1925 L. 94=6 L. L. J. 474.
8. Grown up girl of 18 submitted herself to be carried away and raped, the presumption is of consent. 1931 L. 401.

9-A. Corroboration of girl's testimony.

1. Only in exceptional cases should uncorroborated testimony of girl be accepted. 1934 C. 7=38 C. W. N. 108.
2. The corroboration should be independent evidence of some witness other than the woman herself. 1934 C. 7=38 C. W. N. 108, 12 Cr. App. Rep. 81, 21 Cr. A. C. 23.

10. Death by —. See Culpable Homicide—22.

1. The introduction of mature male organ into the vagina of an immature female, may produce local injury sufficient to cause death from *haemorrhage, shock, or subsequent inflammation*, such as peritonitis or gangrene by violent laceration of vagina or perineum. *Lyon's Med. Jur.*, 1935, P. 374.
2. Violent sexual intercourse in a young female at or near the age of puberty may

Rape—(contd.)

cause constitutional disturbance leading to fatal haemorrhage into the brain, peritoneal cavity etc. *Lyon's Med. Jur., 1904, P. 250.*

11. Essentials and Evidence.

1. Vulval penetration is sufficient for conviction under S. 376. 1923 L. 36=88 I. C. 705=26 Cr. L. J. 1185.
2. Partial penetration, though not sufficient to cause any rupture or injury to the hymen is sufficient penetration under S. 376. 1927 L. 735=28 Cr. L. J. 241.
3. Where there is no direct evidence nor blood or semen on the body of the prosecutrix and there had been great delay in making first information report and there was enmity between the parties, the accused should be given benefit of doubt. 17 P. W. R. 1916 Cr.=33 I. C. 630=17 Cr. L. J. 150, 1927 L. 836=28 P. L. R. 235.
3. It is hardly possible that any self-respecting woman would come forward in a Court of justice to make a humiliating statement against her honour, unless it was absolutely true. 1923 L. 291=75 I. C. 77=24 Cr. L. J. 877.
5. In a case of rape it is unsafe to convict merely on the accusation of a woman. 67 I. C. 827=23 Cr. L. J. 475, 75 I. C. 986=1924 L. 269, 1927 R. 67.
6. If the girl was not a virgin and no trace of semen is found on her clothes and there is no physical proof of the rape, the evidence is insufficient for conviction. 1923 L. 238=82 I. C. 64=25 Cr. L. J. 1200.
7. The charge of rape was brought against the accused immediately after the occurrence and was supported by medical evidence and the accused was arraigned before a Panchayat there and then shows that rape story is no fiction, though the friends of the girl being ignorant rustics did not look for the blood to preserve it in support of the charge. 1923 L. 332=76 I. C. 1037=25 Cr. L. J. 317.
8. When the victim of rape is an innocent girl of tender age, her evidence is highly valuable, specially when she disclosed it soon after. 1925 N. 74=25 Cr. L. J. 1214.
9. In no cases is it more difficult to arrive at a confident verdict whether evidence is false or true than in rape or indecent assault cases. There is a possibility of unintentional mis-statement produced by hysterical conditions. 45 A. 265=81 I. C. 629=1924 A. 411=25 Cr. L. J. 981.
10. Where semen was found on the *silwar* of a married woman, who passed the night before making the first information report with her husband, the evidence is insufficient for conviction. 1927 L. 867=9 L. L. J. 384.
11. The report of Chemical Examiner regarding the presence of semen on the complainant's clothing is not sufficient. 1930 L. 193=30 P. L. R. 662=11 L. L. J. 391.
12. If the Court is of opinion that the child who is raped cannot give relevant information on account of immaturity of judgment, it should not examine the child at all. 1930 L. 337=31 P. L. R. 612, 38 A. 49 *Contra* 41 C. 406.
13. If the girl did not complain for so investigation, these are sufficient of rape. 54 P. L. R. 1916=34 I.
14. No charge is easier to concoct and more difficult to refute than a charge of rape. 3 M. S. F. 152. See 1926 L. 375=94 I. C. 257=27 Cr. L. J. 593.
15. Some marks of struggle must be looked for in a rape case. 75 I. C. 986, 25 Cr. L. J. 74.
16. The fact that the accused was suffering from gonorrhoea and the other party was not infected with the disease is by no means conclusive of his innocence. 29 Cr. L. J. 12.
17. Where the prosecution evidence is not strong, conviction cannot be based on the complainant's evidence alone. 9 L. L. J. 337, 11 P. W. R. 1922 Cr.
18. Where the woman had intercourse with some persons but showed no signs of force having been used and had reported to several persons. Held, that was not sufficient corroboration. 5 B. L. J. 112.

Rape—(contd.)

19. Where there was the evidence of the woman only and there was no evidence of penetration, the accused was guilty under S. 351, 11 L. L. J. 391.
 20. In rape cases the general immoral character of the woman is relevant evidence. 1926 C. 320 = 27 Cr. L. J. 263.
 21. Volval penetration is sufficient. Rupture of hymen is not necessary. 1934 L. 797.
 22. The girl, her mother and eye-witnesses deposed in favour of prosecution. There was absence of hymen and absence of injuries. Blood stains were found on *dhoti* of accused and cloth of girl. Held, that the conviction was proper. 1935 A. 590 = 157 L. C. 147.
 23. Only in exceptional cases conviction on uncorroborated testimony of the girl should be upheld. 1934 C. 7 = 38 C. W. N. 108.
 24. In a double rape case in broad daylight, the fact that husband of prosecutrix was at a distance of 70 yards when she was crying for help must be brought to the notice of jury. Conviction was upheld under S. 354. 1934 N. 94 = 35 Cr. L. J. 957.
 25. In arriving at a conclusion in charge of rape the following inquiries are necessary :—(a) The time, place, and all circumstances connected with the assault should be noted and carefully considered (b) The age, strength of body, state of health, of mind and the general character of the accused, are to be duly estimated. (c) The education, station in life and previous intimacy of the parties. (d) All marks of violence or disease are to be taken into consideration. (e) The organs of both parties are to be examined and their proportion compared. *Ryon's Med. Jur.*, 1836, P. 322.
12. Examination of the accused
1. The examination of the accused should be made to ascertain :—(1) His age and capacity for committing the offence. (2) Whether his clothes or person exhibit signs of recent sexual intercourse or struggle. (3) Whether he is suffering from venereal disease. . . . Scratches or bruises on his body should be noted with reference to struggle. *Lyon's Med. Jur.*, 1904, pp. 258-259. *Taylor's Med. Jur.*, 1928 P. 113. *Lyon's Med. Jur.*, 1935, P. 381.
 2. In cases of alleged rape and struggle on the part of the victim, small bruises corresponding to finger marks may be found about the arms. *Taylor's Med. Jur.*, 1928, P. 360.
13. False charge of—
1. False charge of rape may be easily set up by girls at the age of puberty. The medical evidence can rarely be more than merely negative; it is practically impossible from it alone to say that there may not have been such a degree of penetration as constitutes rape in law. When a girl over sixteen or a woman is in question juries are very prone to think that "there cannot be smoke without fire." Where the sexual organs were found uninjured and marks of blood on the clothes of the child were on the *outside*, and the whole fibre of the stuff had not been completely penetrated by the liquid, the charge was proved to be false. *Taylor's Med. Jur.*, 1928, P. 130.
 2. In few cases false charges are disproved by medical evidence—in others, medical men may be sometimes the dupes of designing persons. In majority of cases, the falsehood of the charge is proved by inconsistencies in the statement of the prosecutrix herself. Amos remarked, that for one genuine case of rape tried on the circuits in his time, there were on the average twelve pretended cases. *Taylor's Med. Jur.*, 1928, P. 111.
 3. Women intent on revenge or extortion will frequently bring a false charge against a man, producing a well-tutored child as the victim. Another class of false accusation is that brought by the woman who was a consenting party until caught in the act. In such a case no injury will be found unless the woman was virgin. *Lyon's Med. Jur.*, 1935, P. 375.
 4. Modern Magistrates look with great suspicion on all charges of rape, unless made in a day or two after its alleged occurrence. *Ryon's Med. Jur.*, 1836, P. 309. *Taylor's Med. Jur.*, 1928, pp. 128-129.

5. No charge is more easily made than rape, or rebutted with more difficulty. *Ryon's Med. Jur., 1836, P. 509.*
6. Rape is often set up to hide the downfall of a young girl who wishes to avoid her shame, by turning the pity and sympathy of every one towards her; girls often invent attacks by quite unknown persons or, graver still, they bring false accusations against person named. In such cases the real seducer is hardly ever accused of the rape. He is spared and no charge is made until the fact of pregnancy is certain. "*Criminal Investigation*" by *Hans Groe, 1906, P. 18.*

14. First information report

In a rape case the confession of the accused was recorded the day after the occurrence and the Chemical Examiner's report supported the girl's story. Held, that conviction was valid. It is but natural that the girl complained in the first instance only of robbery of jewels. 93 P. L. R. 1910=11 Cr. L. J. 665=8 I. C. 494.

15. Impotency or physical incapacity. See Impotency.

1. A person physically incapable of committing the offence of rape cannot be held guilty of attempt to commit rape. (1896) Unrep. Cr. C. 865.
2. A boy of twelve can be convicted of an attempt to commit rape. 42 I. C. 175.
3. In India the potency of a person charged with rape has to be proved by evidence in each case. (1891) Unrep. Cr. C. 86.

16. Marks of injury. See 12, 17, 18, 19, 20.

Where there are no marks of resistance on aggressor and no marks of injury are found on private part of woman it is not proper to convict on the bare testimony of the woman in the absence of corroboration 1935 L. 8=36 Cr. L. J. 428=153 I. C. 594.

17. Medical evidence of— See hair—3

Medical evidence in cases of rape may be derived from four sources:—(1) Marks of violence about the genitals (2) Marks of violence on the person of the prosecutrix or prisoner. (3) Presence of stains of spermatic fluid, or of blood, on the clothes of the prosecutrix or prisoner. (4) The existence of gonorrhoea or syphilis in one or both. *Taylor's Med. Jur., 1928, P. 111*

18. Medical Examination of woman

1. In a charge of rape the fact that the woman did not offer herself for medical examination cannot weigh against her. 17 N. L. J. 189=1935 N. 69.
2. The examination of a woman, several days after the occurrence is of no value, when she bore several children. 1935 N. 6.

19. On adult woman or girls over sixteen.

1. Girls who have passed the age of sixteen, and adult women, are considered to be capable of offering some resistance to the perpetration of the crime. Therefore in a true charge we should expect to find not only marks of violence about the pudendum, but also injuries of greater or less extent upon the body and limbs. Bruises upon the arms particularly may be considered reasonable evidence of attempts at struggling; impressions of finger nails, too, would be suggestive. Bruises or scratches about the inner side of the thighs and knees may be inflicted during attempts to forcibly abduct the legs. Strong corroborative evidence of a tale of struggle might be obtained from an examination of the accused for similar marks of bruises or scratches about the arms or face, and possibly even about his penis, though this is much less likely. *Taylor's Med. Jur., 1928, pp. 123-124.*
2. If a married woman is rendered powerless by many persons being combined against her, or if she is rendered insensible by intoxicating drinks or narcotic vapours, a rape may be perpetrated, without any injury to the genital organs. A separation of thighs in a married woman will cause a dilation of the parts, as to render it easy for the male organ to penetrate the vagina without any traces of violence. On the other hand vagina may be the seat of violence, and no marks to indicate a struggle or the application of force may be found on the body. *Taylor's Med. Jur., 1928, P. 125.*

Rape—(contd.)

3. The presence of spermatozoa in the vagina is conclusive proof of connection, but not of rape, but their absence is no proof that connection has not taken place, for they may have been removed by washing or discharges. *Taylor's Med. Jur.*, 1928, P. 126.
4. The mere presence of semen on the lion cloth of woman is no sufficient proof that she was consenting party, unless there was spermatozoa in the vagina. 1925 L. 94.
5. In married women, or in those accustomed to sexual intercourse, no inference can be drawn from a dilated state of the vagina. *Taylor's Med. Jur.*, 1928, P. 128.
6. When a girl over sixteen or a woman is in question, Juries are very prone to think that "there cannot be smoke without fire." *Taylor's Med. Jur.*, 1928, P. 130.
7. It has been alleged that it is impossible that a man unaided can commit a rape on an adult female of ordinary strength, in full possession of her senses. *Lyon's Med. Jur.*, 1904 P. 247.
8. In cases of alleged rape and struggle on the part of the victim small bruises corresponding to finger marks may be found about the arms. *Taylor's Med. Jur.*, 1928, P. 360.

20. On children up to 16 years old.

1. If the crime has been completed and there has been any resistance on the part of the child, there must be marks of injury on the sexual organs. Even without reference to manual violence on the part of the assailant, the size of the adult male organ must cause much local injury in the attempt to enter the vagina of a child. If the violation has taken place within two or three days, the appearances presented by the parts may be as follows:—(a) Inflammation with more or less abrasion of the lining-membrane of the vagina, or the entrance. (b) A mucopurulent discharge from the vagina, of a yellowish or greenish-yellow colour, staining or stiffening the linen worn by the girl; the mucus membrane of the urethra possibly shares in the inflammation rendering the discharge of urine painful. (c) In recent cases blood may be oozing from the abraded membrane, or clots of blood may be found deposited in the vulva. (d) The hymen may be entirely destroyed or it may present one or more lacerations. Owing to the inflamed state of parts, the child walks with difficulty and complains of pain in walking. (e) Lastly the vagina may be unnaturally dilated. *Taylor's Med. Jur.*, 1928, P. 114.
2. The absence of marks of violence on the genitals when an early examination has been made, furnishes a strong presumption that rape has been committed on the young person. *Taylor's Med. Jur.*, 1928, P. 119.
3. Hymen is not always present in young children, it may have been congenitally deficient, or, what is more probable, it may have been destroyed by ulceration or suppurative inflammation of the parts. The absence of this membrane, can afford no proof of the perpetration of the crime, unless we find traces of its having been recently torn by violence. *Taylor's Med. Jur.*, 1928, P. 119.
4. Care should be taken that the symptoms of a malignant form of disease (Noma, a form of destructive ulceration), to which female children are sometimes subject, are not mistaken for criminal violence. *Taylor's Med. Jur.*, 1928, P. 120.
5. If one of the parties is suffering from venereal infection, the probabilities are certainly very high that the disease will be communicated to the other party. But this relationship is much easier to establish or refute in the case of syphilis and of gonorrhoea than of other venereal troubles. Violence on the body of a young child is seldom met with, because no resistance is made. Bruises or contusions may however, be occasionally found on the legs. *Taylor's Med. Jur.*, 1928, pp. 122-123.
6. In unmarried women and in children, where there has been much violence, the signs of rape may persist and be apparent for a week or longer. Delay in having the examination of the girl made, unless satisfactorily explained, is always a suspicious circumstance. *Taylor's Med. Jur.*, 1928, P. 123.

21. On prostitutes

1. Law protects prostitutes against involuntary connection just as it protects children and chaste women. When a charge is made by a prostitute it is justly received

Rape—(contd.)

with suspicion. Something more than medical evidence would be required to establish the charge. There may be marks of violence about the pudendum, or on the person, and yet the conduct of woman may have been such as to imply consent on her part. *Taylor's Med. Jur., 1928, P. 110.*

2. "A common whore may be ravished against her will, and it is a felony to do it." *Howell's State Trials, Vol. II, Ryan's Med. Jur., 1836, P. 309.*

22. On woman asleep, drunk or unconscious.

1. If a woman be drunk or asleep from drink or other narcotic, it is possible for sexual intercourse to take place without her consent. If it is alleged that she was rendered unconscious by drink, an inquiry into her character would be necessary to find out why she consented to drink more and more. If no unfair means had been used, there can be little doubt that a constructive consent had been given. *Taylor's Med. Jur., 1928, P. 104, Lyon's Med. Jur., Ed. 1935, P. 373. Ryan's Med. Jur., P. 1836, P. 313.*
2. It is possible for rape to be committed during natural sleep. *Ibid.*
3. A rape is possible in a hypnotic sleep. *Taylor's Med. Jur., 1928, pp. 108-109. Lyon's Med. Jur., 1901, P. 219.*
4. In *R v. Baker* (1872) the prosecutrix alleged that she did not consent to the act and it was done at the time when there was a fit of *hysteria*. The accused was convicted. Cases in which *hysteria* is pleaded should be regarded with great suspicion. *Taylor's Med. Jur., 1928, P. 110.*

23. Presence or Test of Seminal Stains.

1. The following are the characteristics of seminal stains :—(a) Semen stiffens cloth like starch and is of a light greyish yellow colour ; pus and several other discharges stiffen cloth in a somewhat similar manner. (b) The characteristic odour may be given out on moistening the stain, if the cloth is otherwise sufficiently clean. (c) Warmth applied to the stain by holding it near the fire deepens the stain to a yellow fawn colour, other discharges are not so affected. (d) Presence of spermatozoa. This is the only and positive test for semen, but it is essential that one or more should be seen in a complete form, with filament attached. The human spermatozoa have a flattened almost oval head and vary in length from 1/1000 to 1/500 of an inch, the head being about 1/9000 of an inch in diameter. While the discovery of spermatozoa in a stain is a positive evidence of its seminal origin their non-discovery does not enable you to swear that the stain is not semen. When a seminal stain is mixed with much blood or the clothes are very dirty, the detection of semen is especially difficult. *Lyon's Med. Jur., 1904, pp. 104-105.*
2. The detection of dead or motionless spermatozoa in stains may be made at long periods after emission, when the fluid has been allowed to dry. Spermatozoa are not found in the very young, the very old, or in those who are labouring under long standing disease of the testicles. Even in the case of healthy married men, who have had children, spermatozoa are not always found in the Spermatic secretion, on account of exhaustion from frequent intercourse etc. *Taylor's Med. Jur., 1928, pp. 136-137.*
3. The mere fact that slide containing a smear of discharge from the penis of deceased contained spermatozoa and there was whitish discharge from the vagina of the woman are not conclusive proof that two were caught in the very act of coitus. 1933 O. 148=34 Cr. L. 7. 498.

24. Procedure.

1. Separate sentences under Ss. 376 and 366 are not against the provisions of S. 71, I. P. C. 7 L. 484, 29 Cr. L. J. 248.
2. Where the real offence is rape and the abduction is an aggravating circumstance, separate sentences under both the sections should not be given. 1926 L. 114=89 I. C. 912=26 Cr. L. J. 1440.
3. Acquittal under S. 376, I. P. C., is not tantamount to acquittal under Ss. 376—511, I. P. C. 1932 C. 723.
4. Conviction for rape cannot be altered into one under S. 323. 35 Cr. L. J. 519=1934 L. 178.

Rape—(concl'd.)

5. Joint trial of two Police Officers having sexual intercourse with defenceless woman in Police Station one after another is not illegal. 1933 B. 256=57 B. 400, 15 B. 491, 29 B. 449, 1927 M. 177 and 1929 B. 295 Dist. 30 B. 49, 1927 B. 177, 1926 A. 334 and 1929 C. 123 Ref.
6. Case should be tried by a Magistrate with S. 30 Powers 1936 L. 256.

25. Rupture of Hymen.

1. Rupture of hymen is not necessary to sustain charge of rape. 1934 L. 797.
2. Absence of hymen in the girl without any marks of injury is remarkable. It is possible that it may have disappeared through previous co-habitation or monthly course or that the girl may never have had any, although it is very rare. These circumstances are not sufficient to belie eye-witnesses. 1935 A. 590=157 I. C. 147.

26. Sentence.

1. Crimes of violence on women must be put down with a strong hand. 1929 L. 584=116 I. C. 883=30 Cr. L. J. 699=30 P. L. 437, 1934 L. 797.
2. The punishment should be proportionate to the greater or less atrocity of the crime, conduct of the accused and the defenceless and unprotected state of the injured female whether she is a low native or a high European. 1925 N. 74=82 I. C. 142=25 Cr. L. J. 1214, 52 I. C. 423.
3. The fact that complainant committed suicide owing to shame brought on her should not be taken into consideration in passing sentence for it is not a natural or probable consequence of accused's act. 43 I. C. 443=19 Cr. L. J. 155.
4. If the girl raped is unchaste, sentence of seven years is too severe. 1927 L. 772=100 I. C. 123=28 Cr. L. J. 256.
5. On a second or subsequent conviction, the accused may be additionally sentenced to whipping. S. 4 (6) Whipping Act (VI of 1864.)
6. The fact that the family of the injured girl condoned the offence by taking money, should not be taken into consideration in passing sentence. 20 Cr. L. J. 647.
7. Where the accused were armed with deadly weapons and forced the girl at the point of gun to some remote part of a hill. Held, that a sentence of 3 years should be enhanced to 5 years' rigorous imprisonment. 1932 L. 483=33 Cr. L. J. 564=138 I. C. 191.

27. Virginity of girl. See Virginity.**RASH AND NEGLIGENT ACT. Ss. 336, 337, 338, I. P. C.****1. Act endangering personal safety. S. 336, I. P. C.**

1. The manager of a temple who in a festival had a car driven which was out of repair and which endangered the life of those attending procession, was guilty under S. 336. (1890) 1 Weir 337.
2. An engine driver took an engine letting off steam along a public thoroughfare at a time when traffic was very heavy, near the horses and carriages parked there and which endangered the public safety, was held guilty. (1836) 1 Weir 337.

2. Administering drugs—Dhatura. S. 337, I. P. C.

Administering of injurious drug or potion to a person to induce love, in ignorance of its nature and effect and without care and caution, which causes serious illness is an offence under S. 337. 39 C. 855, 17 Bom. L. R. 217, 38 I. C. 1003=19 Bom. L. R. 54.

3. Causing hurt by—. S. 337, I. P. C.

1. The accused's liability is determined by what is the proximate cause. If the proximate cause is the negligence of accused, contributory negligence is no defence. 92 I. C. 433=27 Cr. L. J. 257=1925 S. 233.
2. Accused a native Hakim performed an operation on the outer side of the upper lid of the complainant eye causing permanent injury. The instrument used was a pair of scissors and wound was sutured with an ordinary needle and thread. He neglected to disinfect or sterilize the instrument or to use antiseptics. Accused pleaded

Rash and Negligent Act—(contd.)

consent of the complainant under S. 88. Held, he was guilty under S. 337 if not under S. 338. 39 B. 523.

3. Accused who is arraigned with negligence cannot claim the benefit of an error of judgment when he exercised none. 92 I. C. 433.

4. **Causing grievous hurt by—** S. 338, I. P. C.

Accused firing a gun towards a footpath and hitting a passerby is guilty under S. 338, when his leg had to be amputated. 16 I. C. 511, 7 M. H. C. R. 119.

5. **Contributory negligence.**

1. While contributory negligence would not be a defence entitling the petitioner to an acquittal, it might be a factor for consideration in determining the sentence. 100 I. C. 831=1927 L. 165=28 Cr. L. J. 351.
2. Contributory negligence can be pleaded to rebut the civil liability, though not criminal liability. 6 M. H. C. R. 31 (App.)
3. Accused drove his car without light after dark but kept on shouting to people to make way. Many got out of the way, but one passenger who was deaf and old was run over and killed. Held, that as there was no rash or negligent driving, accused was not guilty. 6 M. H. C. R. 31.
4. A driver ran over a boy who was sleeping on the road, by allowing his cart to proceed unattended on the road. Held, that although the boy may have contributed to his own injury by sleeping on the road but the accused by his negligence caused injury. He was found guilty though a fine of one rupee was imposed. (1884) B. U. C. 198.

6. **Death by—** S. 304-A. See Death by negligence—12-13.

7. **Driving—** See Rash and negligent driving, S. 279, I. P. C.

8. **Excessive sexual intercourse—** See Death by negligence—5.

9. **Firing gun.** Ss. 336—338, I. P. C.

1. In a shooting expedition the gunshot escaped the animal and hit at the leg of a member of the party. Held, that the shot was purely accidental. 1931 L. 54=130 I. C. 654=32 Cr. L. J. 587.
2. During communal riots accused fired two shots at the persons passing near his house but no body was hurt. Held, that accused committed no offence. 47 A. 606=1925 A. 396=87 I. C. 523=26 Cr. L. J. 987.
3. Accused, who owned a paddy field in a jungle, discharged a gun in the direction of a footpath close to his field which wounded the complainant who was then passing along it, in the leg. The leg had to be amputated. The accused knew that the footpath was generally used by the public. Held, he was guilty under S. 333 but the High Court reduced his sentence to a fine of Rs. 55 only 16 I. C. 511. 7 M. H. C. R. 119.

10. **Motor car accidents.** Ss. 336, 337, 338. See S 5, Motor Vehicles Act.

1. A licensed Taxi driver was required to wear spectacles while driving car. He omitted to do so and there was collision. Held, he was not guilty. 42 B. 396.
2. Accused while driving a car at a moderate speed and on the correct side of the road, ran over a boy who came in contact while crossing the road. Held, he was not guilty under S. 338. 115 I. C. 95=30 Cr. L. J. 402.
3. In the case of driving motor car, it should be always kept in a state of complete control sufficient to enable the driver to avoid running into a passenger, who may fail to step off the road, however annoying the dilatoriness of foot passenger may be. 100 I. C. 831, 28 Cr. L. J. 351=1927 L. 165=28 P. L. R. 99.
4. The mere fact that a driver lost his head is not sufficient, unless unforeseen emergency suddenly occurred, which made him lose his mind and rendered him incapable of exercising his faculties. 9 Mys. L. J. 207, 53 C. 333.
5. Contributory negligence is no defence, although it may be taken as mitigating circumstance. 100 I. C. 831=1927 L. 165. See 6 M. H. C. R. 31.

Rash and Negligent Act—(contd.)

6. Where a Motor driver is being prosecuted under S. 338, it cannot be said that his car was used for the commission of an offence within the meaning of S. 516-A. Detention of car pending trial is illegal. 1931 L. 565, 4 P. L. R. 1904.
7. Accused was charged with rash driving. Evidence of other instances of rash driving by accused is inadmissible. 1929 M. W. N. 395.
8. Accused was guilty of rashness and negligence. He was drunk and got into wrong side. He collided with a Tonga and a lady broke her collar bone. Held, a sentence of fine of 100 Rupees was quite sufficient under S. 338. 1933 O. 568=147 I. C. 122.
11. **Plying unsafe vessel.** S. 282, I. P. C.
A person plying unsafe vessel should be convicted under S. 282 and not under S. 336, I. P. C. 1 B. H. C. R. 137.
12. **Shooting expedition.** See—9.
13. **Stone throwing.** S. 336, I. P. C.
 1. Mere pelting of stone on a person's house is no offence, unless it was done so rashly and negligently as to endanger human life or personal safety of others. 4 I. C. 293.
 2. If a person intentionally throws stones at or on a house under such circumstances, that although he does not intend to cause hurt, it in fact causes hurt, he is guilty under S. 336. 36 I. C. 145, (1898) P. J. L. B. 425.
 3. Throwing of bricks into the house of complainant is an act which would endanger personal safety of others and amounts to an offence under S. 336. 1932 A. 322.
 4. A person deliberately throwing brick at a temple in order that Hindus may believe that the bricks came from Mahomedan quarter so that riot may follow, commits no offence. 1928 A. 745=112 I. C. 592=29 Cr. L. J. 1008.
 5. During a communal riot, accused threw brickbats at people passing by the land close to his house and fired two shots, but no body was hurt by the bricks or gunshot. Held, he committed no offence. 47 A. 606=1925 A. 396.
 6. Accused throwing bricks in the house of another are guilty under S. 336. S. 336 applies to illegal acts also. 1932 A. 322, 47 A. 606 and 1928 A. 745 Ref.
 7. Throwing bricks in the house of another amounts to an offence under S. 352. 1932 A. 322 (323).
14. **Unskilful medical treatment**
 1. Performance of an operation on a woman with her consent for cataract according to the recognized methods of Indian surgery, the result of which was that she lost her eye sight, was not an offence under S. 338. 5 A. L. J. 155.
 2. Accused a native Hakim performed an eye operation with ordinary scissors and used needle and thread without sterilizing it. He used no antiseptics and the eye was permanently injured. Held, he was guilty under S. 337 if not under S. 338. 39 B. 523.
 3. Evidence of similar acts of negligence is inadmissible to show that he was negligent in the operation. Monir's Ev. Act, Page 111. (1936).

15. **What is—.** See Death by negligence—12—13.**RASH OR NEGLIGENT DRIVING.** S. 279, I. P. C. See S. 5, Indian Motor Vehicles Act. See Rash Negligent Act—10.1. **Contributory negligence.** See Rash and negligent act—5.

1. Although in Criminal cases, accused cannot rely on the plea of contributory negligence, yet it is necessary for fixing causation and actual measure of accused's liability. 1925 S. 33=92 I. C. 433, 1931 A. 703=133 I. C. 601.
2. Contributory negligence does not entitle a person to an acquittal. It might be a factor for determining the sentence. 1927 L. 165=100 I. C. 831=29 P. L. R. 99=25 Cr. L. J. 351.
3. For English law on the point, see 6 M. H. C. R. App. 31.
2. **Dangerous to public.**
 1. When a person drives in a manner which is dangerous to public, he is guilty. It

Rash or Negligent Driving—(contd.)

does not mean that hurt or injury should in fact have been caused. 6 M. H. Cr. (App.) 31, 19 B. 715, 39 P. W. R. 1910.

2. Circumstances and amount of traffic must be considered to determine whether driving is dangerous. 1926 B. 564 (2)=97 I. C. 973=27 Cr. L. J. 1213.
3. If there is no danger to the public outside the car, who are using the road, no offence under S. 279 is committed, although the driver is guilty under S. 337, I. P. C. 1930 S. 64=119 I. C. 536=30 Cr. L. J. 1077.
4. Accused was driven to her house in carriage about 8 P.M. without lights. The driver was shouting to people to warn them. The carriage knocked down an old deaf man. Held, that there was no rash or negligent act. 6 M. H. C. R. App. 31, (*English Law Discussed*).
5. A person driving car has a right to expect that persons negligently loitering on the road would make way for him. Even when they signal to him to stop, he is not bound to stop. A man is not expected to stand obstinately in the way while the driver is in the process of pulling up. 1934 N. 65=35 Cr. L. J. 696=148 I. C. 541.

3. Death by— See Culpable homicide—23. Death by negligence.

4. Driving on wrong side.

1. The ordinary rule of the road is "keep to the left." It would be a negligent act not to observe the rule where it exists and a person endangering others by his non-observance of this rule is guilty. 61 I. C. 52=23 Bom. L. R. 358.
2. Mere driving on the wrong side itself is not a rash act but where the accused did not blow the horn and accelerated speed before actually clearing tram car and in doing so fractured the head of a boy alighting from the rear of the tram car, he was guilty under S. 304-A., I. P. C. 1928 Bom. 208=111 I. C. 657=29 Cr. L. J. 897.
3. Where the road is 40—50 feet wide enough to give ample room for four cars to pass abreast, even if the accused did go slightly over the middle line, the car coming from the opposite had 20 feet in which to swing to its left, he cannot be assumed to be driving recklessly or negligently 1929 R. 14=115 I. C. 990=30 Cr. L. J. 539.
4. Accused driving at a moderate speed and on the correct side of the road ran over a boy while crossing the road, he is not guilty. 115 I. C. 96=32 C. W. N. 612=30 Cr. L. J. 402.
5. Accused was driving on wrong side of the road at sharp corner entering into a thoroughfare of considerable traffic with the result that he came into collision with a motor bicycle, the side car of which was damaged. Held, he was guilty under S. 279, I. P. C. 1921 S. 97=84 I. C. 253=26 Cr. L. J. 253.
6. Every body including motorists must observe the rule of road 1934 N. 65=35 Cr. L. J. 696.
7. Accused was on the wrong side of the road but he drove slowly and gave signals by putting out his hand, negligence is not proved. He is not guilty. 1934 R. 194, 3 A: 776, 1926 C. 300.

5. Offence under special law—special conviction.

1. The provisions of S. 279 and S. 5, Motor Vehicles Act, are substantially the same. If facts alleged come equally under either definition, accused is not prejudiced whether the conviction is under one or the other. 1925 Bom. 526=90 I. C. 320, 1925 A. 798=88 I. C. 898=23 A. L. J. 790.
2. If accused is acquitted under S. 34, Police Act, it logically means that he is not guilty under S. 279. 1925 A. 798=88 I. C. 1=26 Cr. L. J. 1057.
3. A person cannot be punished both under Special Act and Penal Code. 1923 Bom. 231=25 Cr. L. J. 981=112 I. C. 101.
4. If accused is convicted under Ss 337 and 304, he cannot be separately convicted under S. 279. 1929 M. W. N. 395.

Rash and Negligent Act—(contd.)

6. Where a Motor driver is being prosecuted under S. 338, it cannot be said that his car was used for the commission of an offence within the meaning of S. 516-A. Detention of car pending trial is illegal. 1931 L. 565, 4 P. L. R. 1904.
7. Accused was charged with rash driving. Evidence of other instances of rash driving by accused is inadmissible. 1929 M. W. N. 395.
8. Accused was guilty of rashness and negligence. He was drunk and got into wrong side. He collided with a Tonga and a lady broke her collar bone. Held, a sentence of fine of 100 Rupees was quite sufficient under S. 338. 1933 O. 568=147 I. C. 122.
11. **Plying unsafe vessel.** S. 282, I. P. C.
A person plying unsafe vessel should be convicted under S. 282 and not under S. 336, I. P. C. 1 B. H. C. R. 137.
12. **Shooting expedition.** See—9.
13. **Stone throwing.** S. 336, I. P. C.
 1. Mere pelting of stone on a person's house is no offence, unless it was done so rashly and negligently as to endanger human life or personal safety of others. 4 I. C. 293.
 2. If a person intentionally throws stones at or on a house under such circumstances, that although he does not intend to cause hurt, it in fact causes hurt, he is guilty under S. 336. 36 I. C. 145, (1898) P. J. L. B. 426.
 3. Throwing of bricks into the house of complainant is an act which would endanger personal safety of others and amounts to an offence under S. 336. 1932 A. 322.
 4. A person deliberately throwing brick at a temple in order that Hindus may believe that the bricks came from Mahomedan quarter so that riot may follow, commits no offence. 1928 A. 745=112 I. C. 592=29 Cr. L. J. 1608.
 5. During a communal riot, accused threw brickbats at people passing by the land close to his house and fired two shots, but no body was hurt by the bricks or gunshot. Held, he committed no offence. 47 A. 606=1925 A. 396.
 6. Accused throwing bricks in the house of another are guilty under S. 336, S. 336 applies to illegal acts also. 1932 A. 322, 47 A. 606 and 1928 A. 745 Ref.
 7. Throwing bricks in the house of another amounts to an offence under S. 352. 1932 A. 322 (323).
14. **Unskilful medical treatment.**
 1. Performance of an operation on a woman with her consent for cataract according to the recognized methods of Indian surgery, the result of which was that she lost her eye sight, was not an offence under S. 338. 5 A. L. J. 155.
 2. Accused a native Hakim performed an eye operation with ordinary scissors and used needle and thread without sterilizing it. He used no antiseptics and the eye was permanently injured. Held, he was guilty under S. 337 if not under S. 338. 39 B. 523.
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Rash or Negligent Driving--(contd.)

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5. Accused was driving on wrong side of the road at sharp corner entering into a "T" junction of a main road with the result that he came into collision with a car which was damaged. Held, he was guilty under I. C. 253=26 Cr. L. J. 253.
6. Every body including motorists must observe the rule of road. 1934 N. 65=35 Cr. L. J. 696.
7. Accused was on the wrong side of the road but he drove slowly and gave signals by putting out his hand, negligence is not proved. He is not guilty. 1934 R. 194, 3 A. 776. 1926 C. 300.

5. Offence under special law—special conviction.

1. The provisions of S. 279 and S. 5, Motor Vehicles Act, are substantially the same. If facts alleged come equally under either 'definition, accused is not prejudiced whether the conviction is under one or the other. 1925 Bom. 526=90 I. C. 320, 1925 A. 798=88 I. C. 898=23 A. L. J. 790.
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3. A person cannot be punished both under Special Act and Penal Code. 1928 Bom. 231=23 Cr. L. J. 981=112 I. C. 101.
4. If accused is convicted under Ss. 337 and 304, he cannot be separately convicted under S. 279. 1929 M. W. N. 395.

Rash or Negligent Driving—(concl'd.)**6. Owner's liability for acts of servants—**

1. If the servant does anything outside the scope of his employment, the master is not criminally responsible. 34 A. 146.
2. If the directions of the master, procured the rash and negligent act, he would be guilty as abettor. 6 M. H. C. R (App.) 31, 1 N. W. P. H. C. R. 310.
3. If the owner of car made provisions for illumination, he is not liable if his driver drives it without light. 1 R. 600=1924 R. 63=76 I. C. 564, 36 C. 415 and 45 C. 430 Dist., 27 P. R. 1918 Cr.
4. Where the driver left the car in charge of a cleaner with instructions not to drive it and who drove it against the corporation post and damaged it. Held, that the owner is not liable criminally, as driving the car lay outside the scope of the cleaner's employment. 29 C. W. N. 815.
5. Two persons were convicted, one for offences under Ss. 280 and 304-A, I P. C., and the other of abetment. It was found that former was only a servant acting under the direction of the latter. Held, that servant was not guilty. 12 Cr. L. J. 495.

7. Rash and negligent manner. See Rash and negligent act—10.

1. Criminal rashness is hazarding a dangerous or wanton act with the knowledge that it is so and that it may cause injury without intention to cause it. Criminal negligence is the gross and culpable neglect or failure to exercise that proper care and precaution to guard against injury to the public or individual. 53 C. 333.
2. Accused saw a car coming on its proper side and while he should have drawn in behind the water cart passing in the same direction as the accused, but attempted to force his way and tried to play the old dangerous game of "three abreast" he is guilty. 1925 A. 798=88 I. C. 998.
3. Engaging in conversation whilst driving or driving along a road under repairs is not necessarily rash or negligent act. 53 C. 333.
4. Driving car recklessly until it came so close to pedestrian that it was impossible to save collision amounts to rash and negligent driving. Mere negligence on the part of pedestrian does not excuse negligence on the part of driver. 1935 N. 230. 1933 A. 232=55 A. 263 Dist.
5. Going on wrong side but driving slowly and giving signals is no negligence. 1934 R. 194.
6. Speed of 30 miles in straight and open road is not by itself excessive. 1933 O. 391.
7. Driving on wrong side is not always rash and negligent. 1933 O. 391.

8. Sentence.

Accused injured a poor woman carrying a load of grass by driving his car rashly and negligently and left her lying in the street after the injury. Held, that sentence of Rs. 20 was too inadequate and additional punishment of 3 months' rigorous imprisonment was justified. 28 Cr. L. J. 894=1927 O. 441=104 I. C. 910.

9. Similar acts of—

If the accused is charged with rash driving, prosecution is not entitled to prove that he was rash generally or in relation to another occurrence. Evidence of previous occurrence is not admissible. 1929 M. W. N. 395.

RASH NAVIGATION. S. 280, I. P. C. See Public Nuisance—36.**RAZOR. See Grievous hurt by dangerous weapon—8.****READING OVER STATEMENTS S. 360, Cr. P. C.****1. Applicability of S. 360 to proceedings.**

1. S. 360, Cr. P. C., applies to proceedings under Chapter XII, Cr. P. C. 52 C. 437, 28 C. W. N. 968, 3 P. L. T. 291. *Contra* 1925 C. 1040=86 I. C. 979.
2. S. 360 applies to proceedings under S. 117, Cr. P. C., for furnishing security for good behaviour and the non-compliance vitiates the trial. 52 C. 632.
3. S. 360, Cr. P. C., should be applied to the examination of a complainant under S. 200, Cr. P. C. 1926 N. 141=89 I. C. 713=26 Cr. L. J. 1401.

Reading over Statements—(contd.)

4. S. 360 applies to proceedings before Commissioners under the Defence of India Act, 1928 L. 125=107 I. C. 100=23 Cr. L. J. 212.
 5. S. 360 applies to the evidence of witnesses and not to the examination of accused, 12 W. R. 44.
 6. When a case is tried summarily, it is not necessary that the evidence of witnesses should be read over to them. 23 Cr. L. J. 120.
 7. S. 360 applies to evidence recorded under S. 356 or 357, Cr. P. C., but not to evidence recorded under S. 355. 19 Cr. L. J. 169.
 8. S. 360 applies to proceedings under S. 145, Cr. P. C., in so far that the statements be read over to witnesses though may not be in the presence of the parties who are not accused. 52 C. 721.
 9. Omission to read over evidence does not vitiate order under S. 145, Cr. P. C. 1924 P. 786=76 I. C. 25=25 Cr. L. J. 89, 65 I. C. 557=1922 P. 371.
2. By witness himself.
1. Although the deposition is not read over to him, but the witness reads it himself still the deposition is legal evidence. 5 P. 63=1926 P. 232=3 I. C. 884=27 Cr. L. J. 484, 46 C. 895. But See 52 C. 431.
 2. It is not sufficient compliance with S. 360 (1) to hand over deposition to a witness to read it and such deposition is not admissible against him on a charge of perjury. 42 C. 240, 35 C. 955, 1925 P. 723=86 I. C. 991, 1925 C. 1120.
 3. Reading over of the evidence by the witness himself cannot convey to accused, what has been recorded. Evidence not duly recorded as required by S. 360, cannot be used as the foundation of a conviction. 52 C. 431=1925 C. 782.
3. Correcting deposition at the time of—.
1. An honest witness who wishes to alter or correct a statement he has once made, should be allowed to do so, and should not be deterred from doing so by the fear of a criminal charge. 10 C. 937, 18 Cr. L. J. 480.
 2. A witness should be given every opportunity of correcting and explaining any contradictions which his statement may contain. Rattan Lal 54.
 3. There is no provision of law which requires that a witness should be given opportunity to explain discrepancies in his evidence. But it is open to him to do so at the time when the deposition is read out to him. 1929 C. 390=31 Cr. L. J. 373.
 4. If the Court instead of allowing correction to be made, proceeds to make a memorandum according to Sub-Section (2), it must be appended to the deposition. 13 W. R. 17.
 5. A deposition must be read as a whole and a witness must be given opportunity of correcting any answer given by him. 19 Bom. L. R. 61, 29 Bom. L. R. 813.
 6. Where a witness is cautioned by Judge and then admits that his earlier portion of his statement was false, he should not be prosecuted for perjury. 25 O. C. 139, 1 L. C. 322.
4. Effects of failure.
1. Non-compliance with the provisions of S. 360 only amounts to an irregularity and is cured by S. 537, Cr. P. C. 1927 A. 755=102 I. C. 782, 100 I. C. 227=1927 P. C. 44, 1927 A. 764=102 I. C. 210, 1921 R. 53=94 I. C. 717=27 Cr. L. J. 669. *Contra* 1921 C. 182=76 I. C. 961, 28 C. W. N. 119.
 2. A non-compliance with the provisions of S. 360 which has not resulted in any failure of justice does not vitiate trial. 1927 C. 375=103 I. C. 799=28 Cr. L. J. 751, 4 P. 483, 1927 A. 757=102 I. C. 772, 1927 P. C. 44, 3 R. 612.
 3. When a deposition is not read over to witness in accordance with the requirements of law, it cannot be used against him on a charge of perjury. 1928 L. 125=107 I. C. 100=29 P. L. R. 14=29 Cr. L. J. 212, 12 P. R. 1917 Cr., 42 C. 240, 6 C. 762, 28 M. 308, 11 C. W. N. 845, 62 I. C. 584=1921 P. 149, 42 M. 561. *Contra* 12 Bur. L. T. 167, 8 M. L. T. 117, 21 M. L. J. 411, 85 I. C. 33.
 4. If a deposition is not read over to a witness, it cannot be used against him in a trial under S. 211, I. P. C. 1928 C. 271.

Reading over Statements—(contd.)

5. The statement though not read over, can be used on a subsequent occasion to contradict the witness under S. 145, Evidence Act. 1927 P. 315=107 I. C. 100=6 P. 478.
6. If S. 360 is not complied with, the presumption of accuracy under S. 80, Evidence Act, does not arise and it is for the prosecution to prove that it was accurate. 89 I. C. 449=1921 S. 16=26 Cr. L. J. 1137.
7. It is incumbent on the Judge to read over deposition to each witness, though it may take considerable time. 42 C. 957, 36 C. 925.
8. When the evidence recorded by a Magistrate is not read over to each witness in the presence of accused the commitment is illegal. 52 M. 995.
9. If the statement is not read over to the witness as required by O. 18, r. 5 of C. P. C., secondary evidence is not admissible under S. 91, Evidence Act, and there can be no conviction for perjury. 1 L. 361, 6 C. 762, 12 C. W. N. 845, 42 M. 561 and 28 M. 303 (310) Foll., 23 C. W. N. 661 and 28 P. R. 1918 Cr. Dist., 25 P. R. 1890 Not foll.
10. The question whether a statement was read over is one of fact and cannot be taken in revision for the first time before the High Court. 4 P. 488.

5. Locus Penitentiae.

1. There ought to be *locus penitentiae* for witnesses who have deposed falsely, retracting their false statements. (1864) W. R. 10 Cr. 25 O. C. 129.
2. The question whether a *locus penitentiae* should be allowed to accused while Court did not comply with the provisions of O. 18, r. 5 of C. P. C., could not arise where the accused when tried for perjury adhered to former statement and admitted it to be correctly recorded and that it was true. 28 P. R. 1918 Cr.

6. Object of—

1. The object is to obtain an accurate record from the witness and to give him an opportunity of correcting it. It is not to enable the accused or his advocate to suggest corrections. 5 R. 53=1927 P. C. 44=100 I. C. 227.
2. The intention of S. 360 is to protect the witnesses as also to help the accused. 4 P. 231=86 I. C. 996=1925 P. 378=26 Cr. L. J. 932, 1927 P. 100.

7. Objection to the—

The objection should be taken at once. It cannot be taken for the first time in revision. 1927 P. 100=99 I. C. 109=28 Cr. L. J. 77.

8. Presence of accused.

1. A deposition must be read over in the presence of accused. If it is not so read the conviction is illegal. 2 Weir 435, 51 C. 236, 52 C. 159, 36 C. 955.
2. The deposition of a witness may be read over in the presence of a Pleader of one of several accused. 36 C. 808.
3. Reading over by clerk in the verandah of the Court house in view of the accused is insufficient. 13 Cr. L. J. 569=15 I. C. 985.
4. If the accused is in attendance, the evidence must be read over in his presence. It is only when the accused appears by a Pleader that reading over of the evidence in the presence of Pleader is sufficient. 1925 C. 528=93 I. C. 973=27 Cr. L. J. 509=30 C. W. N. 336, 1928 C. 27=106 I. C. 545.
5. S. 360 does not say that the statement should be read over in the hearing of the accused. 1927 P. 100=99 I. C. 109=28 Cr. L. J. 77.

9. Prosecution for perjury.

1. When a deposition is not read over to a witness in accordance with S. 360, he cannot be prosecuted for perjury. 1928 L. 125=107 I. C. 100=29 P. L. R. 14, 42 M. 561, 42 C. 240, 6 C. 762, 36 C. 955, 28 M. 308.
2. Witness can be prosecuted for perjury if the statement was not read over to him in the presence of accused, when it can be proved that the witness admitted it to be correct when read over to him and by the evidence of the Magistrate who recorded it. 12 Bur. L. T. 167, 34 M. 141, 21 M. L. J. 411=12 Cr. L. J. 44.

Reading over Statements—(concl'd.)

10. Reading over—sentence by sentence.

It is not sufficient compliance to read out each sentence of the statement as it is being recorded. 22 Cr. L. J. 609, 63 I. C. 461, 62 I. C. 584.

11. Recording of R. O. A. C.

1. Recording of the fact of the deposition having been read over is not imperative but desirable. 1925 P. 723=86 I. C. 991=26 Cr. L. J. 927.
2. The provisions of S. 360 do not require that an endorsement or certificate should be given that statement of a witness was read over to him. 1927 P. 100.=59 I. C. 109.
3. When there was no certificate of R. O. A. C. and statement was not read over to the witness, the conviction for perjury was bad in law. 1924 C. 182.
4. The certificate of R. O. A. C. is necessary in a case under S. 107, Cr. P. C. 1925 C. 940=89 I. C. 976=26 Cr. L. J. 1456.

12. Time for—

1. The evidence of each witness, shall be read over to him as it is completed. 22 Cr. L. J. 669.
2. Reading deposition of witnesses after the examination of all is over, is illegal and not only irregular. 49 M. 71.
3. If the deposition is read over at the close of cross-examination, it is sufficient compliance. 19 Cr. L. J. 169=43 I. C. 585.
4. Reading over to a witness his evidence even after some days of his examination-in-chief but immediately after his cross-examination is sufficient compliance with S. 360. 1929 C. 390=122 I. C. 209=31 Cr. L. J. 373, 1929 P. C. 44, 1926 C. 563 Dist.
5. Witnesses were examined one after another until midday adjournment, when their depositions were read over to them during the interval and the evidence of remaining witnesses were read over after the close of the day. Held, that the trial is vitiated. 53 C. 129, 1926 C. 157.
6. When the statement was read over by Clerk of Court in the absence of the trying Judge and Vakil, a conviction for perjury was set aside. 28 M. 308. *Contra* 34 M. 111.

13. Translation of evidence—

1. Where the accused does not understand either the language of the Court or of the witness, there is no provision for the deposition of a witness being interpreted to accused after it has been read over and interpreted to the witness. 1927 P. C. 44=5 R. 53=100 I. C. 227.
2. S. 360 does not require that the deposition recorded in English should be translated into Vernacular to a witness, who has deposed in Vernacular, after having first been read over to him in English. 1928 C. 27=106 I. C. 545=29 Cr. L. J. 49.

14. When Magistrate taking other evidence.

1. Where, while evidence of one witness is being read over to him, the evidence of another witness is taken in the Court, the procedure is illegal and retrial should be ordered. 52 C. 499, 1926 C. 423=87 I. C. 840=26 Cr. L. J. 1018.
2. Where the deposition of a witness was being read over, the Committing Magistrate was examining another witness. Held, that the commitment should be quashed. 1925 C. 933=88 I. C. 1043=26 Cr. L. J. 1257.
3. Deposition of a witness in criminal proceedings is nonetheless admissible because another witness was being examined. 21 M. L. J. 411=12 Cr. L. J. 44.

REALIZATION OF FINE. S 386, Cr. P. C. *See* Fine—12.

RECEIPT.

1. Forged—using as genuine. *See* S. 471, I. P. C.
2. Liability of writer of forged—. *See* Forgery—18.
3. Prosecution for unstamped—. *See* Stamp Act, S. 62.

Receiving stolen Property.

RECEIVING STOLEN PROPERTY (S. 411, I. P. C.)

1. Applicability.

1. When receipt or detention of property not necessarily for disposal, is dishonest, S. 411, is the appropriate section. If on the other hand dishonest receipt or detention cannot be proved but for dishonest concealment or disposal S. 414 is more appropriate. 49 B. 878, 31 P. R. 1879 Cr.
2. S. 411 does not apply if the property is *res-nullius*, e.g., bull let loose as a part of religious ceremony. 9 A. 348, 17 C. 852, 18 B. 212.

2. 'Believe' to be stolen.

The word 'believe' in S. 411 is much stronger than 'suspect'. The prosecution must show that circumstances were such that reasonable man must have felt convinced in his mind that the property was stolen. It is not sufficient to say that accused was careless or had reasons to suspect the property to be stolen or that he did not make sufficient inquiries. 1935 O. 327=154 I. C. 901=36 Cr. L. J. 602, 1929 O. 213=30 Cr. L. J. 969 Rel. on.

3. Burden of proof.

1. Where the stolen property is discovered 15 months after the theft the *onus* of proof should not be put on the accused. 1928 L. 687=108 I. C. 212=29 Cr. L. J. 464, 62 P. L. R. 1916.
2. The *onus* is on the prosecution to prove that the accused received property dishonestly. 109 I. C. 674=29 Cr. L. J. 594.
3. Burden of proof of facts from which knowledge of accused as to stolen property can be presumed lies on the prosecution. 27 Cr. L. J. 1144=1927 N. 40.
4. Because the distance of time between theft and recovery is short *onus* does not shift to accused to prove innocent possession. 1933 A. 893, 1933 P. C. 218, 1920 C. 342=21 Cr. L. J. 545.
5. If accused is unable to account for possession, burden of proof does not shift to accused. 1933 A. 893, 1931 C. 617.

4. Changing hands.

Where the nature of the articles is such that they may be constantly changing hands the recovery of such articles more than 5 months after the theft cannot in law give rise to a presumption against the possessor and it is not incumbent upon him to explain how he came by them. 1921 L. 89=62 I. C. 867.

5. Charge.

1. The charge that the accused received stolen property and had not been able to account as to how he obtained was held to be defective. 1 B. H. C. R. 95.
2. Dishonesty and knowledge or reasonable belief on the part of the accused that the property he received was stolen property must be set out in the charge. 4 W. R. 11.
3. The omission of the word "dishonestly" in a charge under S. 411, I. P. C., is not a ground of reversing conviction. 10 B. H. C. R. 373.
4. The charge should contain the name of the owner of property. 1 Bom. H. C. R. 95.
5. The omission of the word "dishonestly" in the charge is no ground for preferring appeal against acquittal. 10 B. H. C. R. (Cr. C.) 373.
6. Though the charge under S. 411 which does not specify the particular articles for the possession of which each of the accused is being prosecuted is no doubt defective, it is only curable irregularity when accused are not prejudiced. 1935 O. 473.
7. A joint-trial of three persons under S. 411 and one of them for two other offences for dishonestly possessing bullocks of some other persons is not illegal. 1534 A. 811=35 Cr. L. J. 1224. 1921 A. 403, 1921 A. 246, 1923 A. 417, 1929 A. 202 and 1933 A. 354 Dist.
8. Separate trials in respect of portions of stolen property cannot be held. 1934 P. 433 = 13 P. 161.

Receiving stolen Property—(contd.)

6. Essentials and Evidence.

1. It is essential that the stolen property should have been found in possession of the accused and the accused retained it knowingly. 1929 A. 917=119 I. C. 863.
2. Prosecution must prove facts from which knowledge can be presumed. It is not sufficient to show that the accused person was careless or he had reason to suspect property or that he did not make sufficient enquiry to ascertain whether it had been honestly acquired. 1927 N. 40=97 I. C. 664=27 Cr. L. J. 1144, 6 B. 402, 49 B. 878, 35 I. C. 488.
3. For a conviction under S. 411 proof of theft is not necessary. 1926 L. 640.
4. To retain valuable property which does not belong to the accused is not in itself proof that a man's possession is dishonest. Mere possession of stolen property is no offence. 1923 L. 340=76 I. C. 963=25 Cr. L. J. 29.
5. It is necessary that the particular article stolen should be proved to have been stolen from a particular individual and if possible traced to its origin. 1926 S. 129=91 I. C. 64=27 Cr. L. J. 32, 1924 N. 48=75 I. C. 544.
6. Bullocks were stolen from one village and handed over to a person in another village to pasture them with his own. There can be no inference that the possession was dishonest. 1930 P. 353=122 I. C. 586=31 Cr. L. J. 437.
7. Accused found seated around the stolen property disputing as to its distribution are guilty. 1926 P. 316=94 I. C. 705=27 Cr. L. J. 657.
8. Mere discovery of stolen articles in a roofless room of accused's house is valueless. 1924 A. 192=81 I. C. 553=25 Cr. L. J. 942.
9. Where the fact of burglary was not reported for 4 months and goods of common pattern were found in the house of the accused which the accused and the complainant each claimed as his own, the accused must be acquitted. 1923 L. 36=81 I. C. 48=25 Cr. L. J. 560.
10. Where property of ordinary type was found 2½ years after the dacoity at the house of the accused who was goldsmith and when asked he explained that he himself made for his wife. Accused is not guilty. 1925 A. 220=26 Cr. L. J. 578, 29 A. 138.
11. A's bullock was missing and after several months it was found with B. B is not guilty as a missing bullock could not be stolen within meaning of S. 410, 1929 A. 917=129 I. C. 863=30 Cr. L. J. 1133=36 P. W. R. 1911.
12. An accused's statement to the Police that another accused is also in possession of stolen property is inadmissible 1922 A. 24.
13. When the accused knew where stolen property was buried and produced it but falsely stated that he did it under instructions from Police who themselves had buried it is sufficient for conviction. 1930 S. 168=126 I. C. 53=31 Cr. L. J. 947.
14. Certain stolen goods were sent from one station to another. At the station of delivery the accused handed over the Railway receipt and paid freight. He is guilty under S. 411 although he did not remove the goods from the Railway. 40 C 990.
15. Mere possession and sale of stolen animal and denial of the fact is not sufficient proof under S. 411. 229 P. L. R 1914.
16. Production of stolen property is not conclusive proof of the offence under S. 411. 92 P. L. R. 1902, 1 P. W. R. 1906 Cr.
17. It must be proved in what theft the property was stolen. 1924 M. 350, *Contra* 1926 L. 640.
18. Promise to restore stolen goods is not sufficient for a conviction under S. 411. 32 P. L. R. 1905.
19. A person knowingly aiding in disposal of stolen property is accomplice. 1934 M. 721.
20. Accused knowing that a stolen mare was with another took the search party. Held, he was not guilty under S. 411. 1933 S. 352.

7. Exclusive possession. See—5.

1. An ornament (*kangni*) was found in a jar of chillies in a house occupied by the

*Receiving stolen Property.***RECEIVING STOLEN PROPERTY (S. 411, I. P. C.)****1. Applicability.**

1. When receipt or detention of property not necessarily for disposal, is dishonest, S. 411, is the appropriate section. If on the other hand dishonest receipt or detention cannot be proved but for dishonest concealment or disposal S. 414 is more appropriate. 49 B. 878, 31 P. R. 1879 Cr.
2. S. 411 does not apply if the property is *res-nullius*, e.g., bull let loose as a part of religious ceremony. 9 A. 348, 17 C. 852, 18 B. 212.

2. 'Believe' to be stolen.

The word 'believe' in S. 411 is much stronger than 'suspect'. The prosecution must show that circumstances were such that reasonable man must have felt convinced in his mind that the property was stolen. It is not sufficient to say that accused was careless or had reasons to suspect the property to be stolen or that he did not make sufficient inquiries. 1935 O. 327=154 I. C. 901=36 Cr. L. J. 602. 1929 O. 213=30 Cr. L. J. 969 Rel. on.

3. Burden of proof.

1. Where the stolen property is discovered 15 months after the theft the *onus* of proof should not be put on the accused. 1928 L. 687=108 I. C. 212=29 Cr. L. J. 464, 62 P. L. R. 1916.
2. The *onus* is on the prosecution to prove that the accused received property dishonestly. 109 I. C. 674=29 Cr. L. J. 594.
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4. The charge should contain the name of the owner of property. 1 Bom. H. C. R. 95.
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6. Though the charge under S. 411 which does not specify the particular articles for the possession of which each of the accused is being prosecuted is no doubt defective, it is only curable irregularity when accused are not prejudiced. 1935 O. 475.
7. A joint-trial of three persons under S. 411 and one of them for two other offences for dishonestly possessing bullocks of some other persons is not illegal. 1534 A. 811=35 Cr. L. J. 1224. 1921 A. 408, 1921 A. 246, 1923 A. 417, 1929 A. 202 and 1933 A. 354 Dist.
8. Separate trials in respect of portions of stolen property cannot be held. 1934 P. 483 =13 P. 161.

Receiving stolen Property—(contd.)

6. Essentials and Evidence.

1. It is essential that the stolen property should have been found in possession of the accused and the accused retained it knowingly. 1929 A. 917=119 I. C. 853.
2. Prosecution must prove facts from which knowledge can be presumed. It is not sufficient to show that the accused person was careless or he had reason to suspect property or that he did not make sufficient enquiry to ascertain whether it had been honestly acquired. 1927 N. 40=97 I. C. 664=27 Cr. L. J. 1144, 6 B. 402, 49 B. 878, 35 I. C. 488.
3. For a conviction under S. 411 proof of theft is not necessary. 1926 L. 640.
4. To retain valuable property which does not belong to the accused is not in itself proof that a man's possession is dishonest. Mere possession of stolen property is no offence. 1923 L. 340=76 I. C. 963=25 Cr. L. J. 29.
5. It is necessary that the particular article stolen should be proved to have been stolen from a particular individual and if possible traced to its origin. 1926 S. 129=51 I. C. 64=27 Cr. L. J. 32, 1924 N. 48=75 I. C. 544.
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7. Accused found seated around the stolen property disputing as to its distribution are guilty. 1926 P. 316=94 I. C. 705=27 Cr. L. J. 657.
8. Mere discovery of stolen articles in a roofless room of accused's house is ~~valuable~~. 1924 A. 192=81 I. C. 553=25 Cr. L. J. 942.
9. Where the fact of burglary was not reported for 4 months and goods of common pattern were found in the house of the accused which the accused and the complainant each claimed as his own, the accused must be acquitted. 1923 L. 35=31 I. C. 48=25 Cr. L. J. 560.
10. Where property of ordinary type was found 2½ years after the dacoity at the house of the accused who was goldsmith and when asked he explained that he himself made for his wife. Accused is not guilty. 1925 A. 220=26 Cr. L. J. 574, 29 A. 138.
11. A's bullock was missing and after several months it was found with B. B is not guilty as a missing bullock could not be stolen within meaning of S. 410, 1929 A. 917=129 I. C. 863=30 Cr. L. J. 1133=36 P. W. R. 1911.
12. An accused's statement to the Police that another accused is also in possession of stolen property is inadmissible. 1927 A. 24.
13. When the accused knew where stolen property was buried and produced it but dishonestly stated that he did it under instructions from Police who themselves had buried it is sufficient for conviction. 1932 S. 168=126 I. C. 53=31 Cr. L. J. 947.
14. Certain stolen goods were sent from one station to another. At the station of delivery the accused handed over the Railway receipt and paid freight. He is guilty under S. 411 although he did not remove the goods from the Railway. 40 C. 99.
15. Mere possession and sale of stolen animal and denial of the fact is not sufficient proof under S. 411. 229 P. L. R. 1914.
16. Production of stolen property is not conclusive proof of the offence under S. 411. P. L. R. 1902, 1 P. W. R. 1906 Cr.
17. It must be proved in what theft the property was stolen. 1924 M. 352, Comm. Cr. L. 640.
18. Promise to restore stolen goods is not sufficient for a conviction under S. 411. P. L. R. 1905.
19. A person knowingly aiding in disposal of stolen property is accomplice. 1924 P. L. R. 1905.
20. Accused knowing that a stolen mare was with another took the search party. He was not guilty under S. 411. 1933 L. 352.

7. Exclusive possession. See—5.

1. An ornament (kangri) was found in a jar of clothes in a house ~~owned by the accused~~

Receiving stolen Property—(contd.)

8. Sugar is not capable of identification but the find of large quantity of sugar with the accused may be corroboration of prosecution story. 9 P. 66=1930 P. 513.
 9. Evidence of identity is easily procurable. 25 P. R. 1883 Cr.
 10. If the identity of stolen article is doubtful conviction can be set aside even in revision. 194 P. L. R. 1912.
 11. If the case entirely depends on evidence of identity, it is generally of difficult and unsatisfactory nature. 17 P. R. 1868 Cr.
 12. Coins found on the thief must be proved to be the actual coins before they can be treated to be stolen property. 1926 S. 17=89 I. C. 259=26 Cr. L. J. 1315.
 13. Indian women can identify their jewellery even of common pattern. 1926 L. 132=26 Cr. L. J. 1361=89 I. C. 449.
 14. The distinctive names of stolen goods must be given in the list of stolen articles. 1921 P. 499.
 15. It is wholly insufficient to prove that property stolen was very much like that produced. 29 I. C. 72.
 16. Grain is not capable of identification. 1 Weir 429.
 17. If goods of common pattern or make are found with the accused, he cannot be convicted. 1923 L. 36=81 I. C. 48, 22 P. W. R. 1912 Cr.
 18. Identification of ordinary clothes is impossible. 1922 A. 24.
 19. The evidence of a witness that complainant or some body else identified the recovered stolen property is inadmissible as hearsay. 1924 L. 727.
- 11. Joint Hindu family or head of family. Sec—7.**
1. Where the house is occupied by a joint family none of them can be said to be in exclusive possession of it 57 I. C. 913, 54 I. C. 245, 1922 A. 83=67 I. C. 338, 67 I. C. 588, 4 L. L. J. 484.
 2. The guilty presumption arises against the head of the family. 29 A. 598, 1930 L. 884.
- 12. Joint possession by the accused Sec—7.**
1. If all accused are in joint possession of the property, presumption is that all of them are thieves or receivers of stolen property. 1929 S. 9=111 I. C. 732.
 2. But it must be proved that accused had physical or constructive possession of a part of property. 1929 S. 9=111 I. C. 732.
- 13. Joint trial—distinct offences.**
1. In case of a person found in possession of different articles of stolen property, the question is not whether they belong to different owners but whether accused received them at different times. 15 A. 317.
 2. Where accused receives several articles with distinct notice of their being proceeds of distinct thefts, the mere fact that they were received at one time would not consolidate the crime. 15 C. 511, 45 A. 485. See 98 I. C. 104.
 3. Stolen goods of two thefts were found on the accused at one and the same search, and there was no proof of two distinct acts of receiving it, there cannot be two convictions under S. 411. 4 P. W. R. 1907 Cr., 19 4 R. 253=2 R. 80.
 4. Joint trial for an offence under S. 411 and S. 20, Arms Act, is illegal. 9 P. R. 1912 Cr.
 5. Joint trial of offences under Ss. 411 and 379 is not bad if the transaction is the same. 67 I. C. 510, 1921 P. 291.
 6. When stolen property is recovered from different men at different times, their joint trial is illegal and is not cured by S 537, Cr. P. C. 67 I. C. 505.
 7. Joint trial of offences under Ss. 411 and 379, I. P. C., is illegal. 5 P. R. 1900 Cr., 3 P. R. 1905 Cr., 115 P. L. R. 1906.
 8. Accused found in possession of properties identified as belonging to different owners, should not be convicted of several offences of receiving in respect of each property

Receiving stolen Property—(contd.)

- unless the prosecution proves that they were received at different times. 1928 L. 637=10 L. 158=110 I. C. 673, 15 A. 317, 1923 A. 547, 15 C. 511, 1923 C. 557, 26 P. R. 1889 (F. B.) and 27 Cr. L. J. 872 Diss. from.
9. Accused produced properties stolen at different places, he can be convicted separately of receiving them. 67 I. C. 120=27 Cr. L. J. 872.
 10. Accused was charged with having stolen six specific animals belonging to five different persons at different times, the trial is illegal. 1926 S. 129, 25 M. 61 (P. C.).
 11. If the property was stolen on one occasion, all the accused may be jointly tried under S. 411, I. P. C., although they may have received it on different occasions. 1932 B. 231=137 I. C. 146, 6 P. 583.
 12. If more than one offence of theft has been committed in respect of certain property, persons in possession of such stolen property cannot be jointly tried. 1935 O. 327=154 I. C. 901=36 Cr. L. J. 602.
 13. But if the holding of joint trial has not caused prejudice to the accused, the trial is not vitiated. 905 M. 61 (P. C.), 1935 O. 327=36 Cr. L. J. 602.
 14. Where several articles stolen at one theft are received by different persons, all or any of the receiver are triable jointly for the offence under S. 411. 1935 O. 475, 1923 P. 38=6 P. 583=28 Cr. L. J. 962 Foll. 1935 O. 327=36 Cr. L. J. 602 Ref. 1934 A. 811.
 15. If the prosecution case against two accused is mutually exclusive, joint trial is bad. 1934 R. 193=35 Cr. L. J. 1312, 14 Cr. L. J. 563, 1923 R. 67=24 Cr. L. J. 750.
 16. Separate trials in respect of portions of stolen property are illegal. 13 P. 161=1934 P. 483.
 17. A joint trial of three persons under S. 411 and one of them for two other offences for dishonestly possessing bullocks of some other persons is not illegal. 1934 A. 811=35 Cr. L. J. 1224, 1921 A. 408, 1921 A. 246, 1928 A. 417, 1929 A. 202 and 1933 A. 354 Dist.
 18. Several articles were stolen on different dates. But there was no evidence of separate acts of reception. Held, that single trial under S. 411 is not bad. 1934 P. 483=13 P. 161. 1925 P. 20 and 1923 A. 547=45 A. 485 Foll. 9 C. W. N. 1027 Diss. from.
 19. A person committing criminal breach of trust and other receiving the stolen property can be tried together. 1 Cr. L. J. 584.
- 14. Jurisdiction.**
1. Where accused committed dacoity in British India but were caught with the stolen property in a Native State and were convicted under S. 411 by the State Court. Held, another trial for the same offence in British India was barred. 1924 L. 238=73 I. C. 939=24 Cr. L. J. 715.
 2. Currency Note stolen in foreign territory was cashed at Lahore. Conviction was altered to S. 414, I. P. C. 34 P. R. 1902 Cr.
 3. There is nothing to prevent a person from being convicted under S. 411 though he is thief and for which Court has no jurisdiction to try him. 30 P. R. 1894.
 4. A dacoity was committed in British India and the accused were pursued in Gwalior State by the Police where they were found with the stolen property. The conviction of the accused under S. 411 by the Courts of British India is illegal. 9 A. 523, 10 B. H. C. R. 356.
 5. To give jurisdiction to a Court at A it must be proved that either the accused committed the theft at A or he was there found in possession of stolen property. 18 C. W. N. 1178.
 6. Foreigner found in possession of stolen property in foreign territory is not amenable to British Courts. 16 P. R. 1880 Cr., 20 P. R. 1878 Cr., 7 P. R. 1894 Cr., 29 P. R. 1867 Cr.
 7. Dishonest retention in British India of property stolen outside British India by foreign subject is punishable. 30 P. R. 1894 Cr.

Receiving stolen Property—(contd.)

8. British Courts have no jurisdiction in respect of an offence of receiving stolen property, committed outside British India, unless offenders are British subjects. 29 P. R. 1867 Cr.
 9. If a thief commits an offence in foreign territory, he can be tried in British India as receiver of stolen property, although he cannot be tried for theft without extradition. 10 B. 186, 15 C. 511, 6 C. 307.
- 15. Pointing out stolen property. See—5 (above).**
1. Mere pointing out of the place where stolen property is concealed is not sufficient. 1921 L. 385=73 I. C. 331.
 2. When the accused knew where stolen property was buried and produced it but falsely stated that he did it under instructions from Police who themselves had buried it, is sufficient for conviction. 1930 S. 163=125 I. C. 53=31 Cr. L. J. 947.
 3. Mere production of a stolen property by the accused from a jungle which was neither in his possession nor control is not sufficient. 46 P. L. R. 1912.
 4. Pointing out stolen property in grass and water-courses is not sufficient. 1831 A. W. N. 94.
 5. Accused successfully points out number of places where stolen property is, presumption is that he has something to do with the offence. 18 P. R. 1917, 13 M. 425.
 6. Pointing out stolen property in a field which does not belong to accused is not sufficient for conviction. 17 A. 576, 20 P. R. 1905 Cr., 46 P. L. R. 1912, 32 W. L. R. 1913, 1 P. R. 1917 Cr.
 7. Accused merely pointing out and causing recovery of stolen property from a place accessible to many, is not liable under S. 411. But if there is confession of accused relating to theft and proved by other witnesses, the conviction is proper. 1935 O. 475, 1930 L. 91=31 Cr. L. J. 774=125 I. C. 181, 1929 M. 846=31 Cr. L. J. 449, 73 I. C. 331=1921 L. 385 and 16 C. W. N. 238=13 Cr. L. J. 127 approved.
- 16. Presumption of guilty knowledge from recent Possession. S. 114 (a), I. E. Act**
1. Possession of stolen property recently after theft raises the presumption that the possessor is either thief or receiver of stolen property. S. 114 (a), I. E. Act, 1934 A. 455, 1930 O. 353.
 2. The presumption is one of fact and discretionary, the Court is not bound to raise it. 1934 A. 455=35 Cr. L. J. 1092, 1931 C. 617=33 Cr. L. J. 40.
 3. Presumption arises only when possession is proved. 35 Cr. L. J. 994=1934 R. 80, 6 B. 731, 1932 S. 180, 1924 A. 192=25 Cr. L. J. 942.
 4. The property must be proved to be stolen property. The fact that property may reasonably be presumed to be stolen does not justify the raising of presumption. 52 C. 223=1925 C. 666.
 5. Finding of stolen property with the accused three years after theft does not indicate dishonest intention. 1923 L. 460.
 6. Although there can be no presumption of guilty knowledge from possession of property 2 years after theft, yet Court can ask the possessor to explain the origin and draw unfavourable inference from refusal to explain. 1924 R. 256=2 R. 80=81 I. C. 443=25 Cr. L. J. 907.
 7. Property found 2 months after theft, no presumption under S. 114, Evidence Act, can be applied. 1923 M. 305=72 I. C. 538=24 Cr. L. J. 426.
 8. There is no hard and fast rule as to time, within which the stolen article should be found with the accused. In a case of a dacoity finding of property 2½ months after dacoity is not a long time. 1927 O. 277=103 I. C. 62, 29 A. 138 Dist.
 9. Possession of stolen property 19 months after theft raises no presumption that the holder thereof was either the thief or received the goods knowing them to be stolen. 1926 L. 528=95 I. C. 471=27 Cr. L. J. 807.
 10. If a few stolen articles were found in possession of a person under circumstances, which may give rise to the probability of his coming by them honestly sometime after the theft, the presumption under the law might not arise against him. 1926 C. 925=94 I. C. 361=27 Cr. L. J. 617.

Receiving stolen Property—(contd.)

11. Mere absence of explanation or unsatisfactory or false explanation are not sufficient to bring the offence under S. 411 home to the accused, since the failure of a person to account for his possession is an element in the proof but it is no substitute of proof. 21 A. L. J. 836, 34 P. W. R. 1914, 25 I. C. 982, 6 A. 224.
 12. A handkerchief found in prisoner's possession more than a month after the theft does not raise a presumption that he received it knowing it to be stolen even if he refuses to account for it. 6 A. 224.
 13. A prostitute was robbed of her ornaments by A and B. Three days after the theft B's father-in-law was found selling them in a neighbouring village where he had no business to go. Held, he was not guilty. 10 C. W. N. 219
 14. Accused was found in possession of pieces of silk, sari, watch and chain ten months after the theft and gave a feeble explanation with regard to some of them. He was convicted on the whole case. 9 Bom L. R. 27.
 15. Accused was found in possession of camel, seven months after the theft, no presumption of guilt can be raised against the accused 62 P. L. R. 1916=32 I. C. 660=41 P. W. R. 1915 Cr., 8 I. C. 145.
 16. Accused was found in possession of stolen currency notes 18 months after the theft and there was no other suspicious circumstance present. The fact that he has given false explanation is not sufficient to convict him. 13 Cr. L. J. 475.
 17. If the accused is found with stolen property nine months after its loss, the presumption under S. 114, Evidence Act, is insufficient. 130 I. C. 800=1931 P. 85=32 Cr. L. J. 614.
 18. In case of stolen property found in possession of accused after six months, there can be no presumption of theft under S. 114 (a), Evidence Act. It is at the most a suspicion. 1935 C. 680.
 19. It is true that if stolen property is recovered from the accused long after the theft, the *onus* of proving his innocence should not be thrown on the accused, still if the recovery is made 15 days after the theft he is not entitled to have the presumption of innocence. 1935 O. 475. 1928 L. 687=108 I. C. 912=29 Cr. L. J. 464 Dist.
 20. In case of property recovered 15 months after theft no guilty presumption under S. 411 arises. 1928 L. 687=29 Cr. L. J. 464.
 21. The possession should be exclusive as well as recent 1934 R. 80=35 Cr. L. J. 994, 6 B. 731 Rel. on
 22. Presumption under S. 114 (a) arises when a stolen revolver was found 7 months after. 1933 A. 461.
 23. No fixed time can be laid down to determine whether possession is recent or not. 94 I. C. 361=27 Cr. L. J. 617, 19 Cr. L. J. 189=43 I. C. 605
 24. Presumption of guilt varies according as the stolen property is or is not calculated to pass readily from hand to hand 1928 N. 213=109 I. C. 801, 1921 L. 89=22 Cr. L. J. 595, 19 Cr. L. J. 189, 1924 R. 173.
 25. A person found in possession of stolen property a couple of hours after the burglary can be convicted under S. 457. 1933 O. 117=34 Cr. L. J. 649.
 26. A period of 12 years in case of jewellery, 49 A. 230=1927 A. 38, of 24 years in case of gold or silver ornaments of ordinary type. 1925 A. 220=23 Cr. L. J. 578, 1926 L. 528, 29 A. 133, one year in case of articles of brass 23 W. R. (Cr.) 16; 9 months in case of animals 1931 P. 85=32 Cr. L. J. 614, 32 I. C. 660=17 Cr. L. J. 68; of 3 months in case of keys 46 I. C. 158; of 40 days in case of *Dopatta* 1922 A. 24 has been too long to justify a presumption of guilty knowledge.
 27. Accused produced a receipt showing that he was purchaser of the bullocks which were in his possession for several months. Held, that presumption under S. 114 was sufficiently rebutted. 1936 O. 380.
- 17. Presumption of guilty knowledge.**
1. The fact that the accused who sold the articles were of 18 and 20 years of age and that they could hardly be supposed to be owners of the articles may be evidence of suspicion, but it cannot be said that accused must have believed that the articles were stolen property. 134 I. C. 401=32 Cr. L. J. 1184.

Receiving stolen Property—(contd.)

2. If the accused gives explanation for his possession of stolen goods which though probable but not convincing, the *onus* to prove the guilt is on the prosecution. Presumption under S. 114 is then of no avail that accused should prove affirmatively that he came by the goods innocently. 1931 C. 617=35 C. W. N. 291, 52 C. 223.
3. It is not sufficient to fix guilt on the accused from the fact that he was careless or that he had reason to suspect the goods to be stolen or that he did not make sufficient inquiry to ascertain whether it had been honestly acquired. 1932 L. 434=33 P. L. R. 572, 6 B. 402.
4. The mere fact that jewellery handed over by a European soldier was such that it was ordinarily worn by Indian females, is not sufficient to support the finding that accused had reason to believe it to be stolen. 1932 L. 434=33 P. L. R. 572.
5. Person found in possession of stolen property soon after theft and not able to account for it, it is to be presumed that he is in possession knowing or having reason to believe it to be stolen property. 1935 O. 475, 1934 A. 455, 1930 O. 353.
6. In a case under S. 411, the fact that the accused was in possession of many other stolen articles is admissible to show that he knew the articles to be stolen, but it is not admissible to prove *jactum* of possession of the articles. 11 Bom. H. C. 90.

18. Procedure.

1. If the property is stolen at different dates, the presumption is that they were received by Receiver on different dates. Burden lies on accused receiver to prove that he received them at one time, otherwise acquittal for some articles is no bar to trial for receiving another item. 1927 S. 53=98 I. C. 104, 27 Cr. L. J. 872, 15 C. 511, 1923 A. 547 and 1925 P. 20 Not foll.
2. In the case of five thefts, when there is no proof that the proceeds of each theft were received on different occasions, accused cannot be convicted in five separate chalans. 1932 L. 615 (1).
3. A person charged with house breaking can be convicted of receiving stolen property in appeal. 1932 N. 173.
4. Conviction under S. 302 cannot be altered into one under S. 411. 1933 O. 315.
5. A person found in possession of stolen revolver can be tried under S. 411 as well as under Arms Act. 1933 A. 461=145 I. C. 609.

19. Recovery list of stolen property. See Stolen Property—4. Statement to Police—12.**20. Res nullius.**

S. 411 does not apply to property which is *res nullius*. 9 A. 348, 17 C. 852, 18 B. 212.

21. Sentence.

1. A boy of 14½ years cannot be let off after mere admonition. Six months' rigorous imprisonment is not proper on first offence. A security of good behaviour for one year was thought sufficient. 1923 P. 297=82 I. C. 480=25 Cr. L. J. 1312.
2. Mere fine which is less than the value of the property is too light for cattle theft. It was enhanced to one year rigorous imprisonment. 1935 Pesh. 100=157 I. C. 169.

22. Stolen property—What is. See Stolen Property.

1. Property into or for which stolen property has been converted or exchanged is not stolen property. 39 P. R. 1881 Cr.
2. Money obtained by cashing forged cheques is not stolen property. 24 W. R. 33 (35).
3. An ingot obtained by melting down stolen jewellery cannot be regarded as stolen property. 39 P. R. 1881 Cr.
4. The creditor of a person applied for insolvency. The debtor transferred some of his property to accused to prevent its falling into the hands of the Receiver. Held, that property acquired by fraudulent transfer is not stolen property. 16 Cr. L. J. 675.
5. If there is no evidence that property was actually stolen conviction under S. 411 is illegal. 2 N. W. P. H. C. R. 187.
6. If stolen property is deposited in a Bank, it cannot be attached, it becomes Bank's property. 58 B. 152=1934 B. 74.

Receipt.

RECEIPT.

Refusal to give receipt for money paid is no offence. 1 B. H. C. R. 92.

RECEIVING STOLEN PROPERTY OF A DACOITY. S. 412, I. P. C.

1. The essence of the offence under S. 412 is the special knowledge or belief connecting the property with a dacoity or with dacoits. 26 M. 467 (468), 7 W. R. (Cr.) 73, 9 W. R. (Cr.) 16.
2. The offence of the receipt or retention must be completed in British India. It is no offence under the Code to receive or retain in a Native State the proceeds of a dacoity committed in British India. 9 A. 523.
3. The bare discovery of stolen property and arms in a joint family house is not sufficient to convict each member. 22 A. 445.
4. The fact of stolen property being found concealed in the house of the accused, would ordinarily be sufficient to raise the presumption that he knew the property to be stolen, but not to prove that he knew that it had been acquired by dacoity. Rat. Un. Cr. C. 184 and 756, 6 B. 731.
5. Accused need not strictly prove his claim to possession of stolen property. Jury may accept his explanations. 53 C. 157=1925 C. 1241=26 Cr. L. J. 1582.
6. In identification of stolen articles of small value the opinion of assessors is entitled to great weight. 1925 O. 452=89 I. C. 155=26 Cr. L. J. 1291.
7. Where a person received at one and the same time several stolen articles belonging to different owners, the receipt constitutes one single offence. 45 A. 485=1923 A. 547=24 Cr. L. J. 632=73 I. C. 520.
8. Receiver of articles of petty value should not be given the same punishment as the actual dacoits. 1927 O. 277=28 Cr. L. J. 638.

RECORD.**1. Calling for—of inferior Court. S. 435, Cr. P. C.**

1. Record can be called for by High Court, Court of Sessions or District Magistrate at any time even after the prisoner has served out his sentence. 7 A. 135.
2. High Court can call for record, even after the death of the prisoner pending an appeal before the Lower Appellate Court had passed any order. 2 B. 564 *Contra* 6 P. R. 1893 Cr.
3. This section does not give the High Court a roving commission for stamping with approval or tracing a possible error in the proceedings of a Lower Court. 1899 A. W. N. 135.
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6. Refusing to grant a copy under S. 165 (5), to a person whose house had been searched can be revised by the High Court. 1923 A. 402=110 I. C. 215=29 Cr. L. J. 663.
7. If it is brought to the notice of the High Court that a person has been or is about to be subjected to the harassment of an illegal prosecution, it will interfere. 1924 C. 1018=82 I. C. 266.
8. High Court on information contained in a Newspaper, a placard on a wall or any anonymous Post Card can take action, if it considers that there are sufficient grounds to justify sending for record under S. 435. 45 A. 128.
9. District Magistrate is inferior to the Sessions Court, the latter can call for the record of a case decided by the former and make a reference to the High Court. 1925 A. 591=89 I. C. 146, 9 A. 362, 46 A. 851, 41 B. 47, 8 C. 875, 1924 L. 240, 1933 P. 305, 28 A. 91, 1931 R. 251, 49 A. 443.
10. When a District Magistrate calls for the record of a Magistrate under S. 435 with a view to transferring it to another Magistrate, the jurisdiction of the former

Receiving stolen Property—(contd.)

2. If the accused gives explanation for his possession of stolen goods which though probable but not convincing, the *onus* to prove the guilt is on the prosecution. Presumption under S. 114 is then of no avail that accused should prove affirmative that he came by the goods innocently. 1931 C. 617=35 C. W. N. 291, 52 C. 223.
3. It is not sufficient to fix guilt on the accused from the fact that he was careless or that he had reason to suspect the goods to be stolen or that he did not make sufficient inquiry to ascertain whether it had been honestly acquired. 1932 L. 434=3 P. L. R. 572, 6 B. 402.
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10. When a District Magistrate calls for the record of a Magistrate under S. 435 with a view to transferring it to another Magistrate, the jurisdiction of the former

Magistrate is suspended and he cannot record a composition and acquit the accused. 49 B. 533.

11. When the District Magistrate declined to go into the merits when moved under S. 435 and said that more convenient mode was to apply to Sessions Judge, the latter could entertain an application for revision. 54 M. 842.
12. Court can *suo moto* or on any information call for record, whatever the source of information may be whether third party or official. 12 L. 471, 1930 N. 61, 24 A. 151, 23 P. R. 1916, 2 A. 522, 3 A. 563, 1887 A. W. N. 144, 56 A. 158, 1931 L. 145, 24 A. 443, 49 A. 238, 10 Cr. L. J. 237.
13. Court will interfere on the application of third party if there is a miscarriage of justice. 45 A. 128, 55 B. 353=1931 B. 140.
14. Court refused to interfere on the application of Bar Association when a third party was convicted and who did not take part in the proceedings. 45 A. 128, but interfered when a member of the Bar was convicted. 1930 O. 497=32 Cr. L. J. 104.
15. A Magistrate cannot seek advice from District Magistrate on a question of jurisdiction. 37 B. 144.
16. The Court whose proceedings are revised must be an inferior Criminal Court. Thus District Magistrate is inferior to the Court of Session though not subordinate to it. 1925 A. 591, 15 P. R. 1904 Cr., 17 Cr. L. J. 223, 41 A. 587 and even in the exercise of his appellate jurisdiction. 3 L. 23.
17. S. 30 Magistrate is inferior to District Magistrate. 19 Cr. L. J. 801.
18. Any criminal proceedings including one under S. 488 are advisable. 43 B. 607.
19. Where an application is *withdrawn* and is rejected for want of prosecution, second application is competent. 4 O. C. 119, 54 M. 842.
20. Where remedy by way of appeal is available, revision will not lie. 1884 A. W. N. 293.

2. Destruction of—

Where evidence was first taken and then destroyed the conviction was set aside. 48 C. 280.

3. Discrepancy in English and Vernacular record. See Vernacular.

4. Forgery of—. See Forgery—20.

5. Inspection of—

1. The only valid reason for refusing an inspection of record, is that it was against public interest. Public has right to inspect and take copies of judgment of Lower Courts. 1931 A. 364=132 I. C. 327.
2. After a Court has given adjournment to enable the accused to apply for transfer, the Court does not become *functus officio* and disallowing inspection of record is illegal. 1931 L. 59=129 I. C. 193.
3. Taking official papers from the custody of an officer to show it to party's Vakil is theft by servant. 1926 B. 122=94 I. C. 881=27 Cr. L. J. 689.

6. Language of—. S. 357, Cr. P. C.

1. The plea of the accused need not be recorded in the very language in which it is made. Where it is foreign language, the record must be in the language in which it is interpreted to the Court. 5 C. 826.
2. Where the accused was examined by the Magistrate in Marhati and gave his answers in Marhati, the statement should be recorded in Marhati. 21 B. 495.
3. If it is not practicable to record the statement in the language in which it is made, the law directs that it shall be recorded in the language of Court or in English. 21 C. 642.
4. Where a confession made in Hindustani was recorded by a Mahomedan Magistrate in Bengali, the language of Court, the High Court held that in the absence of evidence it should be presumed that Magistrate found it impracticable to record the statement in Urdu. 18 C. 549, 45 A. 166, 7 P. R. 1899 Cr.

Record—(contd.)

5. Where the Magistrate recorded the evidence in English under S. 336 the irregularity is curable if accused is not prejudiced. 53 A. 172.
7. Loss of— *See* Previous acquittal or conviction.
8. Making incorrect document. S. 167, I. P. C. *See* Public Servant.
9. Making incorrect—, S. 218, I. P. C. *See* Public Servant.
10. Mode of making—of evidence. *See* 12—15.
11. Of demeanour of witnesses. *See* Demeanour of witnesses. S. 363, Cr. P. C.
- 11-A. Of evidence in absence of accused. S. 353, Cr. P. C. *See* Evidence—42.
 1. It is imperative that evidence should be taken in the presence of accused or in certain circumstances in the presence of his Pleader. 4 Cr. L. J. 89.
 2. It is not sufficient to read out to a witness his previous deposition in a former case and asking him if the statement made therein is true. 50 C. 223, 5 L. 396, 1933 L. 231, 1926 L. 378, 22 M. 455, 1928 R. 284.
 3. A contravention of the provisions of this section is an irregularity not curable under S. 537. 6 P. 691, 6 B. 124, 20 C. 357, 58 M. 285, 1927 O. 353, 1925 N. 457, 1935 O. 488=36 Cr. L. J. 1198.
 4. In cross cases, Court cannot consider at all the evidence given in one case in reaching conclusion in the other. 50 A. 457=1928 A. 593, 1924 C. 813, 26 P. R. 1900, 1928 L. 380, 4 L. 376, 56 M. 159=1933 M. 367.
12. Of evidence in other than summons and summary cases S. 356, Cr. P. C.
 1. Where a Magistrate in a proceeding under S. 145, Cr. P. C., neither recorded the evidence fully in his own hand, nor caused it to be recorded fully, but simply made a memorandum under S. 356 (3), Cr. P. C., the whole proceedings must be set aside. 42 C. 381, 1925 O. 286=83 I. C. 630. *See* 53 A. 172.
 2. Where the Magistrate made no vernacular record of evidence, the procedure was held to be illegal 1890 A. W. N. 164, 17 A. L. J. 1146.
 3. Where the evidence was recorded by Magistrate's Reader and the Magistrate did not make a memorandum of the statement of each witness but took a great care in sifting evidence and arriving at a correct conclusion, the irregularity is cured by S. 537, Cr. P. C. 1928 O. 112=106 I. C. 582=29 Cr. L. J. 70.
 4. Where the evidence was recorded and subsequently destroyed, the conviction was set aside. 48 C. 280.
 5. Omission to record evidence as prescribed by S. 356, is an illegality vitiating trial. 19 Cr. L. J. 235, 1891 A. W. N. 145 *Contra* 129 I. C. 255, 53 A. 172.
 6. Where there is a discrepancy in material part of the evidence of the principal prosecution witness between the vernacular record and the English record of evidence, the accused is entitled to benefit of doubt 24 Cr. L. J. 624.
 7. In cases mentioned in S. 356, the evidence cannot be recorded in the form of a mere memorandum. If it is so recorded, the conviction will be set aside. 2 Weir 432.
 8. Where the Magistrate recorded the evidence in English the irregularity is curable if accused is not prejudiced. 53 A. 172, 129 I. C. 265.
13. Of evidence in Presidency Magistrate's Court. S. 362, Cr. P. C.
 1. A Presidency Magistrate must comply with the provisions of S. 362 (1) and (2) where he deals with the case under S. 457 read with S. 511, I. P. C., and pass a sentence of one year's rigorous imprisonment, though the sentence is to be served in the Dharwar Juvenile Jail. 1925 B. 147, 1931 B. 142. *See* 56 B. 200.
 2. The Magistrate must take notes of all the material facts, whether they appear in the course of an examination in chief or cross-examination. 46 C. 411.
 3. The Magistrate must record evidence in the form of direct narration and not indirect narration. The irregularity is curable. 18 Cr. L. J. 336.
 4. There is no obligation on the part of Presidency Magistrate to record evidence in cases in which appeal does not lie. 56 B. 200, 31 C. 983, 33 C. 1036.

5. In proceedings under S. 488, Cr. P. C., before Presidency Magistrate, it is not necessary to record the evidence. 1932 B. 179=137 I. C. 27.
14. **Of evidence in summary trial—** See Summary trial.
Record in summary trial though brief should show the necessary ingredients of the offence charged. 12 Cr. L. J. 280=10 I. C. 921.
15. **Of evidence in Summons Cases.** S. 355, Cr. P. C.
 1. In summons cases the deposition may be recorded in the form of memorandum and need not be read over to the witness. 2 Weir 433.
 2. In maintenance proceedings under S. 488, Cr. P. C., the evidence ought not to be recorded as in summary trial but in the manner provided by S. 355, Cr. P. C. 20 C. 351.
 3. There is no provision as to the language in which the memorandum is to be recorded. If a second class Magistrate records a memorandum in English, it is a mere irregularity not vitiating trial. 9 M. 269.
 4. S. 355 does not apply to offences mentioned in S. 261 (b), Cr. P. C. 1927 B. 426=102 I. C. 345=28 Cr. L. J. 537.
 5. In a case of theft under S. 379, I. P. C., in which the value of property stolen does not exceed Rs. 50 the procedure at the trial is regulated by S. 355 and not S. 356, Cr. P. C. 1923 A. 432=21 A. L. J. 276.
16. **Of examination of accused.** See Examination of accused—21.
17. **Of examination of complainant.** See Examination of complainant.
18. **Of examination of witnesses.** See Examination of witnesses—7.
19. **Signing of—**

Where the substance of the evidence taken by the Magistrate was careful and complete but was not signed the error vitiated the trial. 1922 P. 5=65 I. C. 546=3 P. L. T. 322=23 Cr. L. J. 114.

20. **Theft of—** See Theft—23.

Abstraction of a document from a judicial record is mischief and theft. 112 P. R. 1866 Cr.

21. **Using—in another case.** See Deposition—5, Evidence—40.

22. **Vernacular—**

1. Generally speaking the evidence recorded in the vernacular in which the witness deposed is entitled to a greater weight and is more reliable than the record made in English language. But where the Magistrate is fully conversant with vernacular in which the witness gave evidence, the English record is also reliable. 24 Cr. L. J. 624.
2. Where there is a discrepancy in material part of the evidence of the principal prosecution witness between the vernacular and English record, the accused is entitled to benefit of doubt. 24 Cr. L. J. 624.
3. Accused made a confession in Mani Puri language and was interpreted to Court in Bengali. He recorded it in English, but a record in Mani Puri language was also made. The two records differed. Held, that Mani Puri record was the proper record and the only evidence in the case. 21 C. 642.

RECORDING REASONS. See Irregularities.

RECOVERY LIST.

1. **As evidence.**

1. Recovery list of stolen property is not evidence in itself but can be used for refreshing memory of the person writing it. 1924 L. 727=82 I. C. 707.
2. Recovery list signed by witnesses is of no value when the property was not recovered in their presence. 1923 L. 466.

Recovery List—(concl'd.)

3. Different items recovered should be separately and consecutively numbered. 1935 C. 184.
4. A recovery list prepared by Police under S. 103, Cr. P. C., is an official document admissible under S. 35, Ev. Act. But if it contains any inadmissible confession, such matter must be excluded. 1933 S. 220=34 Cr. L. J. 843.

2. Signature of accused on—. See Confession to Police Officer—22.

RECTUM—THRUSTING STICK IN. See Culpable homicide—16.

1. The thrusting of a stick or other similar object into the anus is a mode of torture or murder occasionally resorted to in India; and threat to do this is a very common form of abuse. *Lyon's Med. Jur.*, 1935 P. 215. Injuries produced by thrusting stick into the rectum may cause death. Out of fifteen cases eleven proved fatal in Bengal. In majority of such cases victim is a male who is punished in this way for adultery or theft. Injuries to the rectum and anus are sometimes the result of an act of sodomy. *Lyon's Med. Jur.*, Ed. 1935, P. 215.
2. Accused on grave and sudden provocation put a rod in the rectum of accused and caused death. He was guilty under S. 304 (2). 1932 L. 199=33 Cr. L. J. 365.

REFERENCE Ss. 438, 432, Cr. P. C.

1. Admission of facts by parties in—.

If admission of facts are made by the parties, the High Court for the purpose of reference should accept them. 1925 C. 1026=91 I. C. 805=27 Cr. L. J. 133.

2. Against acquittal.

1. A reference under S. 438 recommending revision of orders of acquittal stands on higher footing than application of private prosecutor for such revision. In case of reference under S. 438 the revisional powers of the High Court should be sparingly used. 6 C. 924, 44 C. 703.
2. In case of acquittal, the District Magistrate should move the Government to file an appeal under S. 417 and not to make a reference under S. 438. 1902 A. W. N. 89.
3. The High Court will not ordinarily entertain a reference from the District Magistrate in case of acquittal. 5 L. 16, 44 C. 703, 24 A. 346, 25 A. 128, 13 P. W. R. 1907 Cr., 15 M. 36, 28 M. 1028.
4. It is the practice of Allahabad High Court not to interfere on a reference by a Sessions Judge, where the Government could have appealed under S. 417, Cr. P. C. 1924 A. 624=83 I. C. 687=26 Cr. L. J. 127.
5. A reference against acquittal by Sessions Judge is acceptable, for appeal against acquittal is restricted to exceptional cases. But reference by District Magistrate may not be acceptable, as he can move the Local Government to file an appeal. 7 P. 579=116 I. C. 768=1929 P. 139.
6. High Court will not interfere in revision against order of acquittal, in a case under S. 225-B, I. P. C., irregularly instituted on a report sent in by Munsiff, which was treated as complaint. 47 A. 409, 1925 A. 318=26 Cr. L. J. 865.
7. If the accused is acquitted under S. 447, I. P. C., on the ground that the property was not in the possession of any body, High Court will not interfere in revision. 1925 L. 336=86 I. C. 65.
8. In the case of acquittal, where the Local Government does not appeal or where the District Magistrate does not move the Local Government to appeal, the High Court will not, as a general rule entertain a reference direct under S. 438. 1931 L. 533=134 I. C. 208=32 Cr. L. J. 1123, 24 A. 364, 25 A. 128, 38 M. 1028.
9. Ordinarily District Magistrate should not make reference against acquittal. Where the trial Court's judgment was full of surmises and special pleadings, reference was accepted. 1934 A. 714=35 Cr. L. J. 1289=151 I. C. 350, 1921 A. 266=22 Cr. L. J. 337 Ref.

3. Against orders under Ss. 145 or 107, Cr. P. C.

1. The practice as regards reference under S. 145, Cr. P. C., is the same as in the

Reference—(contd.)

ordinary case and there ought to be no reference merely upon the difference of opinion as to the value of evidence. Even if there is error of law, reference should not be made unless it is of such a character that interference by higher authority is necessary. 58 C. 1081=1931 C. 619=32 Cr. L. J. 1237=134 I. C. 915.

2. Where a Magistrate has discharged an accused person under S. 107, Cr. P. C., the Sessions Judge has no jurisdiction under S. 435 to set aside the order of discharge and direct further enquiry. He can only report under S. 438 to High Court. 53 A 148.
4. Against verdict of Jury. See Jury.
5. By District Magistrate against order of Sessions Judge. S. 438, Cr. P. C.
 1. District Magistrate has no power to question the order of Sessions Court, which is a Superior Court and refer the matter to the High Court. 46 A. 851 (853), 28 A. 91, 41 B. 47, 5 L. 11, 23 C. 249-250, 18 C. 136, 36 A. 378, 10 A. 146, 24 Cr. L. J. 573, 1933 L. 433 (2)=34 Cr. L. J. 371, 1924 L. 437.
 2. If the District Magistrate thinks that there has been a miscarriage of justice in a case heard by the Sessions Judge, he should not report the case to the High Court under S. 438, but invite the attention of the public prosecutor to it. 9 A. 362, 46 A. 851, 6 Bom. L. R. 1099, 24 C. L. J. 573.
 3. It is never intended that a Subordinate Court should have the power of questioning the propriety of an order passed by an appellate Court for revision, simply on the ground that original sentence was proper one and should not have been reduced. 3 C. 875, 1882 A. W. N. 135.
 4. District Magistrate should move the Government to file appeal if he thinks that the order of Sessions Judge is not proper. 92 I. C. 743=27 Cr. L. J. 327, 23 A. 91, 9 R. 352.
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 2. Sessions Judge can call for the record of proceedings under S. 110, Cr. P. C., and refer it to the High Court. 1923 A. 596=73 I. C. 337.
 3. The High Court will not ordinarily accept a reference direct from the District Magistrate. 1924 A. 770=25 Cr. L. J. 1277=82 I. C. 285=46 A. 851.
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 5. An Additional Sessions Judge has power to refer cases transferred to him by Sessions Judge. 1903 A. W. N. 8.
 6. District Magistrate or Sessions Judge cannot take further evidence with a view to reporting the case. 3 Bom. L. R. 677, 12 A. L. J. 461.
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 8. A Sessions Judge or District Magistrate cannot refer a case to High Court on a point arising in appeal pending before him. 13 A. L. J. 477, 105 I. C. 802.
 9. If the Sessions Judge is of opinion that an order by District Magistrate directing further enquiry is wrong a reference can be made. 22 C. 573.
 10. Sessions Judge can call for the record, and report under S. 438 even if the convict has not moved him. 131 I. C. 353.
 11. After passing an order of reference under S. 438, the Sessions Judge becomes *functus officio* and has no power to review or revise his own order. 1934 O. 85=147 I. C. 1209.
 12. The Additional Sessions Judge is not competent to make a reference in respect of an accused whose appeal is not transferred to him by general or special order of the Sessions Judge. 1934 O. 86=147 I. C. 882.
 13. Reference is to be made on question of law only. 1934 O. 276=278.

Reference—(contd.).

14. Sessions Judge or District Magistrate cannot refer his own order with recommendation that it be altered. 1933 P. 697=35 Cr. L. J. 22.

7. By Presidency Magistrate on a question of law. S. 432, Cr. P. C.

1. A Presidency Magistrate can make a reference on a question of law, in a case which has arisen in a case pending before him and not where the trial has not begun. 1 Bom. L. R. 521.
2. On a reference by Presidency Magistrate on a point of law, High Court cannot deal with facts, nor any other objection against the proceedings. 33 C. 193, 7 C. W. N. 554.
3. Presidency Magistrate cannot refer a point of law covered by an authority. 54 B. 146=1930 Bom. 49=31 Cr. L. J. 633=124 I. C. 106.
4. Reference is confined to question of law necessary to dispose of a pending case. 1929 C. 756=34 C. W. N. 13.
5. When a Magistrate has once become properly seized of a case by transfer or otherwise, a superior Magistrate cannot take action except by withdrawal or under chapter 32. 57 C. 17=1929 C. 457.

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1. A Sessions Judge, before he refers a case to High Court is bound to call for an explanation of the order passed and should submit this explanation with the record. 8 C. 644.
2. The reference should contain recommendation that sentence should be altered or revised. 27 A. 25.
3. The District Magistrate should give abstract of the case and the grounds on which he considers the order incorrect. 9 Cr. L. J. 502.
4. Reasons for the reference should accompany the record. 1891 A. W. N. 80.
5. For a reference to Full Bench under S. 434, Cr. P. C., the point should be formulated. *Whether 49 M. 913 was correctly decided, is not a desirable form of reference.* 46 M. 605.
6. A Sessions Judge while making a reference to the High Court must make comment on the explanation tendered by the Magistrate. 1932 A. 683.

9. High Court's power in dealing with—.

See Against acquittal.

1. If a District Magistrate refers a case on the ground that a Magistrate has not honestly applied his mind to and has taken a distorted view of the case, the High Court before acting upon his opinion will look into the facts itself. 44 C. 703.
2. In case of discharge, High Court will not interfere, unless it is perverse and foolish. 11 O. L. J. 334, 62 I. C. 590.
3. Where the reference is entirely on merits, the Sessions Judge having been inclined to take a view of the evidence different from that of the Magistrate, the High Court should not interfere under S. 438. Cr. P. C. 30 Cr. L. J. 579=1923 C. 169=116 I. C. 164, 56 C. 924.
4. High Court will not interfere in revision against an order of acquittal passed on the illegality of a complaint. 47 A. 409.

10. On a question of law.

1. District Magistrate or Sessions Judge is to report the incorrectness or illegality of the sentence or order and not that he should refer abstract points of law to the High Court. 50 C. 316.
2. Where a Sessions Judge after having asked the opinion of the assessors in a case tried by him made a reference to the High Court whether he had jurisdiction or not, the reference is not in accordance with law. 2 A. 771.
3. A Sessions Judge or District Magistrate cannot refer a case on a point arising in appeal pending before him. 13 A. L. J. 477, 105 I. C. 802.
4. A Presidency Magistrate can refer on a point of law. *See By Presidency Magistrate.* See 32, Cr. P. C.

Reference—(contd.)

ordinary case and there ought to be no reference merely upon the difference of opinion as to the value of evidence. Even if there is error of law, reference should not be made unless it is of such a character that interference by higher authority is necessary. 58 C. 1081=1931 C. 619=32 Cr. L. J. 1237=134 I. C. 915.

2. Where a Magistrate has discharged an accused person under S. 107, Cr. P. C., the Sessions Judge has no jurisdiction under S. 436 to set aside the order of discharge and direct further enquiry. He can only report under S. 438 to High Court. 53 A. 148.

4. Against verdict of Jury. See Jury.

5. By District Magistrate against order of Sessions Judge. S. 438, Cr. P. C.

1. District Magistrate has no power to question the order of Sessions Court, which is a Superior Court and refer the matter to the High Court. 46 A. 851 (855), 28 A. 91, 41 B. 47, 5 L. 11, 23 C. 249-250, 18 C. 136, 36 A. 378, 10 A. 146, 24 Cr. L. J. 573, 1933 L. 433 (2)=34 Cr. L. J. 371, 1924 L. 437.
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Reference—(contd.)

11. **To a third Judge if two High Court Judges disagree.** *See* Difference of opinion between two High Court Judges. S. 429, Cr. P. C.
12. **To District Magistrate regarding disposal of property.** *See* Disposal of property. S. 528.
13. **To High Court when accused does not understand proceedings.** *See* Deaf and dumb. S. 341, Cr. P. C.
 1. If the accused is unable to understand the proceedings through deafness or dumbness, or through ignorance of the language of the country or want of interpreter, the High Court will order the detention of the prisoner, during His Majesty's pleasure, rather than to put him on trial. 5 B. 262, 1935 M. W. N. 1287.
 2. If the Judge and Jury find that accused is able to understand the proceedings, no reference can be made to the High Court. He should be sentenced according to law. 97 I. C. 361=27 Cr. L. J. 1097.
 3. In a case under S. 341, the Magistrate must record a finding that the accused had sufficient intelligence to understand the criminal character of his act, otherwise he cannot be convicted. 1930 L. 64=118 I. C. 642=30 Cr. L. J. 948.
 4. S. 341 does not apply if accused though deaf—mute, can understand proceeding. 40 B. 598, 10 L. 566, 1927 L. 799, 3 Bom. L. R. 371, 1903 A. W. N. 47.
 5. S. 341 does not apply if the accused is of unsound mind. In such a case procedure prescribed by Chapter XXXIV should be followed. 5 B. 262.
 6. Magistrate should not refer the case in the middle of the trial. 4 Bom. L. R. 825.
 7. In serious cases under S. 341, it is usually the practice to refer the matter to the Local Government, but in case of minor offences, like petty theft, the accused is sometimes discharged. 1 L. 260, 13 P. R. 1911 Cr., 37 P. R. 1889 Cr. 34 P. R. 1885 and 22 W. R. 35 Ref.
 8. High Court may treat the proceedings as amounting to sufficient trial and pass sentence on the accused. 27 C. 368, 12 Cr. L. J. 386.
 9. Accused was convicted on his confession, indicated by signs of an attempt to commit suicide. High Court sentenced him to one day's imprisonment. 1923 B. 194=25 Cr. L. J. 660.
 10. High Court declined to draw any presumption against an accused for the recent possession of stolen property because his infirmity prevented him from offering an explanation. 15 Cr. L. J. 578.
14. **To Jirga.** *See* Frontier Crime Regulation.
15. **To Sessions Judge under S. 123, Cr. P. C.** *See* S. 123, Cr. P. C. Security from Habitual offenders—33.
16. **To Superior Magistrate when Magistrate cannot pass adequate sentence.** S. 349, Cr. P. C. *See* Sentence.
17. **When proper.**
 1. If a District Magistrate considers that a Magistrate had no jurisdiction to try a particular case, he cannot quash proceedings but refer the case to the High Court. 23 M. 540.
 2. When a Sessions Judge considers that the judgment or order is contrary to law or the sentence is severe, he can refer the case to the High Court. 20 W. R. 60, 2 Weir 564.
 3. A necessity of altering conviction from one section to another is not a sufficient ground for a reference. 9 C. 847.
 4. Reference cannot be made on the ground of insufficiency or incredibility of evidence. 1831 A. W. N. 12, 17 C. P. L. R. 35, 18 W. R. 7.
 5. When District Magistrate or Sessions Judge can himself make the order, a reference is illegal. 28 C. 102, 7 P. W. R. 1914 Cr., 13 A. L. J. 477, 15 Cr. L. J. 477.
 6. Reference cannot be made on the report of Jail Daroga. 1691 A. W. N. 80.

Reference—(concl'd.)

7. When an appeal is preferred to the Sessions Judge, he cannot without disposing of the appeal under S. 423 make a reference to the High Court. 1884 A. W. N. 130.
8. If the Sessions Judge tries an assessor case with Jurors as Jurors and not assessors and disagrees with their verdict, he can refer the case to the High Court. 23 B. 696, 25 C. 555.
9. In a case falling under S. 307, Cr. P. C., the reference can be made by the Judge who held the trial and not his successor. 2 C. L. J. 48.
10. Reference should not be made when the only objection is to the finding of the Lower Court on merits. It is not the rule of the High Court to interfere with decisions of facts upon evidence except for very special reasons. 58 C. 1081.
11. Report under S. 438, Cr. P. C., should not be made when the trial Magistrate has to determine whether process is to issue or not. 1931 R. 255=32 Cr. L. J. 950.

REFORMATORIES—CONFINEMENT OF JUVENILE OFFENDERS IN— See Juvenile offender.**REFORMATORY SCHOOLS' ACT (VIII OF 1897).****General.**

1. Period of detention in Reformatory School should be exactly fixed by the Magistrate. 14 Cr. L. J. 256=15 Bom. L. R. 306.
2. The sentence of first youthful offenders whose antecedents are not shown to be bad to ordinary jails has the effect of making them hardened criminals after their discharge from such jails. 1926 L. 611=96 I. C. 390=27 Cr. L. J. 934.
3. The sentence passed on the juvenile offender should not exceed the sentence passed on his co-accused. 46 B. 429=1922 B. 169=65 I. C. 445.

S. 4.

It is illegal to order detention of a boy over 15 in a Reformatory School. 1924 R. 16.

S. 8.

1. High Court can order detention of a boy in Reformatory School not only on appeal but in revision also. 1928 Bom. 348=112 I. C. 344=29 Cr. L. J. 1016.
2. A boy under 12 was convicted for stabbing a companion with a knife. The sentence to pay a fine of Rs 100 or in default to go to Reformatory School for 3 years is illegal. 12 Cr. L. J. 244.
3. In the absence of a sentence of imprisonment an order for detention in Reformatory School is invalid. 34 P. R. 1910 Cr., 18 P. R. 1907.

S. 9.

A second class Magistrate not empowered to act under S. 8 must refer his case to the District Magistrate. 26 I. C. 336=16 Cr. L. J. 52.

S. 11.

There must be a clear finding as to the age of the accused before sending him to Reformatory School. 3 R. 218=1925 R. 302=85 I. C. 708.

S. 16

The High Court will not interfere with an order directing detention in Reformatory School but it is not precluded from altering the sentence of imprisonment into a sentence of whipping and in the latter case the order of detention falls to the ground. 21 A. 391, 13 Cr. L. J. 44.

S. 31.

1. S. 31 empowers the Court to deliver a youthful offender to his parents, with or without sureties for his future good behaviour. 39 A. 141=36 I. C. 492.
2. It is undesirable that a girl of 10 should be sent to prison even for an offence of murder. In such a case S. 31 should be applied. 1921 O. 190=23 Cr. L. J. 145.
3. A boy of 14½ years convicted under S. 411, I. P. C., cannot be let off after mere admonition. Six months' rigorous imprisonment is not proper. A security for good behaviour for one year was thought to be sufficient in the case. 1923 P. 297.

Refreshing Memory.

REFRESHING MEMORY.— Ss. 159, 160, 161, Evidence Act.

1. Benefit of refusal to—

1. If the Police Officer refuses to refresh his memory with reference to Police diary, the accused is entitled to the benefit of such refusal. 1925 P. 131=86 I. C. 274=26 Cr. L. J. 738.
2. Judge is not bound to compel the witness to look at the so-called diary in order to refresh his memory, and that it is wholly within his discretion whether he should do so or not. 8 C. 739=12 C. L. R. 233.
3. A prisoner is not entitled to insist that a memorandum made by a Police Officer shall, in the course of his examination, be referred to by the latter for the purpose of refreshing his memory. 8 C. 154, 11 Bom. H. C. R. 120 Dist.

2. Compelling witnesses for—

Court should compel a Sub-Inspector to refresh his memory with reference to Police diary, if he does not remember the facts relevant to the case. 1924 P. 829, *Contrat* 8 C. 739=745, 8 C. 154=156.

3. Documents for—

1. *List of discovery of stolen articles* can be used by a person to refresh his memory at the time of giving evidence but the list is not itself evidence. 1924 L. 727=23 Cr. L. J. 1347, 1933 S. 229 or list of *stolen property* given by complainant to supplement first information report. 1933 L. 987.
2. *Memorandum* kept by a witness can be used to refresh his memory. 1930 N. 24=120 I. C. 224.
3. *Notes of speech* are admissible under S. 159, Evidence Act. 1930 L. 867, 32 M. 384, 32 M. 12.
4. When a Police Officer refreshes his memory from the *Police diary*, the defence is entitled to inspect only the portion from which he refreshes his memory. 2 P. 74.
5. *Post-mortem Notes* of Medical Officer cannot go on the record *en bloc*, although they can be used for refreshing memory. 9 C. 455=460, 1930 S. 225, 4 C. W. N. 129.
6. A copy of *statement of injuries* recorded in the register of medico-legal cases may be used by the medical witness for the purpose of refreshing his memory but it cannot be treated as evidence. 1926 L. 51=89 I. C. 458=26 P. L. R. 533, 9 C. 455
7. A copy of an *Unstamped Receipt* though inadmissible in evidence can be used by a witness to refresh his memory. 1923 N. 32=68 I. C. 494.
8. *Printed matter* is also included in the word "writing" used in S. 159, Evidence Act. 1930 L. 371=120 I. C. 798=31 Cr. L. J. 168.
9. A witness can refresh his memory by referring in Court to a document which he had read at or about the time of the transaction and it is the fact that he had known it to be correct when he read it and that is the justification for his doing so. It is immaterial that the document was not printed by him or in his presence. 1930 L. 371=120 I. C. 798=31 Cr. L. J. 168.
10. *Recitals in old documents* as to the date of the death of a person are admissible for refreshing memory. 1923 C. 378=72 I. C. 985.
11. A witness is entitled to refer to *horoscope* made at the time to refresh his memory. 41 A. 63, 1923 N. 164=71 I. C. 140, 12 Mys. L. J. 133.
12. An *age certificate* given by a medical man to his patient can be used by the medical man under S. 159. 33 I. C. 142.
13. Police Officer cannot depose to the *statements taken by Police*, by refreshing his memory on referring to the diary. 11 Cr. L. J. 117, 1928 A. 283, 29 Cr. L. J. 472.
14. If the witness can swear to a particular fact on seeing a writing which he knows to be genuine, he may refresh his memory by referring to it. 49 C. 573.
15. *Police diary* can be used to assist the Court, as by suggesting means of elucidating points, otherwise left in doubt and only the Police Officer who kept it can be confronted with it. 19 A. 390, 44 I. A. 137.

Refreshing Memory—(concl'd.)

16. **Dying declaration** may be used for the purpose of refreshing the witness's memory. 8 C. 211.
 17. A document used by a witness to refresh his memory under S. 159 is not evidence *per se*, and need not be produced. 7 L. 91=1926 L. 310, but *see* S. 161; 2 I.C. 535.
 18. A witness may refresh his memory with regard to insufficiently or unstamped document. 1923 N. 32=68 I. C. 494.
 19. An entry in a medical register or a recovery list of stolen property is no evidence by itself. 1926 L. 51=26 Cr. L. J. 1370, 27 C. 295, 9 C. 455, 1924 L. 727=26 Cr. L. J. 1347.
 20. A document otherwise inadmissible in evidence, may be used to refresh memory. 5 C. 353.
 21. A Barrister in proving a statement of a witness at a previous trial, may refresh his memory from the notes taken by him of the proceedings. *Taylor, S. 1412*.
 22. S. 159 does not apply to illiterate witness, as the section requires that the document which is sought to be used to refresh his memory must have been written or read by witness. *Monir's Ev., Act Ed. 1936, P. 1065*.
 23. A copy is inadmissible for the purpose of refreshing the memory of a witness if the non-production of the original is not sufficiently accounted for. S. 159, Ev. Act.
 24. If the witness, having no recollection of the fact, is sure that facts were correctly represented in the document at the time he wrote it or read it, the document may be given in evidence. 32 M. 384, 7 L. 91, 54 M. 678, 1932 L. 7.
4. **Ground for—**

The grounds upon which the opposite party is permitted to inspect a writing and to refresh the memory of a witness are threefold; (i) to secure the full benefit of the witnesses' recollection as to the facts, (ii) to check the use of improper documents, and (iii) to compare his oral testimony with his written statement. 8 C. 739=12 C. L. R. 233.

REFUSAL TO ANSWER QUESTION.

1. **By accused.** *See* Examination of accused.
2. **By witness.** S. 179, I. P. C. *See* Public Servant—42, Privileges—10, Contempt of Court.
3. **In investigation.** *See* Investigation.
4. **Presumption from—** *See* Presumption—10.

REFUSAL TO BE MEDICALLY EXAMINED. *See* Medical Examination.

REFUSAL TO REFER TO DIARY. *See* Diary—8.

REFUSAL TO SIGN STATEMENT. S. 180, I. P. C. *See* Public Servant—43.

REFUSAL TO TAKE OATH. S. 178, I. P. C. *See* Public Servant—40.

REGISTRATION ACT (XVI OF 1908).**Ss. 82 & 83.**

1. Before a prosecution under the Registration Act could be commenced the permission by a Registration officer should be given. 39 A. 293, 38 A. 354, 1921 A. 205.
2. For the institution of proceedings by a private person for offence under the Act, the permission of the officer specified in S. 83 is not a preliminary requisite. 40 M. 880.
3. Putting the thumb impression by an accused as that of another in column I of the registration form No. 8 is an offence under S. 82. 6 P. 305=1923 P. 129.
4. The identifying witness must have direct knowledge of the identity of a person, and the facts, it is essential for an offence. 1922 N. 86=66 I. C. 527.
5. Sub-Registrar cannot inquire as regards truth or falsity of recital, and false recital is no offence. 1924 P. 754=81 I. C. 124.

Registration Act (XVI of 1908)—(concl'd.)

6. When an accused is convicted under Ss. 419—414 subsequent trial under S. 82 is not barred. 1927 R. 303=105 I. C. 236.
7. Accused was ordered to be prosecuted under Ss. 82 and 471, I. P. C., but the order under the former section was found illegal. Yet the order under S. 471 remains. 1929 P. 500=119 I. C. 888.
8. High Court cannot interfere with Registrar's order. 1923 P. 155=57 I. C. 511.
9. No sanction is required for a prosecution under S. 82. 1 R. 299=1929 R. 213.
10. Prosecution under S. 83 cannot be commenced by private person without permission under S. 83. 1927 R. 61=99 I. C. 401=28 Cr. L. J. 145.
11. Merely assuming the name of a non-existent person is no offence. 1935 M. 913=159 I. C. 155, 4 M. H. C. R. 18 Foll.

RELATIONSHIP. See Witness—89. Transfer (Grounds)—78.

RELEASE ON PROBATION. S. 562, Cr. P. C. See First offender.

RELEVANCY OF FACTS. S. 5, Evidence Act. See Facts.

1. Admissibility and—.

Every relevant fact is not necessarily admissible, though where the relevancy of a fact is established, there is a presumption of its admissibility, and it is for the person objecting to show that the fact is not admissible. 16 B. 661 (668).

2. Burden of proving—.

Except where S. 11 is applicable, no presumption of legal relevancy attaches to facts logically relevant, and the person tendering evidence of a fact has to show that it is relevant under some section of the Act. 5 C. 744 (754), 7 A. 385 (399).

3. Court can ask cross-examiner to show—. S. 136, Evidence Act.

1. S. 136, Ev. Act, empowers the Court to ask a party tendering evidence of a particular fact to show how it would be relevant. 12 A. 126.
2. If the Court is in doubt as to the relevancy of evidence the decision should be in favour of its relevancy rather than against it. 12 A. 126.
3. In cross-examination the power to require counsel to satisfy the Court as to the relevancy or object of the question asked should be sparingly exercised. *Wignmore, S. 1871.*
4. In cross-examination, the great art is to conceal from the witness the object with which the question is put, and this object is likely to be defeated if the cross-examiner were to explain the object. *Best, S. 659.*

4. Instances of relevant conduct. See Conduct.

5. Objections to—.

1. Objections to the admissibility of evidence should be decided as they arise. 25 C. 401, 17 C. 173.
2. Objections to evidence should, as a rule, be decided by the Court at once and not reserved for future decision. 1926 C. 752=93 I. C. 101, 1925 A. 405=26 Cr. L. J. 881, 98 P. L. R. 1918, 25 C. 401, 17 C. 173. But see 56 B. 36.
3. Omission to object to irrelevant evidence cannot make it relevant. 25 C. 736.
4. An accused cannot give a valid consent to any material irregularity of procedure. 46 M. 117, 4 L. 376=1924 L. 104.
5. Neither the omission of party to object to the reception of irrelevant evidence, nor consent of parties to the reception of such evidence, can make it relevant. 19 A. 76 (P. C.), 52 C. 67, 1924 C. 1042, 49 C. 93, 1925 C. 887=25 Cr. L. J. 606, 23 C. 736.

RELIGION. Ss. 292—295, I. P. C.

1. Attack on religion or its founder. S. 295-A, I. P. C.

1. A scurrilous and foul attack on a religion or its founder comes within the purview of S. 153-A as well. 1927 L. 574=23 P. L. R. 497 overruling 23 P. L. R. 514.

Religion—(concl'd.)

2. It must be shown that accused acted with deliberate and malicious intention of outraging the religious feelings of the class. (1929) 31 P. L. R. 880.
2. Defiling place of worship. *See* Defiling place of worship. S. 295, I. P. C.
3. Disturbing religious assembly. *See* Disturbing religious assembly. S. 296, I. P. C.
4. Disturbing funeral ceremony. *See* Trespass on burial places, S. 297.
5. Trespass on burial places. *See* Trespass on burial places, S. 297, I. P. C.
6. Wounding religious feelings. S. 298, I. P. C.
 1. Accused defiantly carried the flesh of cow sacrificed by him on Bakrid in an uncovered state round the village. The exposure is intended to wound the feelings of Hindus and is punishable under S. 298. 1893 A. W. N. 144.
 2. The intention to wound religious feelings cannot be presumed from the fact that Mohammadans were driving the cows intended for sacrifice, in front of Hindu shops. 4 P. R. 1890 Cr.
 3. Hindus killed goats by strangulation and not by cutting and thereby wounded the religious susceptibilities of Mohammadans. Held, they are not guilty. 26 P. W. R. 1912 Cr. = 16 I. C. 169.
 4. Interpolation of a forbidden chart in an authorized ritual amounts to an offence under S. 298. 4 P. R. 1890 Cr.
 5. Where the Sikh killed some fowls by *Jhatka* in the vicinity of mosque and the Mohammadan killed a cow with the intention of wounding religious feelings of Hindus, no offence under S. 295, I. P. C., was committed. 10 P. R. 1918 Cr.
 6. Slaughter of kine is not punishable under Punjab Laws Act, 1872, in the absence of rules prescribed by Local Government extending to the District. 20 P. R. 1888 Cr.

REMAND. S. 167, Cr. P. C. *See* Detention, Adjournment.

1. Access to legal adviser at the time of—

1. Proceedings under S. 167 are Judicial and fall under S. 340, Cr. P.C. Accused should have access to legal advice even while he is in Police custody. An interview with Pleader should not be refused, when accused is remanded to Police custody under S. 167. 1930 L. 915, 12 L. 16, 50 B. 741, 12 L. 435.
2. An accused has a right to be represented by Counsel in proceedings before a Magistrate under S. 167, Cr. P. C. 12 L. 435
3. Police should not refuse the legal adviser of the accused to interview or to refuse to allow the relations of accused to supply him food and clothing. 1932 L. 13=12 L. 211, 1930 L. 945=12 L. 16.
4. Magistrate should inform the accused that he is Magistrate and that a remand is applied for and to ask him if he has any objection to offer. He should be given opportunity to send for Counsel. He can give temporary remand till arguments are heard. 1935 L. 230=35 Cr. L. J. 1180=150 I. C. 1056.

2. Choice of Magistrate for—

The practice of obtaining remand from any Magistrate at the choice of the Police is objectionable. In the absence of special reasons, such as distance or other difficulties of the like nature, the Magistrate in charge of *staka* should be approached for remand. 12 L. 435=1931 L. 99.

2. Accused should be sent to the nearest Magistrate whether he has got jurisdiction to try the case or not. 45 M. 14, 12 Cr. L. J. 15.
3. A Deputy Commissioner of Police of Calcutta, who is Justice of the Peace cannot grant remand. 1926 C. 1121, overruling 1926 Jour 190.

3. Custody—nature of—

1. The law views with disfavour detention in the custody of the Police. Such a detention under S. 167 can be allowed only in special cases and for reasons to be recorded. 12 L. 635, 31 P. L. R. 693.
2. When after due consideration the Magistrate remanded the accused to Police custody the custody cannot be held to be illegal. 12 L. 211.

Remand—(contd.)

3. Detention in Police custody should be allowed in special cases and for such limited period as the necessities of the case might require. 8 O. W. N. 1210, 12 L. 435, 31 P. L. R. 693.
 4. The power under S. 167 is given to detain the prisoners in custody while the Police make investigation and before inquiry but the custody mentioned in S. 344 is quite different. 11 M. 98, 23 B. 32, 51 C. 402.
 5. An approver cannot be detained in the custody of Police. 32 P. L. R. 723, 12 L. 635.
 6. Where period of remand permissible under S. 167 has expired the Magistrate cannot make a fresh remand to Police custody. If the Police ask for a remand under S. 344, it can be only to Judicial lock-up. 12 L. 435.
 7. A Magistrate cannot keep in custody an accused person for the purpose of investigation, when there is no Police investigation. 52 A. 457.
4. Nature of proceedings.
1. A Magistrate acting under S. 167 has to weigh evidence to decide whether the prisoner should be detained in custody or not. Weighing of such evidence is judicial function. 1930 L. 945=12 L. 16.
 2. Accused is not entitled to a copy of report to the Magistrate under S. 157, as it is an extract from Police diary and is protected under S. 172. 20 M. 189.
5. Grounds and reasons for—
1. If a Magistrate remands the accused he must record reasons. 23 B. 32, 21 C. 642, 16 C. W. N. 145, 1933 O. 315, 1931 L. 200, 12 L. 435—635, 36 A. 262, 6 A. 119.
 2. The Magistrate should note all the information that he is able to obtain on the subject, e. g., period of detention. 1885 A. W. N. 59.
 3. There must be at least something to satisfy the Magistrate that the presence of the person arrested would during the Police investigation, assist in the discovery of evidence. 11 C. W. N. 554.
 4. The fact that the accused is wanted by the Police for the purpose of pointing out the places through which he passed on his way to commit dacoity or for the purpose of obtaining his identification in the village is not a sufficient reason for sanctioning his detention. 7 C. W. N. 457.
 5. Sanctioning detention to Police custody so that he may be forced to give a clue to the stolen property is improper. 3 N. W. P. H. C. R. 275, (1886) 2 Weir 414.
 6. Remand for the purpose of verifying his confession recorded under S. 164 is improper. 7 C. W. N. 220.
 7. Remanding an accused on a mere expectation that time will show his guilt is illegal. 17 P. R. 1872 Cr.
 8. Accused should not be remanded to Police custody unless his presence is necessary for completing the inquiry. 1895 A. W. N. 59, 1925 B. 387, 1931 L. 200, 11 C. W. N. 554, 25 B. 543.
 9. If the Magistrate thinks that further evidence may be obtained by remand, he can remand the accused to Police custody. 36 C. 166.
 10. The law is jealous of the liberty of the subject and does not allow detention unless there is legal sanction for it. 12 L. 635=1931 L. 476.
 11. The mere fact that Police state that presence of accused is necessary to finish the investigation is not sufficient to order detention. 7 C. W. N. 457.
 12. That property has to be recovered or produced by the accused is good ground for remand. 25 B. 543.
 13. That accused promised to tell the truth is no ground. 1932 O. 11.
 14. Mere omission to record reason by Magistrate who considered the circumstances will not make detention illegal. 1932 L. 13, 1930 L. 945.
6. Object of—

The object is that the accused should be brought before Magistrate competent to try or commit with least delay. 51 C. 402, 11 M. 98.

Remand—(concl'd.)**7. Period of—**

1. Magistrate can remand the accused for a period not exceeding 15 days, but if there is sufficient evidence to suspect that the accused has committed an offence and further evidence may be obtained by remand, he can give further remand. 36 C. 166.
2. Where total period of remand permissible under S. 167 has expired, the Magistrate cannot make fresh remands to Police custody. If the Police asks for remand, it can be under S. 334 and should be to judicial lock-up. 12 L. 435=1931 L. 99.
3. The period of remand to Police custody ought to be restricted to the necessities of the case. 12 L. 435, 8 O. W. N. 1240, 11 C. W. N. 354.
4. The total period of detention in Police custody under S. 167 is 15 days. 23 B. 32, 24 P. R. 1902 Cr., 11 M. 98, 12 L. 435=1931 L. 99.
5. Under S. 344 no limit of period of remand is fixed, although no single order should be for period exceeding 15 days. 1921 A. 617=133 I. C. 617.

8. Procedure.

1. On the expiry of 15 days allowed under S. 167, the Police must either release the accused under S. 167, security being taken if required or the Magistrate must take cognizance on a report under S. 173, if the report discloses *prima facie* case, or the Magistrate must release him. 1924 C. 614=83 I. C. 628=28 C. W. N. 490.
2. It is imperative that Police Officer should send along with the accused a copy of the entries in the diary which would enable him to decide whether detention is necessary or not. 19 A. 390, 6 M. 69.
3. Magistrate should inform the accused that he is a Magistrate and that a remand is applied for. He should ask the accused how long he had been in Police custody and whether he has any objection to offer. He should be given opportunity to send for counsel. He can give temporary remands until arguments are heard. It is not enough to walk past cells announcing remands. 1935 L. 230=150 I. C. 1056=35 Cr. L. J. 1180.

9. Who can give—

1. An application for remand must be made personally by the Chief Police Officer present to the Chief Magisterial Officer present, unless this is impossible owing to the absence of one of the officers concerned or through some other exceptional case. 16 C. W. N. 145.
2. The practice of obtaining remand from any Magistrate at the choice of the Police is objectionable. Ilaka Magistrate should be approached in general in the absence of special reasons such as distance or similar difficulties. 12 L. 435.

REMANDING OF CASE.

In case of appeal under S. 476-B., Cr. P. C., in Civil proceedings the Court has power to remand matter to lower Court for disposal. 1934 M. 52=57 M. 177. 1931 C. 604 Foll. *Case Law discussed.*

REMARKS.

1. About conduct of officials. *See Court duty—27.*
2. About guilt of accused. *See Court's duty—28.*
3. Against persons not before Court. *See Court's duty—29.*
4. Expunging—. *See Expunging remarks.*

REMOVING LADDER (FROM A WALL). *See Wrongful restraint—6.*

REMOVING LATERAL SUPPORT. *See Wrongful loss—5.*

REPETITION.

1. Of confession. *See Confession to Police Officer.*
2. Of defamation. *See Defamation—39.*
3. Of Public Nuisance. *See Public Nuisance.*

Report.

REPORT.

1. First information—. See First information report.
2. Inquest—. See Inquest report.
3. Of an Officer. See Defamation—41.
4. Of Police. See Police report.
5. Of proceedings of Court. See Defamation—40.
6. Of proceedings of Legislative Council. See Interpretation of statute.

REPUTATION—HARMING OF. See Defamation—43.

RES GESTAE. See Facts forming part of the same transaction—3.

RES NULLIUS. See Receiving stolen property—15.

RESERVED ACCOMMODATION. See Railway Act, S. 42.

RESERVING CROSS-EXAMINATION. See Cross-examination—21.

RESERVING DEFENCE— See Defence—12.

RESILING FROM PREVIOUS STATEMENT. See Witness—90.

RESISTANCE TO ONE'S ARREST. S. 224, I. P. C.

1. A speaker asked people to join Congress and preached boycott of British goods and resorting to Civil disobedience. He is not guilty under S. 17 (1) or (2) but his resistance to his being apprehended in an offence under S. 224, I. P. C. 1932 L. 615 (2).
2. To sustain a charge under S. 224 or S. 225 the arrest and detention should be legal. 81 I. C. 312=25 Cr. L. J. 792, 81 I. C. 312.
3. A Sub-Inspector was about to arrest a person and a crowd carrying lathis began to assemble and he abandoned the arrest through fear. Held, there was a no obstruction under S. 224. 1925 A. 308=26 Cr. L. J. 766.
4. The fact that accused surrendered himself the following morning does not cure the offence. 24 Cr. L. J. 307.
5. If a man gains his liberty before he is delivered by due course of law, he is guilty, e. g., when accused was rescued by friends from the custody of process-server and he took advantage of it and disappeared. 72 I. C. 67=1923 R. 133.
6. When a *sheristadar* signed a warrant by order, it can be presumed to be legal. 1923 C. 584=73 I. C. 328=24 Cr. L. J. 584.
7. Illegal consent or neglect of the custodian does not absolve the prisoner from the duty of submitting to the judgment of the law. 72 I. C. 67, 31 M. 271, 18 M. 401, 25 M. L. T. 290, 1 Weir 124.
8. Escaping from Police custody when proceedings under S. 109, Cr. P. C., are pending is an offence under S. 225-B. and not S. 224. 25 Cr. L. J. 462.
9. The prisoner may be wrongly charged for an offence but that does not make his custody illegal. 43 C. 1161.
10. Where a person was lawfully arrested by a private person and made over to *chawkidar*, the custody of *chawkidar* is not lawful and escape from him is not an offence under S. 224. 27 C. 366, 14 A. L. J. 789.
11. If the judgment-debtor is released at the instance of decree-holder from the custody of process-server, there is no escape from lawful custody. 7 I. C. 392.
12. Where accused was arrested and was being taken over to Magistrate for being bound over for good behaviour, his escape from custody falls under S. 224 or S. 225 A., I. P. C. 8 C. 331, 7 A. 67, 9 A. 452.
13. Persons escaping from lawful custody with rescuer's help can be jointly tried with them. 1936 P. 20=15 P. 138=37 Cr. L. J. 240, 15 B. 491; 30 B. 49; 1927 C. 330; 21 Cr. L. J. 161; 1930 P. 159; 43 C. 1161; 1932 P. 171; 1933 L. 159=34 Cr. L. J. 679; 46 A. 95 (P. C.)=1924 P. C. 50; 1923 A. 88; 20 Cr. L. J. 768; 6 C. 171; 50 A. 412=1928 A. 20; 3 L. 359=1922 L. 458 and 7 Bom. L. R. 637 Ref.

resolution.

RESOLUTION.

Of Bar Association. See Legal Practitioners Act, S. 36.

Of Panchayat. See Panchayat.

RESTORATION.

Of absconder's property. See Absconding—7.

Of abducted female. S. 552, Cr. P. C. See Restoration of abducted female.

Of immovable property. See Dispossession from immovable property.

Of moveable property. See Disposal of property. S. 517, Cr. P. C. Inherent powers—9.

RESTORATION OF ABDUCTED FEMALE. S. 552, Cr. P. C.

1. S. 552 has reference to adultery, concubinage, prostitution, etc., but does not include the detention of a Christian child in Mahomedan institution in order that she may be a Mahomedan. 16 C. 487, 4 Bom. L. R. 609.
2. The detention of a girl by the father in his house against the will of her husband is not unlawful detention, unless the detention is contrary to the wishes of the girl. 15 Cr. L. J. 712.
3. If a woman is residing with her relatives who are aiding her in getting divorce, such detention is not unlawful. 2 Weir 724.
4. Detention of a child in a missionary school against the wishes of the parents would be unlawful detention. 16 C. 487.
5. An application under S. 552 does not necessarily allege the commission of an offence, and is not a complaint, consequently the provisions of Ss. 200 and 203 do not apply. 4 Bom. L. R. 609.
6. Where a girl is living with another person, the mother is entitled to her charge, provided she is under 16 years. 1935 R. 494, 16 C. 487 Not foll.

RETRIAL.

Acquittal of accused for absence of complainant bars — See Absence of complainant, S. 247, Cr. P. C.

After discharge of Jury. See Jury.

Appellate Court's power to order — See Appeal—38.

1. Accused was convicted on one charge but was acquitted on other charges. Appellate Court cannot order retrial on all the charges, when it sets aside the conviction. 1935 C. 120=154 I. C. 609.
2. The Sessions Judge has no power to order a retrial with the condition that evidence already on record should be considered. 1935 N. 125 (2)=36 Cr. L. J. 740.

Charge—alteration of charge necessitating. S. 229, Cr. P. C.

1. If the amendment of charge raises a different question of law and would admit of a different line of defence, the accused would be prejudiced and a new trial would be necessary. 6 B. H. C. R. 76.
2. Where the original and altered charges are nearly related to each other and the accused did not object to the amendment, a new trial is not necessary. 11 B. H. C. R. 278.
3. When a new charge was read aloud to Jury but was not explained to the prisoner and he was not called upon to plead to that charge but his counsel when asked did not require a new trial. Held, that omission did not affect the trial. 8 B. 200.

Composition of offence bars— See Compounding offences—12.

A composition has the effect of an acquittal and not a discharge and therefore a complete bar to prosecution for the same offence. 22 P. L. R. 1910.

Delay in ordering— See Delay—19.

*Retrial—(contd.)***7. District Magistrate's power to order—.**

District Magistrate cannot order retrial of a case, although he can order further enquiry. 52 A. 257=1930 A. 257=31 Cr. L. J. 995=126 I. C. 253.

8. Grounds for and against—.

1. That the reasons given by the trying Magistrate in rejecting the prosecution evidence are open to objection, is no ground for ordinary retrial. 1927 A. 727=105 I. C. 658=28 Cr. L. J. 946.
 2. When the finding of the trial Court is vitiated by erroneous assumptions and unwarranted conjectures, a retrial should be ordered. 106 I. C. 682.
 3. If the prosecution is rejected as being doubtful, retrial should not be ordered. 1930 L. 543=31 P. L. R. 729, 1921 M. 687=69 I. C. 330.
 4. In an order of a Magistrate if the Sessions Judge thinks that the charge was triable by him, he should order that the accused be committed for trial. 1922 A. 345=67 I. C. 728=23 Cr. L. J. 456.
 5. If there is no reasonable probability of conviction, retrial should not be ordered. 50 M. 274, 8 O. W. N. 1215.
 6. If one of the jurors expresses his opinion outside the Court before the trial is concluded and the fact is brought to the notice of Judge, a retrial should be ordered. 1921 C. 631=62 I. C. 334=25 C. W. N. 240.
 7. Where the cross-examination of prosecution witnesses was perfunctory owing to Counsel's inaptitude and facts were not ascertained under S. 320 read with S. 34, Penal Code, retrial should be ordered. 1924 C. 257=25 Cr. L. J. 817.
 8. When acquittal is set aside for non-compliance of the provisions of S. 342, Cr. P. C., High Court cannot determine whether accused should be retried. 51 C. 924.
 9. When the evidence is held to be false it is not desirable to order retrial on amended charge after acquittal. 82 I. C. 364.
 10. The mere fact that Magistrate places a different value on discrepancies in evidence is no ground for retrial. 1921 L. 214=60 I. C. 55=3 L. L. J. 97.
 11. If the accused is prejudiced, when convicted for an offence for which no charge was drawn up, retrial should be ordered. 1925 C. 581=84 I. C. 708.
 12. A Judge can refuse to order a retrial on the ground of illegal joint trial, if he considers that accused have already undergone sufficient punishment. 1931 L. 767=33 Cr. L. J. 145=135 I. C. 805.
 13. A retrial cannot be ordered simply because some evidence was improperly admitted. 1931 M. W. N. 1067.
 14. Smallness of a fine inflicted on accused for causing injury by fireworks shows that Magistrate did not take serious view. Retrial was not ordered as accused were punished in pocket by proceedings. 1925 A. 301 (2)=86 I. C. 222.
 15. In exceptional cases where the evidence is of such a character as to suggest the consideration that its real value cannot fairly be appreciated, except by the Court which heard the evidence, a new trial will be directed. 6 Bom. H. C. R. 47.
 16. Retrial should not be ordered too lightly. 1935 C. 184.
 17. When a reference has been made under S. 307 (3), Cr. P. C., and there has been no proper trial, retrial may be ordered. 1935 C. 184. 22 M. 15, 19 Cr. L. J. 868, 1921 C. 631=62 I. C. 334, 50 C. 41=1923 C. 453 and 1925 C. 575=52 C. 403 Ref.
- 9. High Court's power to order—in revision. S. 439, Cr. P. C.**
1. When acquittal is wrong High Court can order retrial. 1929 N. 87.
 2. It will not be right to help the Prosecution by shaping its case afresh, when the whole matter has been threshed out, by ordering retrial. 1925 C. 603=86 I. C. 705.
 3. If the accused was not examined under S. 342, Cr. P. C., map was rejected, defence witnesses were examined as Court-witnesses and the Government refused to appeal and the accused who was acquitted was a European British subject. Held, that

Retrial—(concl'd.)

retrial should be ordered. 1921 C. 269=61 I. C. 655=25 C. W. N. 609.

4. The acquittal cannot be set aside on the ground that in District Magistrate's opinion evidence is sufficient for conviction. 95 I. C. 599=27 Cr. L. J. 823.
5. A different view of evidence by High Court is not sufficient to order retrial. 7 R. 538=120 I. C. 912.
6. An order of retrial in a case of discharge under Ss. 342, 355 and 506, Penal Code, after two years, amounts to travesty of justice. 1923 L. 178=111 I. C. 575=29 Cr. L. J. 895.
7. High Court can direct accused to be committed for retrial. 52 M. 156, 6 A. 40, 15 C. 608, 27 B. 84.
8. If case is not finally disposed of by a Bench the Chief Justice can direct another Bench to hear it. 19 7 M. 951=105 I. C. 686.
9. Where the evidence of previous conviction was discovered after the conviction, the High Court will order a retrial to enable the prosecution to supplement evidence bearing on the question of punishment. 19 P. R. 1905, 36 P. R. 1884, 43 P. R. 1905, Cr.
10. When after the swearing of Jury and reading out charge, the High Court Judge fell ill, another Judge should continue the trial 1927 B. 161=101 I. C. 178=28 Cr. L. J. 402.
10. On transfer of a case. See *De novo* trials.
11. Previous conviction or acquittal bars—. See Previous conviction or acquittal barring trial.
12. Right of prosecution after an order of—.

Where a retrial is ordered, it is always open to the prosecution either to proceed or not to proceed as it may be advised. 1921 C. 257=61 I. C. 1003.

13. Stage of ordering—.

High Court can order retrial from any stage of criminal proceedings. 1932 S. 64.

14. Which Court should try the case after order of—.

1. Where no Court is mentioned by the High Court, it should not be presumed that the High Court's intention was that it should be tried by the same Magistrate. The discretion lies with the Magistrate to choose a Court. 1926 C. 1173=97 I. C. 948=27 Cr. L. J. 1188.
2. When a conviction is upset by the superior Court and retrial ordered, it is desirable that the trial should not be held before the same Magistrate. 1926 C. 1173=97 I. C. 948.
3. When the Magistrate committed an illegality and examined witnesses after it and the Magistrate expressed an opinion on the evidence, the *de novo* trial should be held by another Magistrate. 53 B. 578=1929 B. 309=31 Bom. L. R. 593

15. When arguments not heard.

In an application under S. 488, Cr. P. C., the case was fixed for orders. The Counsel for husband appeared and wished to argue the case and put in some documents but Court ruled him out. Held, the case should be retried. 1930 N. 59=120 I. C. 416=31 Cr. L. J. 110.

16. When accused punished in pocket.

Where the Magistrate inflicts a small fine and accused is punished in pocket by the proceeding, retrial should not be ordered. 1925 A. 301 (2), 86 I. C. 222.

RETROSPECTIVE EFFECT. See Interpretation of Statute.**REVIEW.** S. 369, Cr. P. C.**1. By High Court in its Appellate Jurisdiction.**

1. If the Division Bench of High Court passes an erroneous order in appeal, the only remedy is to make a petition under Ch. XXIX to the Local Government for commuting or setting aside the sentence. 45 A. 143=1923 A. 473 (2).

Retrial—(contd.)

7. District Magistrate's power to order—.

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52 A. 257=1930 A. 257=31 Cr. L. J. 995=126 I. C. 253.

8. Grounds for and against—.

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3. If the accused was not examined under S. 342, Cr. P. C., map was rejected, defence witnesses were examined as Court-witnesses and the Government refused to appeal British subject. Held, that

Retrial—(concl'd.)

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5. A different view of evidence by High Court is not sufficient to order retrial. 7 R 538=120 I. C. 912.
6. An order of retrial in a case of discharge under Ss. 342, 355 and 506, Penal Code, after two years, amounts to travesty of justice. 1923 L. 178=111 I. C. 575=29 Cr. L. J. 895.
7. High Court can direct accused to be committed for retrial. 52 M. 156, 6 A. 40, 15 C. 608, 27 B. 84.
8. If case is not finally disposed of by a Bench the Chief Justice can direct another Bench to hear it. 197 M. 951=105 I. C. 686.
9. Where the evidence of previous conviction was discovered after the conviction, the High Court will order a retrial to enable the prosecution to supplement evidence bearing on the question of punishment. 19 P. R. 1905, 35 P. R. 1884, 43 P. R. 1905, Cr.
10. When after the swearing of jury and reading out charge, the High Court Judge fell ill, another Judge should continue the trial. 1927 B. 161=101 I. C. 178=28 Cr. L. J. 402.
10. On transfer of a case. See *De novo* trials.
11. Previous conviction or acquittal bars—. See Previous conviction or acquittal barring trial
12. Right of prosecution after an order of—.

Where a retrial is ordered, it is always open to the prosecution either to proceed or not to proceed as it may be advised. 1921 C. 257=61 I. C. 1003.

13. Stage of ordering—.

High Court can order retrial from any stage of criminal proceedings. 1932 S. 64.

14. Which Court should try the case after order of—.

1. Where no Court is mentioned by the High Court, it should not be presumed that the High Court's intention was that it should be tried by the same Magistrate. The discretion lies with the Magistrate to choose a Court. 1926 C. 1173=97 I. C. 948=27 Cr. L. J. 1188.
2. When a conviction is upset by the superior Court and retrial ordered, it is desirable that the trial should not be held before the same Magistrate. 1926 C. 1173=97 I. C. 948.
3. When the Magistrate committed an illegality and examined witnesses after it and the Magistrate expressed an opinion on the evidence, the *de novo* trial should be held by another Magistrate. 53 B. 578=1929 B. 309=31 Bom. L. R. 593

15. When arguments not heard

In an application under S. 488, Cr. P. C., the case was fixed for orders. The Counsel for husband appeared and the case and put in some documents but the case and put in some documents but be retried. 1930 N. 59=120 I. C.

16. When accused punished in pocket.

Where the Magistrate inflicts a small fine and accused is punished in pocket by the proceeding, retrial should not be ordered. 1925 A. 301 (2), 86 I. C. 222.

RETROSPECTIVE EFFECT. See Interpretation of Statute.

REVIEW. S. 369, Cr. P. C.

1. By High Court in its Appellate Jurisdiction.

1. If the Division Bench of High Court passes an erroneous order in appeal, the only remedy is to make a petition under Ch. XXIX to the Local Government for commuting or setting aside the sentence. 45 A. 143=1923 A. 473 (2).

Review--(contd.)

2. If a single Judge of the High Court has passed an order dismissing an appeal, a Division Bench cannot review that order by rehearing the appeal. 46 M. 382.
 3. High Court can entertain an application to review a judgment passed by it on appeal in a criminal case. 5 W. R. 61, 1 P. R. 1901, 45 A. 143.
 4. As soon as the appellate judgment is pronounced and signed by the Judges, the High Court becomes *functus officio* and it cannot interfere with it in any way. 14 C. 42, 7 A. 672.
 5. High Court has no power summarily rejecting a criminal appeal but it may do so if the accused had no chance of defending himself. 46 C. 60.
 6. Judgment of two Judges as Criminal Bench cannot be overridden by any other Judge or Bench. 1933 C. 870=34 Cr. L. J. 1100.
 7. Where the High Court has pronounced the judgment and signed it, it becomes *functus officio* and neither the Judge, who passed the judgment nor any other Bench of the High Court has any power to review or reconsider it except for correcting a clerical error. 14 C. 42, 8 P. R. 1909, 23 B. 50, 1927 M. 951=28 Cr. L. J. 974, 1935 A. 446, 47 M. 428. Whether the judgment was passed in appeal. 45 A. 143, 4 B. 101 or in revision. 1935 A. 466, 20 Cr. L. J. 447, 10 L. 241=1929 L. 797=30 Cr. L. J. 815, 38 A. 134. See 1927 A. 724=29 Cr. L. J. 88.
2. By High Court in its inherent jurisdiction. S. 561-A., Cr. P. C.
1. It is wrong that High Court should under S. 491 retry itself a question which has already been determined by the same Court in its ordinary original criminal jurisdiction or to pass an order overriding an order already made by the same High Court. 56 C. 32=1928 C. 367, 61 C. 155.
 2. There is no inherent power in the High Court to alter or review its own judgment once it has been pronounced or signed except in cases where it was passed without jurisdiction or in default of appearance without an adjudication on merits. 10 L. 1, 46 M. 382, 29 Cr. L. J. 669, 61 C. 155, 1935 A. 466=60.
 3. S. 561-A. is of general nature and has no application to the question whether the High Court should review its judgment. 1926 L. 196, 19 B. 732, 56 A. 990.
 4. There is no provision in the Code for reviewing the judgment of subordinate Courts. 19 B. 732.
 5. High Court has power to reconsider the question of sentence when the ends of justice require it. 1928 O. 402=111 I. C. 573=29 Cr. L. J. 893, 1927 L. 139.
 6. A dismissal for default of appearance is not a judgment and the Court may rehear the appeal or revision. 46 M. 382, 1928 R. 283=20 Cr. L. J. 749.
 7. Expunging remarks is not a review of judgment. 2 P. W. R. 1910 Cr.
 8. High Court has inherent powers to review its order for the examination of a witness in Court and substitute one for the examination on commission. 1931 P. 81.
 9. When the appellate or Revisional Court has considered the case, the sentence cannot be reviewed afterwards under its inherent powers. 32 Cr. L. J. 1922.
 10. If the conditions required under S. 421, Cr. P. C., for dismissing an appeal are not complied with, the High Court whether the Bench of same Judges or different Judges can interfere under S. 561-A. 1935 S. 84. 10 L. 1=1928 L. 462, 1923 M. 496=46 M. 382, 58 M. 84, 61 C. 155 and 14 C. 42 Ref. 1927 L. 139=28 Cr. L. J. 239=99 I. C. 1039 overruled by 10 L. 1.
 11. There has never been an inherent power in the High Court to alter or review its own judgment in a criminal case, once it has been pronounced and signed except in cases where it was passed without jurisdiction or in default of appearance without an adjudication on the merits. The remedy of the aggrieved person is to apply to the Local Government to exercise its powers. 1935 A. 60=151 I. C. 714=35 Cr. L. J. 1485, 10 L. 1=1928 L. 462=110 I. C. 221=29 Cr. L. J. 669 overruling 1927 L. 139=28 Cr. L. J. 239 Ref. 1928 O. 402=29 Cr. L. J. 893 and 1927 L. 139 Diss. from.
3. By High Court in its original criminal jurisdictions. S. 434, Cr. P. C.
1. High Court can review the judgment or order of a Judge passed in the exercise of

Review—(contd.)

- its original jurisdiction. 7 A. 672, 10 B. 176, 23 B. 50, 19 Bom. L. R. 695.
2. In the absence of any reservation of a question of law by the trying Judge the High Court is precluded from re-opening a question which has been decided by the single Judge presiding at the trial. 32 B. 111, 1 P. R. 1909 Cr.
 3. The High Court in considering a point of law reserved under S. 434, Cr. P. C., can review the whole case. If it is of opinion that any evidence has been improperly admitted or rejected it can affirm or quash the conviction. 1 C. 207, 17 C. 642, 4 C. W. N. 433, 2 B. 61, 32 B. 111, 1 P. R. 909 Cr.
 4. The High Court, like the Lower Courts can review its judgment before it is signed. 38 C. 828.
4. By High Court in its revisional jurisdiction.
1. A Division Bench of the High Court has no power to alter or review the order of a High Court pronounced in the exercise of its revisional jurisdiction. 7 A. 672, 10 B. 176, 23 B. 50, 19 Bom. L. R. 695, 38 A. 134, 20 Cr. L. J. 447, 26 C. 188, 1929 L. 797=10 L. 241, 1935 A. 466, 2 Cr. L. J. 465, 17 Cr. L. J. 47.
 2. There is no provision in the Code for reviewing the judgments of subordinate Courts. The High Court can revise only such judgments under the ample powers conferred by S. 439, Cr. P. C. 19 B. 732.
 3. A reasonable opportunity to the accused to be heard is a condition precedent to the exercise of jurisdiction under S. 439 when the Court is considering the question of enhancement of sentence and if it is not given its order is void *ab initio*. 47 M. 428=1924 M. 640=46 M. L. J. 456.
 4. Where by mistake a case is posted on a day anterior to that fixed in the notice to the accused, the order is null and void and the High Court is to proceed with the matter afresh after proper notice. 46 C. 60, 47 M. 428, 55 C. 417.
 5. If a revision case is dismissed by High Court for default of payment of printing charges, it cannot be reheard. 1923 M. 276=23 Cr. L. J. 746.
 6. A single Judge of the High Court has no power to alter or revise an order passed by him in revision. 47 M. 428.
 7. High Court has no power to review its judgment pronounced in a criminal revision. 20 Cr. L. J. 447, 14 C. 42, 10 B. 176, 7 A. 672 Foll., 1935 A. 466.
 8. A Division Bench or Full Bench cannot revise the order of a single Judge exercising original criminal jurisdiction. 1 P. R. 1909 Cr.=6 P. R. 1909 Cr.
 9. Where sentence against accused is reduced without notice to the Crown, Court has no right to reconsider the matter as the Crown has no right to be heard in the matter of sentence. 61 C. 155=1933 C. 870.
 10. If the criminal revision is dismissed for default, High Court has no right to entertain a fresh application for the same relief. 13 Cr. L. J. 710, 16 Cr. L. J. 697, 1923 M. 276. *Contra* 1924 L. 310=23 Cr. L. J. 750, 1923 R. 288.
5. By Magistrate or Sessions Judge of its own order or judgment. S. 369, Cr. P. C. See Judgment—1.
1. The Court has no jurisdiction to review or revise its own orders in criminal matters. 1925 O. 476=85 I. C. 383=26 Cr. L. J. 543, 7 Bom. H. C. R. 70, 1935 A. 59.
 2. It is not open to a Magistrate to alter or review his proceedings or judgments in any case after they are signed and published. 10 C. W. N. 1052, 23 B. 50, 25 P. R. 1916, 13 Bom. L. R. 521, 19 Cr. L. J. 225, 1935 S. 84
 3. Where a Magistrate after signing and pronouncing judgment in open Court, on the same day enhanced the sentence at the request of the accused in order to make his order appealable, the order is illegal although the Magistrate acted with the best of motives. 1883 A. W. N. 16.
 4. Accused was charged under Ss. 379—75 and the Sessions Judge sentenced him under S. 379. I. P. C. Next he inquired into the charge of previous conviction. Held, that the subsequent proceedings were invalid, as it amounted to review of the judgment. 42 B. 202.

5. A Magistrate who makes an order under S. 145 without any direction as to costs, has power to order the same subsequently and the latter order is not a review of his judgment. 47 C. 974.
 6. If the Magistrate disposing of an appeal accidentally omits to pass an order under S. 520, it will be open to him or his successor to pass such an order afterwards. 43 M. L. J. 87.
 7. A District Magistrate can order further inquiry into a case in which the order of dismissal or discharge is passed by the District Magistrate himself. 28 C. 102.
 8. Where the District Magistrate has ordered that there was no cause for interfering with the order of discharge, he cannot subsequently order further enquiry, as it amounts to reviewing his order. 5 Bur. L. T. 37.
 9. When mistake has been made in the judgment, e.g. ...
... dismissed as time barred or when an illegal
... open to Judge or Magistrate to alter or review his ...
... course open to him is to submit the case to the High Court. 19 B. 732, 5 Bom. L. R. 360, 22 B. 949, 23 Bom. L. R. 846.
 10. Even if the appeal is summarily rejected under S. 421 for default of appearance, it is not open to review 4 B. 101, *Contra* 7 M. H. C. R. App. 29.
 11. A Sessions Judge cannot alter or set aside a conviction once signed by him on the ground that the sentence passed by him is illegal. 25 P. R. 1916 Cr.
 12. Magistrate cannot add note to his judgment, by which he tries to throw doubts on the conclusions at which he has arrived on the evidence. 2 A 33.
 13. An entry in the order sheet "Enter false, mistake of law" is an order finally disposing of the case and has the effect of "destroying the proceedings" and therefore under S. 369 the Magistrate has no jurisdiction to alter or review it. 1923 P. 532=72 I. C. 945=24 Cr. L. J. 481, 20 C. 867.
 14. Where the accused obtains judgment of acquittal under S. 247 by means of a fraud on the Court e.g., by preventing the complainant for appearing when case was called or by wrongfully arresting or detaining him on a false charge, the Code does not permit the case to be restored on proof of fraud. 38 M. 1028.
 15. It is not open to Magistrate to review an order which is final order, so far as one party is concerned under S. 145. 1925 N. 457=89 I. C. 153=26 Cr. L. J. 1289.
 16. An order of attachment under S. 146, Cr. P. C., is in the nature of judgment and cannot be reviewed by the same Court. 19 Cr. L. J. 225, 19 Cr. L. J. 105.
 17. A Magistrate can review an order passed by himself under S. 145, Cr. P. C. 35 C. 350.
 18. Final order under S. 488, Cr. P. C., cannot be reviewed. 39 I. C. 700=21 C. W. N. 344=18 Cr. L. J. 556.
 19. If the case is decided, the same Judge or some other Judge of co-ordinate jurisdiction cannot review it, whether it is right or wrong. 1935 S. 84=1935 S. 370, (1860) 5 W. R. Cr. 61, 7 M. H. C. R. App. 29, 4 B. 101, 16 I. C. 518, 1923 M. 426, 68 M. L. J. 67=1934 M. 506=58 M. 84, 10 L. 1=1928 L. 462, 61 C. 155 and 14 C. 42 Ref.
 20. Order of transfer is not in the nature of judgment, and hence it can be altered after it is once passed and signed. 1935 A. 815=156 I. C. 163=36 Cr. L. J. 918.
 21. Although S. 369 refers in express terms to judgments under Ch. 26 of the Code, the principles laid down therein apply to final orders which are in the nature of judgments. 1935 A. 815=156 I. C. 163=36 Cr. L. J. 918.
 22. A Criminal Court has no authority to review a final order passed by it under S. 145, Cr. P. C. 1935 R. 447. 35 C. 350 Foll.
- 6. Rejection of appeal.**

Rejection of appeal.
Where an appeal was rejected, as copy of judgment was not filed, it was not a judgment and could be reviewed. 1934 A. 206=56 A. 299. 1923 R. 288 Rel. on.

Revision.

REVISION. S. 439, Cr. P. C. See Further inquiry—Record.

1. Abatement of—. See Abatement.

2. Admission of documents.

When certain applications were not filed in lower Courts and there was no evidence that applications were in the handwriting of the applicant, private copies could not be admitted at revision stage. 1933 O. 86=32 Cr. L. J. 124.

3. Against acquittal.

1. A private prosecutor cannot apply in revision. 14 M. 363, 7 C. 447, 1927 N. 170=102 I. C. 219, 41 B. 560, 41 I. C. 817, 40 A. 84, 53 C. 471, 46 C. 956, 1934 A. 846, 1928 L. 185, 1929 R. 321
2. Revisional powers should be exercised in exceptional cases only. 49 A. 254, 31 Cr. L. J. 584, 1925 L. 490=90 I. C. 668
3. Misappreciation of evidence is no ground for revision against acquittal. 1931 N. 102=31 Cr. L. J. 194=121 I. C. 51.
4. No revision lies against acquittal based on erroneous view of law. 30 Cr. L. J. 405, 18 Cr. L. J. 151=20 C. W. N. 862, 8 P. R. 1918 Cr., 42 M. 109, 1927 M. 473, 51 M. 180, 1 A. 139. See 6 A. 484, 1923 N. 36.
5. High Court would revise an acquittal order at the instance of private prosecutor, only when the order is seriously unjust and public justice demands it. 17 Cr. L. J. 1=32 I. C. 129, 42 I. C. 330.
6. If the order of appellate Court is of a summary nature and discussion of evidence is very inadequate, High Court will interfere. 18 Cr. L. J. 519=39 I. C. 487.
7. In case of public prosecution, if the Government does not appeal, High Court will not take up revision against acquittal. 40 A. 84
8. High Court will not interfere in revision against acquittal especially after long delay. 16 A. L. J. 373=45 I. C. 511
9. High Court will interfere if acquittal is based on irrelevant matter instead of on merits. 21 Cr. L. J. 564=57 I. C. 84.
10. High Court will not interfere in revision unless the setting aside of acquittal is urgently demanded in the interest of public justice. 47 C. 818, 1931 R. 94, 1925 M. 375, 1924 M. 837, 1925 N. 115, 1935 O. 176.
11. High Court cannot convert acquittal into conviction but can remand for trial according to law. 60 I. C. 1000, 22 Cr. L. J. 312.
12. Revision lies when acquittal is based on misapprehension of law. 1924 L. 286.
13. If circumstances of assault are not truly disclosed by complainant, acquittal of accused is proper. 1925 P. 321=26 Cr. L. J. 516
14. Court of revision does not ordinarily interfere with wrong acquittal. 1928 L. 185=29 Cr. L. J. 34=106 I. C. 450.
15. If conviction under one section is altered to conviction under another section, it amounts to acquittal under the original section and it cannot be set aside for mere enhancement. 48 B. 510, 1930 L. 338=127 I. C. 855.
16. Although interference is not usual, but in certain exceptional circumstances it is legal. 22 Cr. L. J. 638=63 I. C. 534.
17. In case of acquittal, the High Court can exercise its powers of revision on the application of a private prosecutor. 2 A. 448, 27 C. 323, 35 C. 755, 18 P. W. R. 1915 Cr., 6 S. L. R. 121, 25 C. W. N. 609, 18 C. W. N. 1244. But see 53 C. 471, 40 A. 84, 1929 R. 321, 1927 N. 210, 2 P. 708, 1925 L. 490, 1927 M. 298.
18. The High Court ought to interfere with an order of acquittal at the instance of private prosecutor especially in a case of defamation or insult, where the offence is of so personal a nature that the Local Government would seldom be willing to appeal from acquittal. 20 Cr. L. J. 708, 42 C. 612, 50 C. 159, 11 C. L. J. 113.
19. High Court will interfere where order of acquittal was passed under S. 247 for non-appearance of complainant. 26 O. C. 282.

Revision—(contd.)

20. Where no appeal has been preferred by Local Government an application by private prosecutor should be discouraged on public grounds. 14 M. 363, 8 B. 197, 24 A. 346, 6 A. 484, 8 C. 895.
 21. If there is no appeal against acquittal, High Court should not interfere on reference from District Magistrate. 25 A. 128, 38 M. 1028, 5 L. 16, 24 A. 346.
 22. High Court cannot in its revisional jurisdiction convert a finding of acquittal under S. 302 into conviction under that section, although the Court held the accused guilty under S. 304, I. P. C. 1923 P. C. 254=50 A. 722=29 Cr. L. J. 823, 44 A. 332=1922 A. 487.
 23. High Court in its revisional jurisdiction will not move against an order of acquittal, unless there is some glaring defect. 1935 O. 176=150 I. C. 951=35 Cr. L. J. 1236. 1932 O. 114=33 Cr. L. J. 383 and 1933 O. 257=34 Cr. L. J. 661 Foll. 1931 L. 533, 1923 B. 74, 1923 L. 185, 1934 A. 714, 1933 N. 239, 1923 L. 163=601.
 24. Acquittal can be set aside if order is based on misconception of law. 1934 A. 190=35 Cr. L. J. 998.
 25. In case of revision against acquittal, High Court will not go into evidence. 1934 A. 146.
 26. High Court in revision cannot convert finding of acquittal into one of conviction. 1921 A. 76, 30 Cr. L. J. 405=552, 53 B. 564.
- 4. Against Appellate orders.**
1. In a revision against an appellate order High Court will, as a general rule, take as the facts of the case the finding of the lower Court and not of the first Court. 18 Cr. L. J. 435, 14 Cr. L. J. 590, 1925 O. 180, 1927 S. 39, 11 Cr. L. J. 629. See 1922 A. 122=23 Cr. L. J. 241.
 2. But when the Lower Appellate Court has not gone into the question with thoroughness, High Court will investigate the original trial. 20 Cr. L. J. 370.
- 4-A. Against charge—.** See—28.
1. If the trying Court thinks that there is a *prima facie* case against the man and frames the charge, it would be inadvisable to interfere in Revision at that stage, unless it can be shown that the order is perverse in the face of all evidence. 1935 R. 292=36 Cr. L. J. 1293=158 I. C. 33.
 2. The Revisional Court cannot interfere merely because Magistrate has not done as the revisional Judge would have done. *Ibid.*
 3. When charge has been drawn up, High Court will not interfere. 28 Cr. L. J. 644.
- 5. Appeal and—Distinction—.** See Appeal.
- 6. Appealable cases.**
1. Where right of appeal exists and is not exercised no revision lies. 30 Cr. L. J. 133=1928 M. 1174, 22 Cr. L. J. 313, 1930 O. 497, 14 B. 331, 1929 P. 640, 1929 S. 176, 1935 R. 393, 50 A. 722.
 2. Appeal filed beyond limitation cannot be treated as revision. 27 Cr. L. J. 780=1926 S. 215=95 I. C. 316.
 3. Competency of appeal bars a right to move for revision, but High Court can interfere *suo motu*. 25 Cr. L. J. 1362.
 4. Where appeal is not preferred, though allowed by law, still High Court can exercise its revisional powers when there is miscarriage of justice. 1931 L. 145.
 5. Where Sessions Judge hearing appealable sentences comes to conclusion that all the accused are not guilty, he must refer the case of non-appealable sentences to High Court for the exercise of revisional jurisdiction. 39 A. 549.
 6. District Magistrate should first move Local Government to file appeal against acquittal, rather than move High Court in revision. 25 Cr. L. J. 337.
 7. An appeal may be dealt with as a revision when no appeal lies. 1928 R. 153, 9 C. 513, 16 C. 799, 2 M. 30, 1928 L. 230, 2 Cr. L. J. 105; or even when an appeal

Revision—(contd.)

though filed is withdrawn. 1931 L. 97; or when it abates. 2 B. 564. But where an appeal lies and is filed beyond time, it cannot be treated as revision. 1926 S. 215.

7. Arguments in—. See—18.

7-A. Costs in.

High Court cannot award costs to party in revision. 55 A. 301, 48 M. 262.

8. Compounding of offence. S. 345 (5-A), Cr. P. C.

Before the amendment of 1923, there was conflict of opinion whether High Court could allow composition of offence in revision. Now S. 345 (5-A), Cr. P. C., provides that it can. 55 C. 1190=1929 C. 96, 46 A. 91, 1929 N. 278, 1934 L. 317, 1929 P. 512, 1925 P. 583.

9. Delay in—. See Delay 21.

1. There is no rule of practice that revision filed after 60 or 90 days must be rejected on the mere ground of delay 1934 L. 264=151 I. C. 943. 1920 L. 241=1 L. 508 Rel. on.
2. Delay in filing revision should be explained. 1933 O. 257=34 Cr. L. J. 661.
3. High Court will not interfere if there is unexplained delay in filing revision. 27 A. 486, 6 Cr. L. J. 153, 1933 C. 647=35 Cr. L. J. 29, 49 B. 906, 8 A. 514.
4. Where there has been so great delay that property in dispute passed on to third persons. 1927 C. 61.

10. Discharge— See Record (calling for). Further inquiry.

"Discharged" in S. 437 does not mean absolutely discharged or in other words not charged with an offence exclusively triable by the Court of Sessions. 1934 L. 164=15 L. 138. 1923 P. C. 254 and 24 M. 136 Foll. 12 P. R. 1904, 8 L. 136, 1927 L. 369 and 101 I. C. 892 overruled.

11. Dispute about immovable property. See Dispute relating to immovable property—19.

12. Enhancement of sentence. See Enhancement of sentence—4.

13. Examination of accused. See Examination of accused—23.

14. Explanation by Magistrate in—.

1. Though it is open to Magistrate called upon to show cause against a rule issued by the High Court in answer to the ground urged by the petitioner, who obtained the rule, but he cannot submit observations in order to add to or supplement his judgment. 7 C. W. N. 859
2. A Magistrate showing cause against rule issued, must ask Legal Remembrancer to appear for him and must not address the Registrar of High Court direct. 4 C. 20.

15. Expunging remarks. See Expunging remarks.

16. Finding of fact.

1. No revision lies from finding of facts. 112 I. C. 97, 1926 M. 154.
2. Unless very strong ground for an opposite conclusion is found to exist, the High Court will take the finding of fact by the Lower Appellate Court and not of the first Court as the fact of the case. 18 Cr. L. J. 435.
3. The fact that High Court may be inclined to take a different view of the evidence is no ground for interference with finding of facts. 1923 P. 13=23 Cr. L. J. 834.
4. High Court will not look into evidence, unless the lower Court omitted to consider some outstanding circumstances. 18 Cr. L. J. 915=42 I. C. 147.
5. High Court generally does not interfere with findings of facts 50 I. C. 983, 28 B. 533, 34 B. 378, 56 B. 192=1932 B. 194, 38 M. 1023, 2 M. 38, 1930 L. 1051=32 Cr. L. J. 271, 1933 L. 236, 1925 L. 42, 1930 C. 645, 1926 M. 154, 1934 L. 264, 1927 A. 555=49 A. 792, 11 P. R. 1911 Cr., 1935 R. 359, 1933 O. 117=195, 19 B. 714, 1933 O. 568, 1933 S. 359, 31 Cr. L. J. 659, 1930 P. 509, 1933 P. 697, 1935 P. 95, 1931 R. 94.
6. In revision High Court would weigh evidence. If prosecution evidence is as good as defence evidence, the accused will be acquitted. 45 A. 109.

Revision—(contd.)

7. High Court must see, if evidence is dealt with according to law. 21 Cr. L. J. 552.
8. High Court will not decide by the balance of credibility between two sets of evidence or facts but would interfere with finding of fact, either perverse or arrived at contrary to law. 46 A. 64.
9. Whether a Manager in the office of Municipality is a Public Servant is a question of fact and should not be raised for the first time in revision. 51 M. 86.
10. High Court will examine finding of fact only in exceptional cases. 100 I. C. 705, 1929 S. 26=111 I. C. 856, 1930 P. 207, 1933 B. 492, 53 C. 1031.
11. When evidence has been considered by two Courts High Court will not ordinarily interfere with finding of facts. 22 Cr. L. J. 647=63 I. C. 407.
12. Finding of facts not based on evidence or record can be challenged in revision. 1935 O. 241=154 I. C. 255.
13. Sessions Judge reversed a finding of fact, by referring to a finding in appeal in a counter case, High Court can interfere, as there was difficulty in finding out whether there was sufficient material on which the Sessions Judge reversed the finding. 1935 P. 494.
14. Finding of fact is ordinarily not disturbed. But High Court will interfere if the lower Court failed to take right view of evidence. 1934 R. 42=35 Cr. L. J. 849.
15. High Court will not interfere with the finding of fact unless perverse. 1933 O. 430=35 Cr. L. J. 121.
16. High Court does not interfere in revision with a finding of fact and specially in case of concurrent finding by lower Court. 1921 P. 491, 15 Cr. L. J. 524, 34 B. 378, 48 A. 603, 1928 B. 221, 20 C. 353, 1923 M. 237. 1934 O. 179, 1934 O. 232, 1927 P. 126, 1935 S. 105, 1933 S. 395=139, 1920 P. 775, 1925 A. 321.
17. Ordinarily High Court will not go into facts unless conscience of High Court has been touched. 13 P. 150=1933 P. 697.
18. If the Judge hearing witnesses has been satisfied and there are no discrepancies, his finding should not be disturbed. 1935 P. 697=37 Cr. L. J. 348.
19. High Court declined to reopen finding of Sessions Judge favourable to accused, based on evidence. 1930 P. 509=32 Cr. L. J. 122.
20. High Court should not interfere unless there is error of Law on the face of the record. 38 M. 1028.
21. A Court of revision will not decide between two conflicting sets of witnesses or two conflicting issues of fact. 46 A. 64, 35 Cr. L. J. 189, 1932 N. 97=33 Cr. L. J. 835, 4 Bom. L. R. 686.
22. High Court will not look into evidence to see whether the finding is correct. 1920 A. 66, 1933 M. 279=34 Cr. L. J. 524, 1934 A. 846=36 Cr. L. J. 490, 22 C. 391, 1927 M. 434, 1925 N. 123; or go into the weight 1922 N. 172=23 Cr. L. J. 391, or sufficiency of evidence. 1925 O. 49, 14 P. R. 1868, 2 M. 38, 19 M. 238, 2 C. 405; or question the finding of credibility of the evidence. 1932 A. 185, 10 P. R. 1900, 1926 N. 115, 1933 N. 384, 18 Cr. L. J. 915.
23. High Court should not substitute, where two views are possible, its own view of evidence for that of lower Court. 1931 L. 98, 8 P. R. 1908 Cr., 1930 L. 543=32 Cr. L. J. 302, 1927 A. 727=28 Cr. L. J. 946, 1928 P. 88, 1925 R. 193, 1929 R. 321, 1935 R. 192=36 Cr. L. J. 1044; nor will it interfere in a question of motive. 1927 M. 613.
24. But High Court has jurisdiction to entertain revision on question of fact, where it is necessary for the purpose of doing justice. 1924 L. 585, 45 A. 656=1924 A. 1, 51 B. 310, 46 A. 64, 10 L. 241, 1920 L. 330, 1927 A. 647, 10 C. 1047, 14 C. 361, 21 C. 931, 14 B. 331, 1931 O. 172, 1924 P. 758, 1925 O. 144.
25. In exceptional case High Court will go into facts and do justice. 12 B. 377, 28 B. 533, 58 B. 40=1933 B. 482, 33 C. 295, 58 C. 1081, 1929 P. 112, 1930 P. 209; though the power should be exercised sparingly. 45 A. 656, 1931 C. 619=58 C. 1081, 32 C. 180, 1933 O. 8, 18 Cr. L. J. 915.

Revision—(contd.)

26. High Court will interfere with the finding of fact if it is contrary to well established principles of Law. 46 A. 64, 1922 P. 265, 1929 P. 429, 28 B. 479—533, 1923 L. 513 or where there is no evidence to support the finding. 45 A. 656, 8 B. 197, 28 B. 479, 1930 C. 615, 35 C. 674, 13 Cr. L. J. 720—712—555—595—463, 1931 L. 153, 1934 L. 264, 1927 L. 34, 1922 L. 459, 1929 P. 112, 1933 S. 171, 29 Cr. L. J. 90, or when there is miscarriage of justice. 1934 A. 735, 14 B. 115—331, 15 B. 351, 2 C. 110, 22 C. 998, 58 C. 1031, 31 M. 133, 1933 O. 257, 1927 O. 345, 1934 R. 42, 1933 S. 139—359—396, 36 Cr. L. J. 1215.
27. In showing cause against a rule for enhancement of sentence, accused is entitled to show cause against conviction and may enter into question of fact for that purpose. 1923 A. 150=30 Cr. L. J. 933, 1929 L. 584=30 Cr. L. J. 699.

17. Fresh application for—

Fresh application for revision on the same grounds is not maintainable. 1927 A. 724.

18. Further inquiry. See Further inquiry.**19. Grounds of. See—34.**

1. When there is error in law or procedure, the High Court will interfere. 1928 A. 1=29 Cr. L. J. 92, 20 W. R. 41.
2. Every irregularity or illegality does not call for interference. 1930 S. 315.
3. If there is substantial doubt as to guilt of accused, High Court can interfere. 27 P. W. R. 1916 Cr., 34 P. W. R. 1915 Cr., 6 P. R. 1875 Cr.
4. Omission to take very material evidence offered by accused calls for interference. 24 W. R. 60.
5. Laxity and indifference by Magistrate in sifting and weighing evidence calls for revision. 2 A. 336.
6. A defective investigation by Magistrate justifies interference. 2 Weir 570.
7. If inferences unfavourable to accused and not to the prejudice of accused, High Court will interfere. 18 Cr. L. J. 116.
8. If the Court omitted to consider some important evidence, High Court will interfere. 20 Cr. L. J. 551.
9. High Court will interfere when the Magistrate has either refused to exercise a discretion vested in him by law, or has exercised that discretion in an improper manner. 19 C. 52, 2 C. 110, 28 B. 533.
10. High Court will interfere on the ground of misreading of documentary evidence. 28 B. 479.
11. There is no species of injustice which the High Court would be powerless to correct. 14 M. L. T. 200, 12 C. W. N. 678.
12. When in the interest of justice High Court's intervention becomes necessary it ought not to be refused. 47 M. 722.
13. High Court does not generally interfere on facts, but may do so in particular cases. 66 I. C. 177, 1926 M. 154, 112 I. C. 97.
14. If the appeal is disposed of on merits, the fact that petitioner's Counsel was not heard is no ground for revision. 1922 P. 587=24 Cr. L. J. 118.
15. Magistrate examined a witness after the arguments of the parties after the close of the case. Further arguments were not asked for. Held, that the omission is a bar to objecting to Magistrate's act. 1924 C. 980=25 Cr. L. J. 1107.
16. Where right of appeal exists, and is not exercised revision will not lie. But High Court may interfere under special circumstances. 1925 M. 239=26 Cr. L. J. 1350.
17. Disposal of case on extra judicial grounds calls for interference. 26 Cr. L. J. 1350.
18. Revisional jurisdiction has been conferred in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precautions or harshness in sentence, etc. 1928 A. 287=29 Cr. L. J. 446.
19. If the evidence as to handwriting is not challenged in trial Court, it cannot be challenged in revision. 1931 A. 12=129 I. C. 443.

Revision—(contd.)

20. Misappreciation of evidence is no ground. 26 Cr. L. J. 1348=1926 N. 115.
21. Omission to examine important defence witness without sufficient cause is ground for revision. 3 P. 59=25 Cr. L. J. 1255=1925 P. 85.
22. General remark that evidence is unreliable without giving any reason is not a proper disposal and the order is revisable. 24 Cr. L. J. 432=72 I. C. 544.
23. It is not the duty of High Court to weigh evidence. 118 I. C. 223.
24. Where accused is prejudiced by inferences unwarranted by evidence, revision lies. 18 Cr. L. J. 116=37 I. C. 468.
25. Omission to consider important evidence calls for interference. 20 Cr. L. J. 551.
26. Going into facts and revising conviction is not illegal even when accused has not preferred appeal. 1924 L. 585=77 I. C. 723.
27. The opinion of Magistrate as to sufficiency or insufficiency of evidence will not be attacked in revision. 25 Cr. L. J. 366.
28. High Court will not interfere when the exercise of discretion is not arbitrary. 1925 S. 190=82 I. C. 760, 2 P. 708.
29. Every irregularity does not vitiate the trial. 1933 S. 37=142 I. C. 74, 1930 S. 315.
30. High Court will not enable, in exercise of its revisional jurisdiction, guilty persons to escape on basis of unsubstantial technicality, e.g., obtaining of sanction under S. 196-A after the initiation of proceedings. 1935 C. 316.
31. That another conclusion might have been drawn from the evidence is no ground for revision. 1935 R. 192=156 I. C. 968.
32. When the evidence of accomplice was not duly considered, conviction was set aside. 1936 O. 401, 1931 O. 172, 18 Cr. L. J. 317.
33. When accused had no opportunity for examining defence witnesses, High Court interfered. 35 C. 1093.
34. When accused does not get fair trial, High Court will interfere. 1920 P. 378=21 Cr. L. J. 289.
35. High Court will interfere in the interest of public peace. 1931 M. 236.
36. When the judgment is perverse on the question of sentence, High Court will interfere. 1932 L. 188=33 Cr. L. J. 108, 13 L. 599, 1932 L. 258.
37. Technical flaws and minor errors in the procedure or even mistake in the appreciation of evidence is a good ground for revision, when they resulted in prejudice to accused. 11 P. R. 1908 Cr.=8 Cr. L. J. 250.
38. Material irregularity is a good ground. 1929 M. 847.
39. High Court can interfere to see if the plea of guilty was based on a proper conception of facts. 1930 R. 349, 1932 S. 100, 1934 S. 20.
40. Where there was no failure of justice, High Court cannot interfere in revision, even though there was an irregularity or impropriety in the proceedings of the lower Court. 18 Cr. L. J. 765, 11 P. R. 1908 Cr., 1 Cr. L. J. 534, 1 P. 75=1922 P. 224, 1933 O. 421, 1932 O. 113=398, 1930 S. 315, 22 Cr. L. J. 309, 1927 M. 298, 1930 M. W. N. 770, 1930 L. 318=10 L. 794, 1926 L. 553, 27 Cr. L. J. 624=94 I. C. 368 (L.), 59 C. 275=1931 C. 607, 1927 O. 318, 45 M. 872, 47 M. 245, 1935 C. 316=52 C. 749, 60 C. 201=1932 C. 651, 60 C. 149=1932 C. 871, 54 A. 1002, 47 A. 353, 1923 P. 438, 1932 B. 473, 24 M. 523, 30 M. 548, 5 P. R. 1906 Cr., 21 C. 827, 21 C. 121, 20 C. 469, 35 C. 158. 1935 C. 316.
41. The powers of the High Court are limited by S. 537, Cr. P. C. 36 P. R. 1884.
42. High Court has wide discretion to interfere in the interest of justice. 41 A. 587, 36 P. R. 1884, 1925 C. 1040, 1922 P. 160, 1931 C. 607=59 C. 275, 1933 L. 393, 39 M. 946, 1920 P. 225, 56 B. 554.
43. Where a right of revision is excluded by any specific provision of law, it cannot be exercised. 15 Cr. L. J. 145, 19 Cr. L. J. 833, 1932 C. 867=59 C. 1080, 1933 M. W. N. 728. But where the act is done without jurisdiction, then High Court will interfere. 41 C. 400, 30 C. 112, 23 C. 446, 27 C. 892, 27 C. 918, 27 C. 931,

Revision—(contd.)

- 25 C. 188, 26 C. 625, 19 C. 127, 1931 L. 552=32 Cr. L. J. 933, 1933 L. 1019=35 Cr. L. J. 505, 35 C. 774, 34 C. 840, 1925 P. 51, 1924 P. 145, 1922 P. 239=442, 1929 P. 714, 20 Cr. L. J. 107=775, 1935 M. W. N. 1341.
44. The powers of revision should not be so exercised as to make one portion of the Code conflict with another, e. g., giving a right of appeal where none exists. 36 A. 403, 16 Cr. L. J. 161.
 45. The Code does not affect the powers vested in High Court by virtue of the Government of India Act. 13 C. L. R. 275.
 46. An argument *ad miseri cordium* is out of place in a Court of revision. 1931 O. 80=32 Cr. L. J. 124.
 47. Reference does not bar application in revision. 45 A. 11=1922 A. 502, 1928 O. 292=29 Cr. L. J. 657.
 48. Dismissal of appeal does not bar revision by local Government for enhancement of sentence. 55 A. 715=1933 A. 485, 1932 N. 73, 10 P. 872.
 49. Appeal may be treated as revision, when no appeal lies. 1928 R. 158, 9 C. 513, 16 C. 799, 2 M. 30, 2 Cr. withdrawn. 1931 L. 97, or abates, 2 B. 564. beyond time, it cannot be treated as revision.
- 20. Hearing Counsel.** S. 440, Cr. P. C. See Arguments.
1. A petitioner has no right to be heard 23 M. L. J. 371, 14 M. 363, 85 I. C. 367, 31 C. 811, 1925 O. 558, 1 B. 64, 11 Cr. L. J. 211, 10 Cr. L. J. 287.
 2. Accused is not entitled to be heard when an order under S. 436 is made directing a further inquiry into a summary rejection of complaint. 15 C. 608.
 3. While accused applied in revision to the High Court and pending revision he was let off on bail but absconded, High Court would not hear his Pleader. 21 Cr. L. J. 240.
 4. High Court under its discretionary powers always hears counsel in matters of importance. 19 C. 380, 6 A. L. J. 237.
 5. There is no established practice in Allahabad High Court to hear counsel in all reference cases. 1927 A. 724.
 6. The counsel of the third party, who has put in application for revision has no right to be heard. 1933 A. 678.
 7. High Court can entertain an application in contravention of the practice of first approaching the lower Court. 55 A. 857, 16 Cr. L. J. 794, 1932 S. 28.
 8. Where the application is entertained and rule issued, it cannot be rejected on the ground that Sessions Judge was not moved first. 48 C. 534, 5 C. W. N. 248, 50 C. 423.
 9. A private complainant may be heard in revision proceedings. 1920 C. 571=21 Cr. L. J. 682, 1929 B. 443, 50 C. 159=1923 C. 11, 7 C. 447.
 10. All judicial decisions are governed by the maxim *audi alteram partem*—hear the other side. Hence no order can be made to the prejudice of the accused unless he had an opportunity of being heard. 19 Cr. L. J. 701.
- 21. How High Court is moved in—**
1. Revision petitions are entertained by Lahore High Court only if Sessions Judge or District Magistrate is first moved unsuccessfully 1927 L. 689=28 Cr. L. J. 815.
 2. Application to Lower Court is essential before moving High Court. 101 I. C. 603, 1927 A. 829, 55 A. 261, 1927 A. 834, 43 A. 497, 41 A. 587, 1929 A. 272, 1924 M. 228, 1931 M. 778=55 M. 178, 1929 N. 13, 1922 O. 147, 1917 A. 596=18 Cr. L. J. 863, 1918 P. 588=19 Cr. L. J. 589, 28 A. 268, 30 A. 116, 36 C. 643, 48 A. 23, 1932 S. 28, 1925 A. 640, 35 Cr. L. J. 475, 1928 S. 69, 1932 R. 192 But see 55 A. 857, 1932 S. 28.
 3. High Court may interfere in revision upon information in whatever way received. 2 M. 38, 45 A. 128, 12 L. 471, 1930 N. 61, 24 A. 151, 23 P. R. 1916.

4. Although the Court has power under S. 439 to call for cases not only on judicial information but which otherwise comes to its knowledge, yet it is a high practice that Judges should be moved in open Court. 16 B. 580.
5. A case may come to the knowledge of the High Court through an official communication direct from the Government. 1887 A. W. N. 144, 2 A. 522, 3 A. 563.
6. High Court may exercise its power on its own initiative. 7 P. W. R. 1912 Cr., 2 B. 564.
7. High Court may exercise its power *suo motu* even though the accused does not desire it. 17 S. L. R. 245, 12 L. 471, 24 A. 151, 18 Cr. L. J. 121.
8. Revision filed without approaching District Magistrate or Sessions Judge should be rejected. 1929 A. 272=119 I. C. 444=30 Cr. L. J. 1079, 1933 A. 283.
9. Where no appeal is preferred against acquittal by the Local Government, an application for revision by private prosecutor is not competent. 14 M. 363, 24 A. 346, 42 C. 612, 2 P. 708, 8 B. 197, 3 B. 150, 20 A. 459 *Contra* 2 A. 448, 27 C. 320, 38 C. 786, 18 P. W. R. 1915 Cr., 25 C. W. N. 609, 18 C. W. N. 1244, 42 C. 612, 50 C. 159, 11 C. L. J. 113, 26 O. C. 282.
10. A party must exhaust all remedies in the inferior Court before he comes up to High Court. 1924 M. 228=25 Cr. L. J. 310.
11. High Court cannot revise order of its own Judge or Judges. 46 M. 382.
12. Under Letters Patent the Criminal Revisional jurisdiction is not included in the Criminal Appellate Jurisdiction. 43 C. 1143.
13. Where the convicted person has not taken steps to contest the propriety of his conviction, an application by stranger should not be heard. 45 A. 128, 58 I. C. 926.
14. High Court can interfere on information contained in a newspaper or a placard on a wall or an anonymous post card, if it considers that sufficient grounds have been established to justify its so doing. 45 A. 128.
15. High Court cannot take action under S. 439 on the report of District Magistrate which has the object of interference with the order of Sessions Judge. He should move the Public Prosecutor if he considers his order illegal. 1924 L. 423.
16. High Court in revision should not be asked to decide questions which Magistrate must decide. 1934 S. 20=35 Cr. L. J. 891.
17. If the High Court admits an application for revision, and records were called although Sessions Judge was not moved in the first instance, this objection should not be entertained. 1933 A. 678.

22. Interlocutory orders. See Interlocutory orders, See—28.

1. Interlocutory matters in Criminal Courts should not be interfered with in revision. 1930 L. 346=128 I. C. 50, 103 I. C. 835, 1920 A. 8, 1933 O. 387, 1929 O. 543, 52 B. 131=1928 B. 184, 1926 N. 304, 1927 L. 744, 1930 L. 881, 1931 M. 419, 1935 M. 257=58 M. 430.
2. Interlocutory orders should be interfered with only in exceptional circumstances. 1926 N. 304=27 Cr. L. J. 707.
3. High Court will interfere with interlocutory order, where no offence has obviously been committed. 1933 B. 409, 52 B. 151=1928 B. 184 Ref.
4. Where bare statement without elaborate argument is sufficient. High Court will interfere in interlocutory order. 1930 L. 881, 1931 P. 140, 1928 O. 104, 1925 N. 345, 1920 N. 31.

22-A. Letters Patent Appeal.

No appeal lies under the Letters Patent from an order of single Judge on a revision application. 39 M. 539, 16 Cr. L. J. 464.—303.

23. Limitation.

1. According to the practice of the High Court an application for revision in Criminal cases must be presented within 60 days and in exceptional cases the rule may be

Revision—(contd.)

- deprived from. 43 C. 1029, 25 Cr. L. J. 564, 54 C. 394, 8 P. 468, 13 Cr. L. J. 31 = 5 S. L. R. 265.
2. Article 181, Limitation Act, has no application to revision petition. 126 I. C. 395
 3. Revision application against an order under S. 107, Cr. P. C., should be made within 30 days. 49 A. 223.
 4. A person convicted under S. 408, I. P. C., was given the benefit of S. 562, Cr. P. C. It is improper to interfere after a considerable length of time. 1928 L. 926.
 5. If the revision application is not made within reasonable time, the Court may reject it. 31 Cr. L. J. 1012, 1926 A. 577, 1927 C. 61, 1928 L. 926 = 29 Cr. L. J. 291.
 6. There is no rule of practice of Lahore High Court that an application presented after 60 or 90 days must be rejected on the mere ground of delay. 1934 L. 264 = 151 I. C. 943. 1 L. 508 Rel. on.
 7. Time can be extended in exceptional cases. 18 Cr. L. J. 694, 43 C. 1029, 8 P. 468 = 1929 P. 404, 1933 P. 601; but mere oversight on the part of legal advisor is not enough. 54 C. 394.
 8. In computing 60 days' time required for obtaining copy of order should be excluded. 43 C. 1029 = 17 Cr. L. J. 419.
 9. Time occupied in prosecuting revision application before the Sessions Judge should be excluded. 18 Cr. L. J. 694, 54 C. 394, 36 Cr. L. J. 97, 18 Cr. L. J. 271, 1934 L. 264, 1926 A. 577 = 767, 1932 O. 242 *Contra* 8 P. 468.
 10. There is no limitation prescribed by law for revision. 1930 O. 401.
- 23-A. On a question of fact. *See*—16.
- 23-B. On a question of law. *See*—19—34.
1. High Court will not interfere in every case in which an error of law has been committed. The discretion should be exercised to prevent substantial injustice. 56 B. 554 = 1932 B. 637, 1928 N. 113, 1933 S. 37, 1931 R. 161, 1926 P. 196, 1928 L. 230, 13 L. 599 = 1932 L. 362, 1932 O. 113, 1928 R. 284, 1932 L. 559, 6 P. 224.
 2. An order, though proceeds upon error of law, but which is otherwise proper, ought not to be set aside. 1925 O. 739, 36 P. R. 1884, 1932 M. W. N. 1353.
 3. When Lower Court ignores facts and tries the accused of lesser offence, High Court will interfere. 1927 M. 307 = 28 Cr. L. J. 154. *See* 1926 P. 393—36.
- 24 New plea in—
1. An accused cannot be heard to urge a new plea entirely inconsistent with the one already raised by him during the trial. 18 Cr. L. J. 435, 1929 M. 188 = 29 Cr. L. J. 1062 = 112 I. C. 566.
 2. Application in revision should be confined to grounds upon which the Rule *nisi* is granted. 42 A. 646.
 3. High Court will not interfere in revision on questions of fact not put before trial Court. 28 Cr. L. J. 2 = 99 I. C. 33.
 4. Objections about the non-compliance of the provisions of S. 360, Cr. P. C., cannot be taken for the first time in revision. 1927 P. 100—414, 26 Cr. L. J. 811.
 5. Objection to joint trial can be taken for the first time in revision. 25 Cr. L. J. 807.
 6. A plea which was not raised in the trial Court. 1932 O. 31, 1932 M. 535 = 33 Cr. L. J. 626, 1931 A. 12, 1933 L. 323 = 34 Cr. L. J. 718, 1920 P. 518, 1929 M. 188, 19 Cr. L. J. 905, or in the lower appellate Court, 45 A. 680, 1929 M. 188, 1924 C. 980, 1933 P. 593 = 35 Cr. L. J. 95, 31 C. 710, 51 M. 86, 28 Cr. L. J. 2 (2), 1927 P. 100, 1925 P. 378—414; or in revision in the lower Court. 55 A. 301 = 1933 A. 264 will not be in the absence of failure of justice be allowed in the High Court. 40 C. 41.
 7. Applicant will not be allowed, at the hearing, to raise a point, not raised in the application. 55 A. 301, 4 P. 231, 1933 P. 597, 42 A. 646, 35 C. 133—141.
25. Non-appealing accused. *See* Non appealing accused.
1. High Court can set aside the conviction of non-appealing accused under its revisional

Revision—(contd.)

4. Although the Court has power under S. 439 to call for cases not only on judicial information but which otherwise comes to its knowledge, yet it is a high practice that Judges should be moved in open Court. 16 B. 580.
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- departed from. 43 C. 1029, 25 Cr. L. J. 564, 54 C. 394, 8 P. 468, 13 Cr. L. J. 31 = 5 S. L. R. 265.
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 10. There is no limitation prescribed by law for revision. 1930 O 401.
- 23-A. On a question of fact.** See—16.
- 23-B. On a question of law.** See—19—34.
1. High Court will not interfere in every case in which an error of law has been committed. The discretion should be exercised to prevent substantial injustice. 56 B. 554 = 1932 B. 637, 1923 N. 113, 1933 S. 37, 1931 R. 161, 1926 P. 195, 1928 L. 230, 13 L. 599 = 1932 L. 362, 1932 O. 113, 1928 R. 284, 1932 L. 559, 6 P. 224.
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 5. Objection to joint trial can be taken for the first time in revision. 25 Cr. L. J. 807.
 6. A plea which was not raised in the trial Court. 1932 O. 31, 1932 M. 535 = 33 Cr. L. J. 626, 1931 A. 12, 1933 L. 323 = 34 Cr. L. J. 718, 1920 P. 518, 1929 M. 188, 19 Cr. L. J. 905, or in the lower appellate Court, 45 A. 680, 1929 M. 188, 1924 C. 980, 1933 P. 593 = 35 Cr. L. J. 95, 31 C 710, 51 M. 86, 28 Cr. L. J. 2 (2), 1927 P. 100, 1925 P. 378—414; or in revision in the lower Court. 55 A. 301 = 1933 A. 264 will not be in the absence of failure of justice be allowed in the High Court. 40 C. 41.
 7. Applicant will not be allowed, at the hearing, to raise a point, not raised in the application. 55 A. 301, 4 P. 231, 1933 P. 597, 42 A. 646, 35 C. 133—141.
- 25. Non-appealing accused.** See Non-appealing accused.
1. High Court can set aside the conviction of non-appealing accused under its revisional

Revision—(contd.)

jurisdiction. 31 C. L. J. 305, 5 C. W. N. 330, 7 P. W. R. 1916 Cr., 14 P. W. R. 1909 Cr., 25 Cr. L. J. 435, 39 A. 549, 1934 L. 346, 1932 L. 615, 1932 L. 364, 1934 S. 72, 1931 L. 153, 1930 O. 497.

2. If out of several convicted persons one has filed revision, the High Court can set aside the conviction of all offenders. 9 P. R. 1909 Cr., 2 M. W. N. 170.

26. Notice. See Enhancement of sentence—10.

1. Under S. 439 no order can be made against the accused without giving him an opportunity of being heard. 45 I. C. 157, 1934 M. 473=57 M. 1101, 12 C. W. N. 22, 10 C. 268, 1933 L. 433.
2. An order under S. 562, Cr. P. C., was set aside under the wrong impression that notice was served on accused. The High Court reheard the case after notice. 1927 C. 702=28 Cr. L. J. 831.
3. If the accused preferring appeal had opportunity of being heard, notice for enhancement is not necessary. 1927 S. 85=27 Cr. L. J. 1265.
4. When appeal against conviction is pending notice for enhancement should not be issued till dismissal of appeal on merits. 49 B. 450.

27. Of High Court's own judgment See Review.

High Court cannot revise any judgment passed by itself. 4 P. R. 1909, 46 M. 382.

28. Pending case. See—22, Interlocutory order.

1. High Court can interfere at any stage of the proceedings in a pending trial. 47 M. 722, 20 B. 543, 1935 S. 81, 1921 S. 137, 12 Cr. L. J. 615, 39 M. 561, 1924 C. 1013, 8 P. R. 1914 Cr., 14 Cr. L. J. 5=398, 3 Cr. L. J. 23, 10 Cr. L. J. 237, 19 A. 221. See 1933 A. 211=34 Cr. L. J. 956.
2. High Court does not interfere with a pending case unless it is of exceptional nature. 1930 L. 881=128 I. C. 542, 25 C. 233, 39 M. 561, 1923 L. 278, 1926 N. 304, 51 M. 804, 1927 M. 961, 1925 S. 231, 1933 S. 169, 1934 N. 138, 1934 S. 183, 1935 S. 81=36 Cr. L. J. 881, 54 M. 251=1931 M. 419, 1933 P. 116, 1933 R. 297, 1933 S. 196, 1935 C. 731, 1931 C. 521.
3. High Court can quash pending proceedings, if no useful purpose is served with pending proceedings. 38 C. 68, 6 N. L. J. 119.
4. If the Magistrate refuses to summon defence witnesses, High Court can interfere. 130 P. L. R. 1901.
5. If the Magistrate improperly declines to record any evidence, High Court can interfere. 257 P. L. R. 1904, 8 S. L. R. 238.
6. In a case of vexatious and protracted trial, the High Court can set aside the charge. 39 M. 561, 22 C. 131, 1933 O. 357=35 Cr. L. J. 148.
7. When proceedings under S. 110, Cr. P. C., were instituted for the third time on the same evidence, High Court quashed proceedings. 33 P. R. 1910 Cr., 2 A. L. J. 673.
8. High Court will not interfere in a pending case, unless there is some manifest and patent injustice apparent on the face of the proceedings, and calling for prompt redress. 26 C. 786, 20 Cr. L. J. 764, 21 Cr. L. J. 343, 51 M. 84, 47 M. 722, 1924 C. 114, 1935 S. 81=36 Cr. L. J. 881, 33 M. 89, 20 Cr. L. J. 764.
9. High Court will interfere with pending trial only when it is satisfied that any delay in the rectification of the error will cause waste of time or a miscarriage of justice. 5 P. R. 1904 Cr.
10. When charge has been drawn up, High Court will not interfere. 2 Cr. L. J. 44, 31 P. R. 1910, 1935 R. 292, 1932 L. 342=34 Cr. L. J. 82, unless the error is of exceptional nature. 1930 L. 881, 1923 L. 278, 1926 N. 304, 51 M. 84, 1927 M. 961, 1933 S. 169, 1934 N. 138, 1934 S. 183.
11. In case of time barred debt, the High Court will interfere when account is presented under S. 409, I. P. C. 24 Cr. L. J. 591.
12. High Court can grant bail in a pending trial. 25 Cr. L. J. 1363.

Revision—(contd.)

13. Revision Court should not give preliminary finding in a case pending before Subordinate Court. 64 I. C. 511=1921 S. 48.
14. High Court will quash proceedings when no offence appears to have been committed on the face of the proceedings. 1923 B. 184=52 B. 151, 20 C. 724, 1934 L. 134, 1927 L. 731=862, 1928 L. 945, 1929 L. 67=29 Cr. L. J. 1008, 1933 C. 647, 52 C. 185=1925 C. 100, 57 B. 690=1933 B. 409, 1935 M. W. N. 1342, 1933 S. 196, 1933 R. 297, 1932 P. 72, or where Civil Proceedings in respect of the same matter are pending. 16 Cr. L. J. 309, 14 Cr. L. J. 128=18 I. C. 688 (L.); or where no sanction for prosecution has been obtained. 50 C. 135, 5 L. 550=1925 L. 266, 1922 L. 183, 6 C. 584, 48 A. 60; or where grave injustice will be done by continuation of proceedings. 1922 L. 452=23 Cr. L. J. 429, 52 C. 188, 1924 C. 1018, 22 C. 131; or when the Lower Court had no jurisdiction. 1933 S. 88=34 Cr. L. J. 364, 5 L. 550, 9 Cr. L. J. 154. But see 1923 M. 326=24 Cr. L. J. 351.
29. **Private complainant.** See—2. Enhancement of sentence—7.
 1. A private complainant may be heard by High Court in revision. 50 C. 159=1923 C. 11, 1929 B. 443, 1920 C. 571=21 Cr. L. J. 682.
 2. Application for revision made by a third party should not be entertained unless there is a very strong case. 1931 B. 140.
 3. Where no appeal has been preferred by Local Government against acquittal, application for revision by private prosecutor should be discouraged on public grounds. 14 M. 363, 15 B. 349, 6 A. 484, 8 B. 197, 3 B. 150, 42 C. 612, 2 P. 708, 27 A. 359, 20 A. 459.
 4. Court of revision can interfere on the application of private prosecutor. 27 C. 320, 2 A. 448, 38 C. 786, 25 C. W. N. 609, 18 C. W. N. 1244.
30. **Quashing Proceedings.** See—28.

Order of Sub-Divisional Officer quashing proceedings amounts to discharge and the Sessions Judge can deal with it without referring to the High Court. 1935 P. 52=155 I. C. 126=15 P. L. T. 775.
31. **Retrial.** See Retrial.
32. **Stay of Proceedings.** See Stay of Proceedings.
33. **Technical irregularities.**

Technical irregularities are not sufficient grounds for interference in revision. 1935 A. 883=36 Cr. L. J. 1035=156 I. C. 948
34. **When High Court will not interfere.** See—19.
 1. High Court will not interfere when there is no error in law on the face of record. 4 Bom. L. R. 686.
 2. High Court will not interfere with the discretion exercised by Lower Court. 2 P. 708.
 3. High Court will not interfere where there has been delay in applying for revisions. 27 A. 163, 8 A. 514, 6 A. 454, 1886 A. W. N. 83, 6 Cr. L. J. 153, 1933 C. 647=35 Cr. L. J. 29, 49 B. 906
 4. When remedy can be obtained in Civil Court, or otherwise High Court will not allow a revision. 6 C. W. N. 469, 2 Cr. L. J. 335, 6 Cr. L. J. 153, 1928 M. 1174, 13 L. 53=1931 L. 572, 47 M. 229, 1923 M. 484, 1924 M. 228=235, 1920 N. 198, 29 C. 352, 1927 P. 640, 125 P. 176, 1934 S. 74, or where the delay was such that property in dispute passed on to third persons. 1927 C. 61=28 Cr. L. J. 59.
 5. High Court will not interfere on the ground that Pleader was not heard in the Lower Court. 1 P. 589
 6. If there is no prejudice to accused, High Court will not interfere, even if there is irregularity or impropriety in the proceedings of the Lower Court. 5 P. R. 1905 Cr., 11 P. R. 1908 Cr., 10 L. 794, 1925 L. 553, 1922 P. 224, 1933 O. 421, 59 C. 275, 60 C. 149, 60 C. 201, 47 A. 353, 1932 B. 473, 24 M. 523, 30 M. 548, 21 C. 121=827, 20 C. 469, 36 C. 158.
 7. If the appeal is pending in the appellate Court, High Court will not interfere in revision. 44 M. L. J. 366.

Revision—(contd.)

8. High Court will not interfere unless it is necessary to prevent an otherwise irreparable injustice. 39 M. 561, 9 Bom. L. R. 706, 20 A. L. J. 909.
9. High Court will not interfere even though the Court is wrong in law or the trial the Court below is illegal, if the accused has not been prejudiced by such error. P. W. R. 1913 Cr., 5 P. R. 1906 Cr., 4 Bom. L. R. 686.
10. Where the irregularities are discovered at the end of trial leading to miscarriage of justice the aggrieved party must carry the matter to the Crown for remedy. C. 723.
11. Powers of revision should not be invoked to supply laches of prosecution in replacing the previous conviction of the accused before the trial Court in order to give him enhanced punishment. 17 Cr. L. J. 3=32 I. C. 131.
12. When accused refuses to take part in trial, revision from his conviction is not derogatory to the dignity of High Court. 1933 A. 678.
13. Discretion vested in Magistrate as regards sentence cannot be interfered with in revision. 1935 S. 245.
14. High Court will be slow to interfere when witnesses have been believed by the Lower Court. 1934 O. 232.
15. High Court will not as a rule interfere in pending proceedings in Lower Court unless there are special grounds. 1933 S. 169=145 I. C. 617.
16. If the order of Lower Court is proper one, High Court will not interfere. 37 A. 187, 1928 L. 546, 1924 C. 538.
17. If the Magistrate relies wrongly on a piece of evidence, it does not warrant interference by High Court. 1922 P. 224=1 P. 75.
18. Where right of revision is excluded by any specific provision of law, it cannot be exercised. 15 Cr. L. J. 145, 19 Cr. L. J. 833, 1933 M. W. N. 728, 1932 C. 867.
19. When matter is petty or trifling. 1929 O. 240, 17 W. R. 37.
20. When new evidence has been discovered subsequent to the decision. 1925 O. 673=26 Cr. L. J. 1278, 21 W. R. 47, (1886) 2 Weir 574.
21. Where the order passed by Magistrate has been executed or spent its force. 1933 P. 145=36 Cr. L. J. 474, 1928 P. 480, 1924 P. 703, 22 B. 760, 1924 M. 696. But if the accused has already undergone sentence, High Court will interfere though in special cases. 38 A. 395, 7 A. 135, 1926 B. 256, 1935 P. 461=36 Cr. L. J. 1268, 7 P. 269, 1935 P. 145.
35. When right of appeal exists. See—6—25.
 1. High Court will not entertain revision at the instance of accused who had right of appeal but did not exercise it. 3 C. 573, 2 A. 276, 1 P. L. R. 1904, 35 B. 253, 8 Bom. L. R. 851, 1933 A. 678, 14 B. 331, 1928 M. 1174, 1935 R. 393.
 2. High Court can exercise its revisional powers in exceptional cases when the right of appeal was not exercised. 6 A. 484.
 3. When a convict appealed to the Sessions Judge who recommended to High Court for enhancement, the High Court was not debarred by subsequently entertaining a revision petition preferred by the accused. 45 A. 11.
 4. If a person having a right of appeal, does not avail of it, High Court will not interfere in revision. 1935 R. 393.
36. Who can apply in—outsiders—. See—21.
 1. High Court may reduce sentence at instance of third party in revision even though convicted person has not appealed. 1933 C. 361, 1932 L. 559—613—364. But when accused are lawyers or men of position, High Court will not interfere at the instance of third party. 1933 C. 361=34 Cr. L. J. 814, 1934 S. 72, 1931 S. 127, 1930 O. 497.
 2. Where an outsider presents an application in the interest of public, the High Court has jurisdiction to interfere to meet the ends of justice. 1933 A. 612=145 I. C. 736, 1931 A. 12, 1932 A. 125, 45 A. 123 Ref.
 3. High Court will interfere however the matter is brought to its notice. 45 A. 123.

Revision—(concl'd.)

4. Third party's application is for drawing the attention of the High Court. His counsel has no right to be heard. 1933 A. 678. *Case law discussed.*
5. High Court can receive information from any body and act *suo motu*. 1933 A. 678.
6. High Court can interfere on the application of third party, e. g., Bar Association when accused did not appeal or co operate. 1932 L. 559. 1931 L. 145=32 Cr. L. J. 700, 1930 O. 497 and 1932 L. 364=33 Cr. L. J. 339 Rel. on.
7. High Court will not interfere unless there is a strong case and miscarriage of justice. 55 B. 353, 1925 L. 507, 1933 C. 361, 1931 S. 211, 1931 C. 410=58 C. 1303.
8. Alien enemy residing in British India can apply in revision. 20 Cr. L. J. 101.

REVIVAL. See Fresh complaint.**1. Delay in—.** See Delay—20.**2. Of complaint in summary case** S. 247, Cr. P. C.

1. The Code makes no provision empowering the Magistrate to revive a case after an order of dismissal. 4 C. W. N. 26.
2. The dismissal of a complaint under S. 247 amounts to acquittal and bars a subsequent trial even if good cause is shown for non appearance of the complainant. 45 A. 58, 34 M. 253, 4 C. W. N. 346, 38 C. L. J. 196, 25 M. L. J. 160. See 40 M. 977.
3. If the proceedings are so irregular as not to amount to a trial, the dismissal will not amount to acquittal and the complaint may be revived. 2 Weir 307.
4. A Court which has acted under S. 247, Cr. P. C., has no power *suo motu* to restore the case and cancel the acquittal. The only remedy of the complainant is to move the High Court in revision. 1930 M. W. N. 190, 2 P. L. T. 170.

3. Of complaint after dismissal. See Complaint.

1. A dismissal of a complaint under S. 203, Cr. P. C., is no bar to the rehearing of the complaint by the Magistrate. 29 M. 126, 36 C. 415, 28 C. 211, 9 A. 55, 36 A. 53, 9 P. R. 1902 Cr., 46 P. R. 1911 Cr.
2. A Magistrate cannot re-open the same case although he can entertain a second complaint. 21 A. L. J. 215.
3. If the complaint is dismissed under S. 259, Cr. P. C., Magistrate can re-hear it on fresh complaint. 38 M. 310, 29 M. 126, 41 M. 727, 28 C. 652, 29 C. 726.
4. No doubt a Court must begin trial *de novo*, if after discharging accused under S. 259, it takes up the complaint again. But where Court discharged the accused under S. 259, but subsequently proceeded with the trial without taking sworn statement, the trial was not illegal, when accused was not prejudiced. 1929 M. 260=115 I. C. 64=30 Cr. L. J. 403.

4. Of order under S. 144, Cr. P. C. See S. 144, Cr. P. C.**5. Of Proceedings under S. 147, Cr. P. C., after stay.** See Easement.**RIGHT OF PRIVATE DEFENCE** Ss 96—105, I. P. C.**1. Against burglar or house breaker—**

1. Where the accused found a burglar in his house at midnight and struck him during scuffle that ensued between him and the burglar, he did not exceed his right of private defence. 1925 L. 23=91 I. C. 70=6 L. 463.
2. There is no right of private defence when the thief is running away without carrying anything. 25 P. R. 1885 Cr.
3. The moment a thief quits the premises the right ceases. 2 P. R. 1882 Cr., 17 P. R. 1876 Cr.
4. Owner has the right so long as the burglar is on the premises. 10 W. R. 9.
5. The right of private defence is not only available when the thief has already effected entry but by preventing him from entering the house. 93 I. C. 183.
6. A person who under a mistake of fact kills a person who is attempting to enter the accused's house, thinking him to be a burglar, while he is not, does not exceed

Right of Private Defence—(contd.)

his right of private defence of property. 1925 C. 1012=27 Cr. L. J. 1237.

7. It is legitimate exercise of the right to catch a thief. Killing is not justified unless, he offers resistance or uses force. But if in catching thief by throat he is suffocated to death, the accused is not guilty. 2 W. R. 12, 5 W. R. 73.
8. Where the deceased was committing house breaking and when coming out of the hole he was done to death by the owner. Held, he was guilty under S. 304 but severe punishment was not called for. 1930 O. 308.

2. Against cattle trespass.

1. The complainant's party had no right to seize the cattle of the accused after the cattle had left the field and the accused were consequently entitled to right of private defence of property. 1 L. L. J. 215, 2 P. R. 1914 Cr.
2. Throwing stones at a cow and breaking her leg after she was driven out of the field is no exercise of the right of private defence. 35 L. C. 318=18 Cr. L. J. 235.
3. Accused's cattle trespassed a field. An attempt was made by owners of the field to seize them but the cattle ran towards the field of the accused. The owner chased them. The accused gave a blow to one of the chasers, who died. Held, that the owners had the right to chase and seize cattle under S. 10, Cattle Trespass Act and no case for private defence was proved. 1928 L. 692=116 I. C. 463=30 Cr. L. J. 627, 1925 N. 50 Dist.

2-A. Against Co-sharer.

A co-sharer was digging earth with a view to appropriate it, other co sharers began to beat and eject him. Held, that other co-sharers had right of private defence and were not guilty under Ss. 323—147 1934 A. 829 (2)=35 Cr. L. J. 730.

3. Against creditor dragging a debtor.

Seizure of the person and dragging a debtor to his creditor by the peons of the creditor against his will constitutes the offence of abduction and the debtor can defend himself by striking but if he causes death, he would be guilty under S. 304. 1930 P. 347.

4. Against dacoit.

Certain dacoits, with the intention of committing dacoity were about to break into the house of the accused, who fired at them and killed one. Held, that the firing was in the right of private defence of property against intended robbery. 1929 A. 299=115 I. C. 609=30 Cr. L. J. 504.

5. Against drunkard.

1. Where of three persons drinking together, one threatened another with a knife for his refusing to drink more and the third interfered and hit him and received a fatal blow with the knife. Held, that the accused had only acted in the exercise of his right of private defence, the provocation was not sufficient to bring it within the first exception of S. 300. 12 Cr. L. J. 477=12 I. C. 85.
2. Drunken men are entitled to protection of law, but if they attack others, any member of the public is entitled to the exercise of right of private defence, provided he does no more harm than is necessary. 1927 R. 121=23 Cr. L. J. 445.

6. Against trespassers and thief.

1. If two persons invade another's house, in anger, the occupier is entitled to eject them forthwith by reasonable force. He is not bound to leave them to go to Police. 41 I. C. 830=18 Cr. L. J. 862.
2. Where A's party was in possession of land and B's party were trying to oust the former by force and A's party killed one of B's party with a lathi blow. Held, that the right of private defence was not exceeded. 51 C. 271.
3. A in excavating a khal encroached on B's land and committed mischief by cutting the land, which was resisted by B's party. The assembly had no right of private defence after the mischief had ceased. 12 W. R. 43.
4. A person has no right to kill a person found upon one's land, unless there was resistance and use of violence. "A kick is not a justifiable mode of turning a man out of your house though he be a trespasser." 17 C. W. N. 1081=21 I. C. 382.

Right of Private Defence—(contd.)

5. Where the trespassers were unarmed and offered no resistance the act of accused in killing two of them with spears amounts to murder. 18 W. R. 19.
 6. Where the trespasser attacked the owner with a spear whereupon the owner struck him a blow with a *lathi* and killed him. Held, that the right of private defence is not exceeded. 11 W. R. 41.
 7. Accused found an old woman cutting his rice and assaulted her brutally, fractured her shoulder blade, wrists and gave two incised wounds on the skull. She died. Held, that the injuries were not justified and it amounted to murder. 5 W. R. 33, 35 P. R. 1916 Cr.
 8. But where accused finding a thief in his field and gave him a *lathi* blow of which he died, the accused is not guilty. 12 W. R. 15.
 9. A thief stealing melons in a field ran away without replying when called out. There is no right of private defence in this case. 25 P. R. 1885 Cr.
 10. Though the accused and his party are engaged in an action amounting to civil trespass, accused is not guilty when he fires a gun when attacked by a number of men armed with *lathis*. 1925 L. 49=81 I. C. 113=25 Cr. L. J. 625.
 11. A trespasser can be ejected with reasonable force or violence. 15 Cr. L. J. 209.
 12. Person threatened with criminal trespass is not bound to run for Police help. 1934 A. 829 (2)=35 Cr. L. J. 730
 13. Complainant got possession of the house through Court and put lock on it. After some days the locks were broken and furniture put there. Complainant put out the furniture and the other party came with sticks, etc. Held, that the complainant could resist the attack. 1934 C. 273=151 I. C. 409.
 14. If the thief throws away the property and effects retreat, the owner who is chasing him cannot cause his death. 1934 L. 595=35 P. L. R. 664, 1926 L. 74 Rel. on. 1926 L. 28=6 L. 463 Dist
 15. Party in possession of property is entitled to resist by force any attack on property. 1933 P. 434=145 I. C. 791, 1932 P. 215=11 P. 523 Dist.
- 7. Alternative plea of alibi or—** See—13
1. Accused can plead right of private defence specifically or in the alternative. 58 I. C. 527=21 Cr. L. J. 799
 2. Accused can set up alternative defence of *alibi* and private defence. 19 Cr. L. J. 371=40 A. 284, 32 A. 451, 16 P. R. 1913 Cr., 19 C. W. N. 654, 21 A. 112, 20 A. 459, 8 P. L. R. 1906, 1933 P. 568=35 Cr. L. J. 92
 3. The Court should not ignore the exercise of the right of private defence, where there is evidence on the file, although he sets up a different defence, e. g., *alibi*. 41 P. R. 1884, 1924 A. 645, 3 L. L. J. 281, 62 I. C. 331, 131 P. R. 1915 Cr., 5 P. R. 1901, 36 P. L. R. 1918
 4. The defence of right of private defence should not be denied to accused merely because accused does not specifically plead it. 1933 P. 568=35 Cr. L. J. 92.
 5. Accused can establish his right of private defence from prosecution evidence. 1933 L. 1055.
- 8. Amount of force.**
1. Once an assault has assumed a dangerous character, every concession should be made in favour of accused, for he is not bound to modulate his defence step by step. 1923 L. 155 (2), 63 I. C. 154, 28 M. 454, 23 B. 817, 1925 N. 261, 1933 L. 665=34 Cr. L. J. 584, 1936 N. 234.
 2. A person on whom *lathi* blows are showered is justified in striking the assaulter with a spear. 1923 L. 900=110 I. C. 787=29 Cr. L. J. 755.
 3. If the prisoner is justified in giving blow, he is not expected to measure the force of his blow in 'Golden Scale.' 1923 A. 357=73 I. C. 975=24 Cr. L. J. 735, 1923 A. 194, 1929 M. 784, 1936 P. 622
 4. The accused were engaged in irrigating their fields, when they were assaulted by

Right of Private Defence—(contd.)

complainant's party, the amount of force to be used by accused in self defence could not be gauged exactly. 1925 O. 425=85 I. C. 353.

5. When a person is assaulted, he is not bound to escape further injury by resorting to less violence. 28 M. 454, 1925 N. 260.
 6. In the heat of the moment and while defending oneself from a man armed with a stick, it is impossible to calculate with accuracy the exact force to be employed in self defence. 1925 L. 514=86 I. C. 218=26 P. L. R. 14.
 7. A Mahomedan married woman became Sikh and got married to one of the party of the accused. Her previous husband's relatives forcibly took her away and in the fight one of them received a fatal blow. Held, that the accused did not exceed the right of private defence. 1923 L. 155 (1)=81 I. C. 157.
 8. One person, charged with *lathis* by five men, killed two in exercising right of self defence. Held, that it was impossible to decide the exact number of *lathis* and force of blows in such a situation. 1929 L. 494=117 I. C. 907=30 Cr. L. J. 863
 9. Amount of force depends on the nature of attack, the danger apprehended, and the real necessity of harm by retaliation. 1931 M. W. N. 646.
- 9. Apprehension of death or grievous hurt—Attack by deceased.**
1. Where a gun was levelled against accused, when he was escorting ladies and he stabbed the assaulter he was held not guilty. 1925 A. 319=86 I. C. 45=26 Cr. L. J. 669.
 2. Where a person was obnoxious to his assailants who attacked his house with sticks and knives and tried to break into the house, he was justified in firing at them and in continuing to fire if the attack went on. 1929 M. 48.
 3. A person attacked by another with "slang" (a fork with a long handle) is entitled to cause death of the assailant. 1929 L. 443=31 Cr. L. J. 47.
 4. The accused was struck by deceased and his party with *lathis* and fell on the ground. The accused rose and caused the death of the assailant with a *lathi* blow. Held, he was not guilty. 10 Cr. L. J. 391, 1925 P. L. R. 14.
 5. Accused was attacked by deceased, who called upon one of his companions to use knife. Accused being so surrounded struck the deceased with a dagger and caused his death. Held, he was not guilty as he had apprehension of grievous hurt, if not death. 2 P. L. R. 1920=55 I. C. 607=1 P. W. R. 1920 Cr.
 6. Three men attacked the accused with *lathis* and he killed one of them. The accused is not guilty. 1925 L. 370=89 I. C. 249=26 Cr. L. J. 1305.
 7. Where the deceased abused and gave his uncle a *jatru* blow and the accused gave him two blows on the head which resulted in death, the right of private defence was not exceeded. 8 P. L. R. 1906.
 8. Supposition of accused that the deceased had a knife, is no occasion for the exercise of the right, in the absence of threat or attempt to draw knife. 25 P. R. 1885.
 9. Some dissatisfied tenants went to the house of the zamindar for the return of the produce. He apprehended hurt and fired. Held, that he did not exceed the right of private defence. 131 P. L. R. 1915, 5 P. R. 1901 Cr., 63 I. C. 154, 22 W. R. 51.
 10. When a person pleads right of private defence, it is not necessary to establish the fact conclusively. If he can show that he had grounds for believing that violence was attempted and that belief under the circumstances was such that a rational man may have entertained, he is entitled to acquittal. 36 P. R. 1879 Cr.
 11. Accused drank with deceased and went to a forest. The deceased admitted that he had caused the death of accused's children with incantations and threatened to have him devoured by tiger. Held, that there was no apprehension as to justify killing. 4 B. L. R. 110.
 12. There must be threat of present danger and not a prospective one. 15 C. 671 (673).
 13. Accused along with others went to the threshing floor of the deceased to claim share

Right of Private Defence—(contd.)

of produce, who assaulted and struck them with a *dang*. The accused gave him a blow with a '*wahola*' which fractured his skull. Held, that the accused had reasonable apprehension of grievous hurt and was therefore protected. 1924 L. 227= 72 I. C. 520= 24 Cr. L. J. 408

14. The question is not what a cool bystander would think absolutely necessary but whether there was apprehension. 1929 M. 748, 81 I. C. 113.
15. Deceased and another came with spears to attack. Accused causing his death commits no offence. 1933 L. 1053.
16. Deceased attacked accused with *lathi* who retaliated. Held, he did not exceed right of private defence. 1933 O. 380.
17. Where a proclaimed offender attacks the Police Officer with hatchet the right of private defence extends to causing death. 1933 S. 193.
18. Aggressor who was strong and powerful gave an iron bound *lathi* blow, accused hitting assailant to death is not guilty. 1933 O. 59=34 Cr. L. J. 243, 1923 A. 194=45 A. 250.
19. In case of fighting with fists, accused can have no reasonable apprehension of grievous hurt. 1935 Pesh. 155.
20. The deceased lost his temper with his brother and threatened him with a scythe. Accused gave him a blow at the head. Held, that the right of private defence was not exceeded. 1934 L. 995

10. Bandh cutting—Dam on canal water.

1. People of village K had erected a *bandh*, and people of S village proceeded to demolish it and one of their men was killed. Held, that people of village K had the right of private defence. 1929 P. 523
2. Accused were entitled to flow of water from canal and complainant put up a dam without any right and attacked the accused. One accused and two of the complainant's party died. Held, that accused were exercising their right of private defence in abating the nuisance caused by the dam. 1933 S. 142=34 Cr. L. J. 768, 20 I. C. 623

11. Both parties determined to fight.

1. When both parties are determined to vindicate their rights or supposed rights by show of criminal force, no question of self defence arises. 5 P. 520, 1932 P. 189, 36 P. R. 1918 Cr., 28 M. 454, 1927 S. 92=98 I. C. 467= 27 Cr. L. J. 1347.
2. If both parties come armed to settle their dispute, no right of private defence exists. 1925 O. 438=89 I. C. 158, 20 A. 459, 1930 O. 252, 35 C. 368, 1934 L. 209, 1934 L. 332, 1934 L. 512 1932 P. 189.
3. If there is a pitched battle both sides would be guilty. 132 I. C. 381.
4. Where each party anticipated resistance from the other and had fully prepared themselves for the violent clash, it was held that the primary object was to fight and the vindication of right of property was a mere pretext. There was no question of right of private defence. 1935 N. 141=156 I. C. 120=36 Cr. L. J. 861, 20 A. 459.
5. There is no right of private defence where parties are themselves for a fight to enforce their right or supposed right and deliberately engaged in large numbers in a fight. 35 C. 368, 35 C. 384, 1926 P. 433= 27 Cr. L. J. 1322= 5 P. 520

12. Bound to run away. See —31.**13. Burden of proof and plea of—**

1. The *onus* to establish circumstances justifying exercise of right of private defence is on accused. 1927 L. 786=104 I. C. 454, 1927 C. 324=100 I. C. 718, 41 P. R. 1884. 13 Cr. L. J. 470, 24 I. C. 327, 154 I. C. 697, 1933 R. 142, 8 C. W. N. 714.
2. A Court cannot set up a plea of self-defence when the accused has not done so himself. 1904 A. W. N. 113.
3. But if the facts are on the file, the Court is bound to apply the law of private defence, if accused has not pleaded it. 20 A. 459, 21 A. 122, 1922 L. 314, 1930 R. 1,

Right of Private Defence—(contd.)

1927 M. 97, 15 Cr. L. J. 710, 11 C. L. R. 232. See 1933 L. 1055

4. Where a plea of private defence of property is set up, the burden of proving that property belonged to them is on the accused. 5 P. 520=1925 P. 433=93 I. C. 394.
5. For doing justice to the accused, the plea of private defence may be raised at any stage, if facts necessary to establish are on the record. 32 A. 451, 19 C. W. N. 951, 30 I. C. 113, 40 C. 163. See also 21 A. 122.
6. The plea of right of private defence can be raised for the first time in appeal. 1932 L. 606=33 P. L. R. 718. See 21 A. 122.
7. The *onus* of proving right of private defence may be discharged, from the evidence elicited from cross-examination. 1923 A. 327, 1923 A. 277=83 I. C. 509.
8. The plea of private defence will not be allowed in appeal, when it involves proof of independent facts in case of defamation. 4 P. W. R. 1910 Cr.
9. The *onus* is on the prosecution to prove that accused exceeded the right of private defence. 1924 O. 334, 1927 L. 786 *Contra* 8 C. W. N. 714.
10. If the deceased was assaulted by the relations of a woman, while he was violating her, no question of burden of proof arises and the case falls under S. 100, I. P. C. 16 C. L. J. 440=17 I. C. 1001=13 Cr. L. J. 905.
11. A's wife was going to her lover B one night. A followed her with a hatchet and attacked B who stabbed A with a knife and caused his death. B denied intimacy with A's wife in the Lower Court which convicted him. He was not allowed to do so in appeal and the right of private defence was not established. 41 P. R. 1884.
12. Defence of right of private defence can seldom be made out when the accused's case is that he did not strike the blow at all. 1923 C. 700=30 Cr. L. J. 799.
13. If the prosecution does not present true account of how the deceased was killed, the accused need not plead private defence 26 Cr. L. J. 647.
14. Right of private defence need not be specifically pleaded. 1933 O. 63=34 Cr. L. J. 373, 58 I. C. 527=21 Cr. L. J. 799.
15. Accused plead alternative defence of *alibi* and right of private defence. 58 I. C. 527=21 Cr. L. J. 799, 40 A 284, 52 I. C. 485, 30 I. C. 113 *Contra* 21 A. 122.
16. In a criminal trial the nature of defence is to be ascertained not only from the statement of accused but from the trend of cross-examination and from the argument of Counsel at the close of trial. 1930 C. 442=127 I. C. 263.
17. If the task of proving an exception has already been performed by prosecution, it is not necessary for the accused to do it all over again. 1925 N. 37=25 Cr. L. J. 1077.

14. Collecting men to resist attack—

1. If there is impending attack by one faction to wreak revenge, and the other party collected men to resist and a riot followed. Held, that the latter party acted in self-defence. 1925 A. 664.
2. It is sometimes impossible to exercise the right of private defence without preparation which may be done by collecting men, against aggression. 24 C. 324, 24 C. 686, 6 C. W. N. 164, 33 C. 295, 14 B. 441, 26 M. 249, *Contra* 20 A. 459, 24 A. 238, 17 Bom. L. R. 888.
3. A person in possession can collect men to defend his property and the concourse of such men does not constitute an unlawful assembly. 19 W. R. 66, 16 C. 206, 48 I. C. 163.

15. Courting attack by accused.

1. The accused insulted the deceased. The deceased then struck the accused. The accused retaliated with a heavier blow, which caused his opponent's death. Held, that the accused had the right of private defence. 1925 L. 514=86 I. C. 218=26 Cr. L. J. 730=26 P. L. R. 14.
2. When accused first picked the quarrel and tried to hit another but ran away for safety from subsequent attacks of *lathis* and seeing that he could not escape, turned round and hit a blow. Held, he was protected by the right of private defence. 1925

Right of Private Defence—(contd.)

A. 313=85 I. C. 382=26 Cr. L. J. 542.

3. A man cannot justify killing another by pretence of necessity unless he were wholly without fault in bringing that necessity upon himself. 5 P. 520.
4. A person cannot set up right of private defence if he voluntarily engages himself in a fight with a desire to fight instead of being forced to fight to save himself. 40 B. 105.
5. Accused first used violence and ran after the deceased who attacked him with a knife. Accused then killed him with a knife. Accused is guilty under S. 304. 1930 M. W. N. 502.

16. Commencement and continuance of—. S. 102, I. P. C.

1. Right of private defence of property comes to an end, when the person runs away to another field and there he is killed by the accused. 1924 P. 275=74 I. C. 717=24 Cr. L. J. 813.
2. Cattle can be chased outside the field, when notice of cattle trespass had been taken and right of private defence exists in case of persons rescuing the same. 1928 L. 692=116 I. C. 463.
3. There is no right of private defence when the thief is running away without carrying anything. 25 P. R. 1885 Cr.
4. Mere presence of persons does not take away the right of private defence. 1933 L. 167.

17. Defending or taking possession.

1. While defending lawful possession if death is caused, the right of private defence exists. 51 C. 271, 1929 P. 523.
2. Force can be used to defend one's possession of property but not for the recovery of the same, for the remedy lies in the Civil Court. 1925 N. 142=81 I. C. 933=25 Cr. L. J. 1109.
3. Defending possession implies that a person in peaceful possession of property is entitled to maintain it even by force. The question whether he had or had not the right of possession is immaterial. 7 W. R. 112, 14 W. R. 69, 10 W. R. 64.
4. Unless a right of private defence is established, a *bona fide* claim of title or possession will not avail. There is no distinction in this respect between forming an assembly to enforce a right and to maintain an existing right. 129 I. C. 130=1931 P. 40=12 P. L. J. 284.
5. Persons claiming interest in land attacked persons who were cultivating that land without giving latter notice to quit. No right of private defence arises. 1936 P. 481.

18. Duty of Magistrate to give benefit of—.

1. Defence sections are timidly applied by the Magistrates. 5 P. R. 1901 Cr.
2. Magistrates should not in their zeal to suppress crimes of violence, overlook the important provisions of law regarding private defence. 1927 L. 194=100 I. C. 124.
3. Even if the plea of right of private defence is not taken by the accused, the Court is bound to apply the law and should not sacrifice justice to mere technicality. 20 A. 459, 21 A. 122, 32 A. 451.

19. Exceeding—. See —8.

1. Where in a *marpit*, brought about by the illegal act of the deceased himself, the accused while resisting attack strikes him on the head and thus kills him, he has not exceeded the right of private defence. 1929 A. 897, 1934 L. 656.
2. If the person entitled to inflict harm in private defence, inflicts more harm than was necessary, the Court may make an allowance for the fact and punish him only for the excessive harm. 20 I. C. 602, 2 W. R. 59, 107 P. L. R. 1916, 1932 M. W. N. 67.
3. Killing a burglar at midnight during a scuffle is not exceeding right of private defence. 6 L. 463=1926 L. 28=91 I. C. 70=27 Cr. L. J. 38.

4. Where the thief when coming out of the hole was done to death, the right of private defence was exceeded. The accused were guilty under S. 304, I. P. C. 1930 O. 408=12/ I. C. 875=32 Cr. L. J. 44.
5. Where an accused on being assaulted and pulled down from his cycle, took a sharp knife and wounded the assailant in his chest, he is guilty under S. 344, as he acted under great provocation. 44 I. C. 675=19 Cr. L. J. 371=40 A. 284.
6. Accused suspected of smuggling opium was ordered to stop by an Excise Inspector, who fired two shots to frighten him. The accused assaulted and killed him. Held, that the Excise Inspector could arrest him but could not cause death in arresting under S. 46 (5), Cr. P. C. The accused apprehended death and so was justified in killing. 54 I. C. 577.
7. The fact of exceeding right of private defence which a man has, cannot make him a member of unlawful assembly and he can be punished only for the individual act. 39 C. 896, 36 C. 296.
8. Where the accused were justified in defending one from the insult and assault took *chhavis* and caused grievous hurt, they exceeded the right of private defence. 18 P. L. R. 1914=29 P. W. R. 1914 Cr.
9. The deceased and his son went to accused's house and abused his sister and the son gave a *lathi* blow on the head of his sister. The accused struck the deceased with the handle of the pitch fork and caused his death. Held, that the right of private defence was exceeded. 69 P. L. R. 1916.
10. Deceased's party forcibly removed a woman of the accused's party and in the fight that ensued, accused killed the deceased. Held, that the right of private defence was not exceeded. 1923 L. 155 (1)=81 I. C. 157.
11. Accused beat the deceased with *dangs* and caused his death as the latter was cutting the rice crop of the accused. Held, that the right of private defence was exceeded. 35 P. R. 1916 Cr.=38 I. C. 751.
12. In the excitement and confusion of a fight, it is too much to expect that an average man would weigh the means he intends to adopt at the spur of moment for self-defence. The counterattack should not be out of all proportion with the original. 1927 L. 194=100 I. C. 124=28 Cr. L. J. 252.
13. The question of exceeding the right of private defence does not depend upon the amount of injuries caused. 1925 P. 762=86 I. C. 988=26 Cr. L. J. 924.
14. In case of dangerous assaults allowance should be made if the right is a little exceeded. 1925 N. 260=26 Cr. L. J. 587, 63 I. C. 154, 1923 L. 155 (2).
15. The deceased went to the roof of the accused's house and began to remove the rafters without any right. Accused flung a heavy *balla* at him and caused his death. Held, he was guilty under S. 304 (2) as he exceeded the right. 1927 L. 730=101 I. C. 663=28 P. L. R. 279.
16. The Court views with leniency the offence of one who has exceeded right of private defence. 182 P. L. R. 1914.
17. In case of exceeding right of private defence, conviction under S. 304 is proper but instead of 7 years, a sentence of one year should be substituted. 1935 O. 442=157 I. C. 641, 1930 O. 408=32 Cr. L. J. 44=127 I. C. 875 Appr.
18. If a person disables his adversary by a blow, the repetition of blow is not justified. 1934 L. 746
19. If deceased threatened the accused with a scythe, the fracture of skull in self-defence is not exceeding the right of self-defence. 1934 L. 995.
20. Deceased who was a notorious bully attacked accused with fists, who stabbed him with knife. Held, that right of private defence was exceeded. He was sentenced to 3 years under S. 304 (2). 1933 L. 227.
21. A was unarmed but he threw down B. B gave some knife blows. Held, he was guilty under S. 304 (1). 1933 L. 1048.
22. If a person alleges that he acted in the exercise of the right of self-defence, the burden of showing that he exceeded the right of self-defence is on the prosecution. 1927 L. 785=28 Cr. L. J. 838 *Contra* 8 C. W. N. 714.

20. Exercise and extent of—.

1. Where the deceased a sturdy youngman quarrelled with his uncle and after exchange of abuses gave him one *jatu* (side post of a cart) blow, whereupon the uncle gave him two *jatu* blows in return. Held, that accused was entitled to acquittal. 49 P. L. R. 1904.
2. A Police man who was conveying a prisoner was mobbed by a number of camle drivers, whose camels were grazing on the canal bank, discharged his gun and wounded one of them. Held, he was protected. 5 P. R. 1901 Cr.
3. S. 104, I. P. C., cannot serve as defence to a charge under S. 504, I. P. C. 11 C. L. J. 113=11 Cr. L. J. 213.
4. Where A finds his stolen animals in B's possession and to recover them drives B's animals as well, B's right of private defence of property arises. 1927 L. 355.
5. A person assaulted is entitled to carry on his defence till he finds himself out of danger. 1925 N. 260=85 I. C. 731=26 Cr. L. J. 587.
6. Extent of right of private defence depends not on actual danger but on reasonable apprehension of such a danger 1925 L. 49=81 I. C. 113=25 Cr. L. J. 625.
7. If a man is attacked by a number of persons armed with *lathis* he is not guilty if he fires a gun to save himself 1925 L. 49=81 I. C. 113, 5 P. R. 1901 Cr., 131 P. L. R. 1915, 63 I. C. 154, 22 W. R. 51.
8. If accused are fighting like rats in a trap with a murderous mob in front of them and an enemy has made his way in the room where they had taken refuge, they are not guilty if they purposely kill their assailant. 63 I. C. 154=1921 B 335.
9. A person is justified in offering resistance to his being taken away against his will for being impressed for service on employment. 52 I. C. 887.
10. Where the danger is imminent and there is no time to have recourse to authorities, a person can fire a gun to save himself. 26 I. C. 158, 41 C. 43, 24 C. 686, 36 C. 865.
11. There can be no right of private defence, when there is no violation of legal right. A girl betrothed to A was afterwards betrothed to B. A eloped with her and was stopped by C the party of girl's father, who seized A's horse to prevent his riding away with her. A's party attacked them. Held, that the assault was not justified 12 P. R. 1872.
12. Villagers of H paraded with sacred water in the village B, the residents of which obstructed them and a fight ensued. Held, that the villagers of A were justified in carrying the water and passing through the village B and obstruction was unlawful. 26 M. 249.
13. Facts unknown to the person assailed at the time of the attack but proved at the trial, should not be taken into account and made the basis for finding against the plea of self-defence. 1929 M. 748=1929 M. W. N. 511.
14. A person assaulted is not bound to retreat but may pursue his adversary till he finds himself out of danger. He is entitled to secure his victory as long as the contest is continued and if in the conflict, he kills, it is justifiable. 1923 L. 155=81 I. C. 164.
15. Supposition of accused that the deceased had knife, is no occasion for the exercise of right of private defence, in the absence of threat or attempt to draw knife. 25 P. R. 1885 Cr.
16. Where there is no apprehension from the other party and the attack is merely out of revenge, there is no right of private defence. 1931 L. 566.
17. The force to be used in the exercise of right of private defence depends on the circumstances of each case. The nature of attack, the danger apprehended the imminence of danger the real necessity of inflicting harm by retaliation are all to be considered. 1931 M. W. N. 646.
18. If an attacked person manages to get weapon from the attacker, he can use it in self defence. 1935 R. 391.

Right of Private Defence—(contd.)

19. Obstruction by lessee to auction purchasers who were given symbolical possession of occupancy holding with standing crops belonging to lessee is not punishable. 1934 N. 172. 15 C. P. L. R. 141 Dist.
 20. Extent of right depends not on actual danger but even on reasonable apprehension. 1933 O. 63=34 Cr. L. J. 373.
 21. Accused saw the deceased on the top of his wife and killed him. Held, that the right of private defence was not exceeded. 1933 A. 213=34 Cr. L. J. 882.
 22. When peaceful citizens are attacked with deadly weapons, right of private defence extends to use of similar weapons and even to the extent of killing aggressors. 1933 A. 401=34 Cr. L. J. 765.
- 21. Illegal acts of public servants under colour of office. S. 99, I. P. C.**
1. S. 99 applies to acts where jurisdiction is wrongly exercised and not where there is complete absence of jurisdiction. 51 C. 902, 1921 P. 415, 6 C. L. J. 127.
 2. "Under colour of his office" means *bona fide* belief that it was his duty to perform the act, whether he was lawfully or unlawfully in the discharge of his duty. 18 A. 246 (252).
 3. A obtained a decree from a Court which had no jurisdiction to effect partition, and the surveyor under the orders of the Collector began to measure the land. He was resisted by accused. Held, that the accused is not guilty as the protection does not extend to the illegal acts. 13 B. 168, 22 C. 286, 24 C. 320.
 4. Where the Partition Amin authorized to measure the land of a village began to measure the land of another village, the obstruction was justified. 5 C. W. N. 391.
 5. An Income Tax Officer has no authority to enter the premises of a firm to inspect the account books and if enters the premises, he can be forcibly turned out. 7 L. 104=1926 L. 326=95 I. C. 308.
 6. A Vaccinator has no right to take lymph from persons without their consent and if he takes it without consent it would justify an assault on him. 3 C. W. N. 627.
 7. S. 99 is not intended to cure want of jurisdiction but only erroneous exercise of it, e.g., intialling a warrant instead of signing it. 8 A. 293 or mode of delivering possession. 18 C. W. N. 548.
 8. A Police Officer tried to snatch a *kulhari* from a person, whom he suspected that he was going to assault his enemy. The accused assaulted him. Held, that the accused was not guilty, as the Police Officer had no right to snatch a *kulhari*. 6 L. 392.
 9. Under S. 99 the right of private defence against an injury apprehended to be done by a public servant extends only to those cases where there is a reasonable apprehension of death or grievous hurt from the act of the public servant. 1927 L. 706=105 I. C. 817=28 Cr. L. J. 993, 24 I. C. 327. See 5 C. W. N. 391.
 10. A person beating a public servant executing a warrant of attachment, though the warrant be illegal, is guilty under S. 323, and is not justified in beating under S. 99. 1927 L. 851=105 I. C. 684=28 Cr. L. J. 972.
 11. A Police man whose cart had been stopped by some camel drivers, whose camels had been trespassing on the Government canal bank, and through whose action his prisoner escaped and was threatened, fired a shot without aim was protected under S. 99. 5 P. R. 1901 Cr.
 12. A peon of the Deputy Commissioner seized the bullocks of the accused to pull his cart out of rent, the owners taking them back forcibly are not guilty. 24 I. C. 172=15 Cr. L. J. 436.
 13. Resisting forcible seizure of animals for transport purposes by a Government officer is justified under S. 99 as it is an illegal act on the part of the officer. 38 P. W. R. 1913 Cr.=325 P. L. R. 1913=20 I. C. 992, 20 I. C. 233=14 Cr. L. J. 409.
 14. A right of private defence exists in a case where the alleged offender does not know and has no reason to believe that the person doing the act was a public servant. 1924 A. 645=85 I. C. 245=26 Cr. L. J. 501.

Right of Private Defence—(contd.)

15. There is no right of private defence against a peon, acting under the colour of his office in good faith, though his act is not justifiable by law. 15 Cr. L. J. 427.
 16. S. 99 protects the public servant against the rights of private defence even if the authority be defective in minor particulars or even if the officer exceeds his duty in a minor particular. 1932 P. 315.
 17. Where a bailable warrant for the arrest of a woman under S. 498, is not shown to her, nor any opportunity to offer bail is given, the arrest is illegal and if Police party is attacked there is no offence committed. S. 99 does not apply. 1935 A. 913=1935 Cr. C. 1129.
 18. The mere fact that a Sub-Inspector was dressed in uniform does not justify the inference that he was acting in good faith, when actually he was acting in reprehensible manner. 1934 O. 124=35 Cr. L. J. 804.
 19. Warrant of attachment was signed by Deputy Collector instead of by Collector. Attachment was effected by Kurk Amin in good faith under colour of office. There was no apprehension of death or grievous hurt. Held, that there was no right of private defence. 1933 O. 276=34 Cr. L. J. 732, 15 Cr. L. J. 427, 24 C. 320, 1926 L. 19=6 L. 392 and 4 A. L. J. 132 Ref., 1924 L. 667=25 Cr. L. J. 43, 1923 P. 338, 20 I. C. 233, 1928 M. 624=51 M. 873, 1929 A. 903, 1927 A. 91 and 1924 C. 959=51 C. 902 Dist.
 20. A Pathan being summoned to Police Station was abused by the Sub-Inspector, whom he (Pathan) threatened with cane, whereupon three constables attempted to beat him. While in their grip, he opened his knife and stabbed a constable who died three days later. Held, he did not exceed his right of private defence. 1936 N. 234, 28 M. 454, 10 Bur. L. R. 191 Ref.
- 22. Illegal attachment by public servant. See—21.**
1. If a bailiff attaches agricultural cattle and grain or tools of potter exempt from attachment under Civil Procedure Code, an assault upon him is not protected by S. 99. 21 M. 296.
 2. A person beating a public servant executing a warrant of attachment, though the warrant is illegal, is guilty under S. 323. 1927 L. 851=28 Cr. L. J. 972.
 3. A Police Officer attached a property although it did not belong to the absconder. The rightful owners had no right of private defence. 29 C. 417.
 4. A Magistrate illegally ordered the Police to take charge of paddy pending proceedings under S. 145, Cr. P. C. The Police was resisted by armed violence. Held, that violence was unjustified. 9 C. W. N. 125, 18 C. W. N. 548=24 I. C. 163.
 5. A Vakil is appointed to make an attachment but under O. 21, R. 105 no reasons were recorded. Held, that accused had no right of private defence against attachment made by him. 1935 A. 490=154 I. C. 631.
 6. For affecting attachment in the *zenana* quarters it is not necessary that the judgment-debtor must be in possession of these, it is enough if decree holder considers that there may be property of judgment-debtor. 1935 A. 490=154 I. C. 631.
 7. An Amin through negligence or inexperience attached the property on expired warrant. Held, accused had no right of private defence under S. 97. 1933 A. 620.
 8. Bailiff entered a house not belonging to judgment-debtor, to attach grain. Judgment-debtor's party have no right of private defence. 1936 L. 851.
- 23. Illegal arrest by public servant— See—21.**
1. There is no right of private defence against the arrest effected by a constable acting under colour of his office, even though the arrest is not strictly justified by law. 106 I. C. 581=29 Cr. L. J. 69.
 2. A Police Officer executing a bailable warrant is bound to give the person arrested, the option of bail, and if he fails to do so, he is not protected by S. 99 against the rescuers, who use force to liberate the arrested person. 15 I. C. 1006.
 3. Without emergency for arrest under S. 151, Cr. P. C., the arrest is illegal and if a person causes simple injuries to armed Police, who use force, he is not guilty. 1930 L. 348=121 I. C. 734=31 Cr. L. J. 294, 24 C. 320, 1926 L. 19.

Right of Private Defence—(contd.)

4. Even if arrest by Police is wholly illegal, yet the person arrested or his rescuers are not entitled to use more force than is necessary. 1926 S. 190=94 I. C. 404.
 5. Where the accused were arrested by Police lurking armed in a village inhabited by dacoits. Held, that even if the arrest was not justifiable under S. 54, Cr. P. C., still the resistance was not justified. 7 P. R. 1869, 9 P. R. 1918 Cr.
 6. Accused who were reported against as dacoits and were armed with gun were arrested by Police. The accused resisted arrest and fired and killed several persons, assisting Police. Held that they were guilty of murder. 21 P. R. 1900 Cr.
 7. A District Magistrate has no jurisdiction to arrest a witness to give evidence before Police. The resistance to such an arrest is justified. 24 C. 320, 6 L. 392.
 8. A warrant which does not contain the name or sufficiently clear description of person to be arrested is wholly illegal. 16 C. W. N. 1078.
 9. Accused suspected of smuggling opium was ordered to stop by an Excise Officer, who fired two shots to frighten him, who wounded the Excise Officer with a sword. Held, that as Excise Officer had no right to cause death for effecting arrest under S. 46 (5), Cr. P. C., the accused had not exceeded the right of private defence. 54 I. C. 577.
 10. Resistance to illegal arrest by Police is not justified by right of private defence. 7 P. R. 1869 Cr., 21 P. R. 1900 Cr., 16 P. R. 1913 Cr.
 11. If there is no defect in the authority issuing warrant of arrest, right of private defence to resist execution does not exist. 1932 P. 315=13 P. L. T. 502.
 12. Where the notice and warrant of arrest of the judgment-debtor were issued simultaneously, the arrest by peon executing the arrest is legal. 1932 P. 315.
- 24. Illegal search by public servant.**
1. Where an Excise Sub-Inspector was empowered to search only for "excisable articles" under the Bengal Excise Act and he attempted to search a house for "foreign excisable articles," his entry was unlawful and assault on him was justified. 19 M. 349, 21 M. 296.
 2. Search by a Subordinate Police Officer deputed by the officer in charge Police Station without a search warrant is illegal but the resistance is not justified when the Police man charged those persons with theft. 16 P. R. 1913 Cr., 7 B. H. C. R. 50, 8 S. L. R. 1, 3 C. W. N. 344.
 3. A person applied for warrant under S. 100, Cr. P. C., to search for persons wrongfully confined but Magistrate issued warrant under S. 96. The police were not protected when resisted as the warrant was wholly illegal. 6 C. L. J. 127.
 4. A warrant which does not contain clearly the description of a person whose house is to be searched or a general warrant is wholly illegal. 13 Cr. L. J. 764.
 5. A search warrant did not give the name and designation of the Police Officer who was to execute it. A Head Constable while executing the warrant was resisted by some men and was beaten. Held, that the accused were not guilty under Ss. 225-B and 332 but they had no right of private defence and were guilty under S. 147 or under S. 323 if less than five. 16 P. R. 1913 Cr.=155 P. L. R. 1913.
 6. A search conducted beyond the Police Officer's station is illegal but there is no right of private defence if the Police were acting in good faith. 26 I. C. 319=8 S. L. R. 1, 18 A. 246.
 7. In the course of lawful search by a Police Inspector, he illegally laid hands on a woman. The accused a near relation of hers remonstrated and was hit with a stick. He snatched it and gave two blows to the Police Inspector who died. Held, that he was protected by right of private defence. 1926 A. 147=27 Cr. L. J. 11.
 8. Accused is justified in pushing the Inspector who began to make search without complying with S. 165, Cr. P. C. 10 P. 821.
- 25. Illegal warrant.**
1. Warrant to attach Sapurdar's property is illegal and resistance is not punishable. 1924 L. 667=25 Cr. L. J. 43=75 I. C. 731.

Right of Private Defence—(contd.)

2. Resistance to the execution of a warrant, the date of return of which had expired is no offence. 10 C. 18, 31 C. 424.
3. Resistance to a defective warrant is justified. 50 P. L. R. 1918, 38 C. 789—1088
Contra 16 P. R. 1913 Cr., 23 C. 896, 28 C. 411, 18 A. 246, 19 M. 349.
26. Injuries on accused's person. *See* Marks of injury.
27. Limit of—. *See* Exercise and Extent—Amount of force.
28. No—
 1. When there is time to have recourse to authorities. 1926 L. 516=91 I. C. 39, 26 M. 249, 14 B. 441.
 2. When both parties are determined to fight. 5 P. 520, 28 M. 454, 35 C. 368, 36 P. R. 1918 Cr.
 3. When there is no defence but offence, e.g., if while defending yourself, you put your enemy to flight and then pursue him and inflict injury. 35 C. 768, 443, 384.
 4. When accused himself courted attack. 40 B. 105.
 5. When the public servant is acting in good faith under colour of his office. 18 C. W. N. 548, 18 A. 246, 23 C. 411, 43 A. 353.
 6. When there is no reasonable apprehension of death or grievous hurt, causing death is not justified. 15 C. 671 (673).
 7. When there is a pre-arranged fight. 1926 L. 221=92 I. C. 459=27 Cr. L. J. 283.
 8. When the property in dispute is not in the possession of any party and possession is attempted and obstructed by force. 91 I. C. 238=1926 O. 148.
 9. When a party is dispossessed from land and he wants to recover possession by force. 1927 L. 705=104 I. C. 464.
 10. When there is a sudden fight and every one is trying to hit one of the opposite side. There is no right of private defence. 1935 A. 438=157 I. C. 422.
- 28.A. Of property. *See* Against Trespasser, burglar, robber.
 1. It is no offence if the servants of a landlord use necessary force to protect the crops from being carried away by the tenants. 36 C. 827, 30 I. C. 748.
 2. The presumption that possession is with the party who has sown crops on the land is rebutted when that party goes armed to attack the opposite party. 30 I. C. 748 = 16 Cr. L. J. 700, 36 C. 827 and 36 C. 865 Dist.
 3. Persons in possession can use force to prevent the other party from cutting crops by force. 44 I. C. 33.
 4. Criminal law protects peaceful possession irrespective of title. A person in such a possession can maintain it by use of force. 7 W. R. 112, 14 W. R. 69, 23 W. R. 25, 16 C. 206.
 5. When possession was given to decree-holder in execution of a decree and judgment-debtor was allowed to remove his crops. He cannot resist decree-holder's entry on the plea of private defence. 1927 L. 193=100 I. C. 232=28 P. L. R. 273.
 6. When neither party was in possession and when the dispute was pending in Revenue Court, the deceased while obstructing the accused was struck dead by the accused. Held, that he was not protected by right of private defence. 1926 O. 148 = 91 I. C. 238.
 7. A person when dispossessed of land, can claim no right of defence of property as against the complainant assuming him to be trespasser who had just entered the land. 1927 L. 705=104 I. C. 464=28 Cr. L. J. 848.
 8. The accused must be in peaceful possession. The mere right to have possession restored by Civil Court does not justify a person in taking law into his own hands. 1927 S. 92=98 I. C. 467=27 Cr. L. J. 1347, 10 Bom. L. R. 285, 1926 P. 433.
 9. Force can be used to defend one's possession of property but not for recovery. 1925 N. 142=81 I. C. 933=25 Cr. L. J. 1109, 21 C. 392, 35 C. 443.

Right of Private Defence—(contd.)

10. If death is caused in defending possession it is protected. 51 C. 271.
 11. When a trespasser has gained possession, the rightful owner can't use force to put him out but must appeal to authorities. 17 C. W. N. 1132, 36 C. 865, 35 C. 103, 3 C. 365.
 12. There is no right of private defence of property in regard to which offence under S. 403 or S. 411 and not S. 379 is committed. 219 P. L. R. 1915, 37 P. R. 1914 Cr.; 36 I. C. 131.
 13. The right of private defence of property commences when a reasonable apprehension of danger to property commences. 14 B. 441.
 14. If both parties are determined to fight to settle their right to property, there is no right of private defence. 1935 N. 141=36 Cr. L. J. 861 (*Case law discussed*).
 15. The accused when in peaceful possession of the property and were set upon by complainant. Held, right of private defence existed. 1923 A. 194=45 A. 250=24 Cr. L. J. 1089.
- 29. Party fight. See—11.**

If partisans of one faction go to attack those of other with sticks and the companions of the latter join with spears and hatchets and the death is caused, there is no right of private defence to latter group. Other persons present can be convicted under Ss. 302—34 I. P. C. 1934 L. 11=151 I. C. 887.

30. Plea of—in appeal.

Plea of self-defence cannot be raised for the first time in appeal when there is no material on the record. 1934 O. 251=35 Cr. L. J. 943.

31. Position of assailant and of victim.

When two men are fighting, it is hazardous to conjecture as to their relative positions from the nature of injuries. 1335 R. 391.

32. Recourse to authorities—Running away.

1. When a matter is not urgent and no serious loss of property is threatened and there is ample time to have recourse to authorities, the accused cannot be said to be acting in the exercise of right of private defence. 1926 L. 516=27 Cr. L. J. 7.
2. When the accused are molested and attacked, while doing a legal act, they need not abandon the enjoyment of their legal rights and run away to seek the protection of the authorities. 1925 O. 425=85 I. C. 353=26 Cr. L. J. 513.
3. A person is not bound to run away to thana at a distance of a *kos* to seek redress from the police, when the thief is depriving him of his property. 1930 L. 314=120 I. C. 600=31 Cr. L. J. 129.
4. A person assaulted is not bound to retract but may pursue his adversary till he finds himself out of danger. 1923 L. 155=81 I. C. 164.
5. The accused finding that the opposite party were cutting the crops from his fields sent a messenger to Police for help and came to his field and asked the opposite party why they were cutting it. In a fight which followed accused killed one of them. Held, that the accused was justified in collecting men to prevent his crops being cut in the event of the Police not arriving in time. 19 Cr. L. J. 983.
6. When there is time to have recourse to public authorities, the use of force to protect one's property is not justifiable. To hold otherwise would be to encourage and put a premium on offences of rioting. 35 C. 103, 7 C. L. J. 359, 7 M. H. C. R. (App.) 35.
7. The apprehension which justifies a recourse to authorities ought generally to be based on some information of a definite kind, as to the time and place of the danger actually threatened. 14 B. 441.
8. A person is not bound to abandon his property at the mercy of the marauders, with a view of making application to the Police for assistance. 1896 A. W. N. 170, 28 M. 454, (1881) Weir 144, 18 C. W. N. 275=22 I. C. 993.
9. If two persons invade another's house in anger, the occupier is entitled to eject them

Right of Private Defence—(concl'd.)

forthwith by raising reasonable force. He is not bound to leave them in the house and go to the Police. 41 I. C. 830=18 Cr. L. J. 862.

10. Where a trespasser has gained possession the rightful owner cannot eject him but must appeal to the public authorities. 17 C. W. N. 1132, 36 C. 865, 35 C. 103.

33. Third person's interference.

1. A person who sees a woman assaulted in the manner described in Ss. 97 and 101 can interfere to save the woman and cut another if necessary. 13 Cr. L. J. 53=13 I. C. 389.
2. In order to set up right of private defence, it is incumbent on the accused to show that an offence affecting the human body was being committed on the person on whose behalf they interfered. 41 I. C. 323=15 A. L. J. 565=18 Cr. L. J. 803.
3. Right of private defence exists in protecting the property of others against theft, robbery, criminal trespass or attempt to commit the same. 1924 A. 696.

34. Whether bound to run away. See—32.

1. Where a person is assaulted he is not bound to escape further injury by resorting to less violence or run away to have recourse to the protection of public authorities. 28 M. 454, 6 Cr. L. J. 271, 1925 N. 260.
2. A man who is assaulted is not bound to modulate his defence step by step. He is entitled to secure his victory as long as the contest is continued. 1923 L. 155=81 I. C. 164=25 Cr. L. J. 676.

RIGHT OF REPLY. See Appeal—44. Argument—7.

The parties should be heard in each other's presence. If the respondent is heard, the appellant shall have a right of reply. 1932 C. 856=33 Cr. L. J. 775.

RIGOR MORTIS. See Time of death.**1. Definition of—.**

After the period of irritability has passed there is a gradual stiffening of the muscles together with a certain amount of shortening of the fibres, this condition is known as *rigor mortis*. Every muscle in the body, voluntarily and involuntarily takes part in the process. If abundant oxygen is supplied and the muscle is kept 0°C there is no accumulation of acid, no shortening and no rigidity. *Taylor's Med. Jur.*, 1928, P. 230.

2. Difference between living contraction of muscles and—.

In the case of living contraction of muscle, it is more or less transparent or rather translucent, elastic and in reaction to litmus it is either neutral or slightly alkaline, but it is not so in the case of *rigor mortis*. If the contraction be overcome by mechanical force, the muscles still possess their power of contraction, but if *rigor mortis* be overcome by mechanical force, absolute flaccidity at once ensues and there is no power to resume old position nor any new one. *Taylor's Med. Jur.*, 1928, P. 231.

3. In involuntary muscles.

1. The ventricles of the heart commonly lose their irritability within an hour after death. *Taylor's Med. Jur.*, 1928, P. 238.
2. Instantaneous stiffening is more likely to exhibit itself when great muscular exertion has been made previous to death. It is more likely to appear in strong and muscular subjects; or when death is sudden or is due to violent disturbance of nervous system (shot through the head etc.,) drowning. That the condition of affairs produced by it is easily distinguishable from that produced by simple *rigor mortis* in that an object grasped by the fingers is firmly gripped just as it would be during life, only that more force is required to extract it from the grip, than would be necessary during life, whereas if held by *rigor mortis* alone the object can be easily lifted off the fingers. That is the strongest or conclusive proof that the object so gripped was thus gripped at the moment of death. *Taylor's Med. Jur.*, 1928, P. 241.

4. Order in which—appears in muscles.

Rigidity first appears as a rule in the muscles of the face, neck and trunk; it then takes

Rigor Mortis—(concl'd.)

place in the muscles of the upper extremities and lastly in those of the lower. regard to its disappearance, the muscles of lower extremities will often be found rigid, while those of the trunk and upper extremities are again in a state of relaxation. It appears later and lasts longer in the lower extremities than in the other parts of the body. It begins almost always in the neck and the lower jaw. From the neck it passes in two directions : upwards to the muscles of the face and downwards to the muscles of the upper extremities and trunk, then attacking those of lower extremities. *Taylor's Med. Jur.*, 1928, pp. 237-238.

5. Time of death from—. See Time of death—4.

6. When begins.

Rigor mortis generally commences within three to six hours of death, while the body is cooling, but long before it has reached the temperature of the surrounding. It comes on slowly in healthy, muscular subjects who have died without convulsions e.g., by hæmorrhage, hanging, etc. It sets in rapidly in new born infants. All circumstances which cause an exhaustion of muscles, during life induce an early occurrence of rigidity, as is seen in hunted animals, overdriven cattle and in cases of poisoning by strychnia and other convulsant poisons. *Taylor's Med. Jur.*, pp. 232-233.

7. When disappears.

1. The sooner the rigidity sets in the more quickly it disappears and gives way to putrefactive processes. Generally, *rigor mortis* lasts for from sixteen to twenty-four hours in sound, muscular subjects. It may last much longer, from 24 to 36 hours and exceptionally it may continue for fourteen days or even longer. *Taylor's Med. Jur.*, 1928, P. 234.
2. Atmospheric changes have influence over it. Dry cold air will cause it to persist for a long time ; and thus in winter season, especially in frost, it is slow in disappearing—its mean duration being from twenty four to thirty-six hours. If the air is warm and saturated with humidity, it soon ceases. In the tropics where the temperature ranges between 80° and 100°F., *rigor* usually begins to disappear in twenty to twenty-four hours. *Ibid*, P. 235.
3. Bodies sunk in cold water soon pass into this state and retain the rigidity for a long time. *Ibid*. Bodies of those who are emaciated or die of Phthisis, Typhus or typhoid fever, and epidemic cholera, pass rapidly into a state of rigidity, which is commonly of short duration. *Rigor mortis* is frequently absent in the bodies of those who have died from generalized septicæmia. The old opinion of the non-occurrence of rigidity in the bodies of persons killed by lightning is unfounded. *Ibid*, P. 236.
4. Rigidity produced as a result of poisoning by strychnine may continue for a very long period. As to other poisons, such as arsenic, mercury perchloride, etc., are likely to cause delay in putrefaction and hence a prolonged state of stiffness in muscles. *Ibid*, P. 237.

RING GAME. See Public Gambling Act.

Ring game is not a game of mere skill. 110 I. C. 674, 34 A. 96. See 40 M. 556.

RING LEADER. See Unlawful assembly—21.

RIOTING. Ss. 147-148—153, I. P. C.

1. Armed with deadly weapon. S. 148, I. P. C. See Deadly weapon

1. If a deadly weapon is carried by one without the knowledge of the other members of the assembly for the private ends of a particular individual, the other persons are not guilty under S. 148. But if it was with their knowledge all are guilty. 27 Cr. L. J. 594=1926 M. 741, 1929 M. W. N. 888.
2. *Muthi* is not a deadly weapon unless used on the head or on some vital part. 12 Cr. L. J. 103.
3. The question whether a *lathi* is deadly weapon, is a question of fact to be determined in each case. 15 A. 19, 15 A. 27.
4. A person can be convicted under S. 148, if he was present in a mob armed with a deadly weapon. 4 P. L. T. 502.

ting—(contd.)

12. Conviction under S. 323 on a charge under S. 148 is not illegal. 1923 L. 326.
6. If both sides used sticks and there is no proof as to who was aggressor a heavy sentence should not be passed. 1929 M. W. N. 583.
7. When five persons armed with *lathis* assembled at the water head to take water by force and ready to strike any body who should stand in their way, they were guilty under S. 148 when they used *lathis*. 1926 L. 4=7 L. L. J. 576.
8. If the prosecution does not present true facts as to how a man was killed, it is not necessary for accused to plead right of private defence. 1925 P. 175.
9. Four persons were convicted for injuries caused during scuffle, and there was no evidence that there were other persons accompanying them. Held, they were not guilty under S. 148. 1932 M. W. N. 67.
10. When the evidence is perjured and motive cannot be ascertained the sure ground upon which the Court can proceed is the marks of injuries on the accused. 1931 A. 439. 133 I. C. 795
11. Only persons armed with deadly weapons can be convicted under S. 148. 1934 L. 632=35 P. L. R. 518, 1933 O. 333.
12. When among 8 persons, some were armed with deadly weapons and some with *lathis*, it is safer to convict the latter under S. 147. 1933 O. 333. 22 C. 276 Rel. on.
13. Crowbar used merely to destroy bridge is not weapon. 1935 Pesh. 65.

2. Charge. See Unlawful assembly.

1. Omission to set out the common object in the charge amounts to a mere irregularity and does not vitiate the conviction unless the omission prejudiced the accused 33 C. 295, 38 P. W. R. 1907, 39 C. 781, 1928 B. 286=115 I. C. 399, 1935 O. 488, 1935 O 19=34 Cr. L. J. 393, 1927 O. 85.
2. Omission to set out common object vitiates the conviction. 1924 L. 667.
3. Where a charge contains several alternative common objects and the Magistrate omits to specify any common object as proved, the appellate Court cannot on this ground alone set aside the conviction. 35 C. 718.
4. When there are two possible common objects and it was not apparent which of them had been accepted by the Court, the charge is defective. 33 C. 295.
5. The opposing factions though each forming an unlawful assembly cannot be both charged and tried jointly as they have not both the same common object. 14 C. 358, 6 C. 96, 22 P. R. 1831, 15 P. R. 1882.
6. It is not open to appellate Court to invent a common object not specified in the charge. 38 C. L. J. 379=1924 C. 449=81 I. C. 261=25 Cr. L. J. 773.
7. A person cannot be convicted of rioting and the causing of hurt when he has not been charged for it. 26 I. C. 152.
8. It is not illegal to charge a rioter both for rioting and causing of hurt and the rest of his confederates for only rioting. 39 A. 623.
9. Where the common object assigned in the charge as framed has not been sustained another common object cannot be invented to support the conviction. 1924 C. 449=51 C. 271=81 I. C. 261.
10. Charge for offence with one common object will vitiate conviction for offence with another common object. 1925 P. 152=81 I. C. 794=25 Cr. L. J. 1018
11. Mere stating the word 'rioting' in the charge is sufficient. 55 C. 879, 39 C. 781.
12. The principal and the prominent common object should form the object of the charge and not the incidental happenings. 1928 P. 405=103 I. C. 421.
13. Where the accused are charged with rioting and causing hurt, without explaining what rioting means but such irregularity has not prejudiced accused who were represented by lawyers, it is curable under S. 537. 1935 A. 627. See 55 C. 879, 39 C. 781.
14. The word "by force or show of force" need not be included in the charge. 1936 P. 627.

*Rioting—(contd.)***3. Common object.**

1. Where it is found that the accused came to the place and some of them assaulted the complainant, the presumption is that the assault took place in prosecution of the common object. 1923 N. 100=69 I. C. 633=23 Cr. L. J. 745.
2. The common object must be judged from a consideration of all the facts. 3 L. 144=68 I. C. 113=1922 L. 1=4 L. L. J. 91.
3. If the accused did not cause the death of the deceased he can be convicted under S. 304 if it is shown that he was a member of an unlawful assembly whose common object was to commit an offence under S. 304. 1921 N. 687=69 I. C. 38.
4. Accused jointly entered on certain land in defiance of an order under S. 144, Cr. P. C., though some may be convicted under S. 188, I. P. C., and others of abetment, nevertheless the common object of all of them is one and the same. 1925 C. 903=85 I. C. 818=26 Cr. L. J. 594.
5. If out of six accused three are found to have the common object different from that set out in the charge S. 147 does not apply. 1922 C. 191=72 I. C. 355.
6. The mere fact that 20 or 30 persons assembled and had sticks in their possession is not sufficient to establish that their intention was to accomplish that object by the use of criminal force. The common intention must be proved as a fact by legal evidence. 1925 M. 1213=27 Cr. L. J. 108, 24 M. 124.
7. Isolated or independent assault by some candidates or their supporters in an election cannot be said to be in furtherance of common object, unless formation of unlawful assembly is proved. 1933 L. 235 (2)=34 Cr. L. J. 782.

4. Collecting men. See Right of private defence—19.

If a large number of people collect together to resist a real or fancied encroachment on their rights and no violence is used against persons, the sentence should be lenient. 1935 A. 627.

5. Cumulative sentence. Separate sentences.

1. Accused cannot be convicted twice over for committing a single act such as rioting and trespass. 8 I. C. 880, 8 C. W. N. 305, 22 I. C. 764.
2. Separate sentences for rioting and hurt or grievous hurt are not sound. 31 P. R. 1916, 16 P. L. R. 1911, 73 I. C. 517=1922 L. 405, 114 I. C. 331=30 Cr. L. J. 295, 1927 L. 785=104 I. C. 454, 1922 L. 405=73 I. C. 517. See 4 P. R. 1901 Cr.
3. Where the common object of an unlawful assembly was to assault the Police Officers in the discharge of their duties and hurt was actually caused to some of them, the accused could not both be convicted under Ss. 147 and 332. 28 P. W. R. 1907, 1922 L. 31=67 I. C. 721=23 Cr. L. J. 449.
4. If the evidence as to who committed the specified offence be lacking it is necessary to frame a separate charge under S. 332. 111 P. L. R. 1912.
5. Accused in order to execute the sentence of a Panchayat seized the complainant, blackened his face, placed him on donkey and took him around the village. They are guilty under S. 147 and not under S. 355. 1923 L. 91=23 Cr. L. J. 457.
6. If the common object of the assembly is to commit theft accused need not be sentenced separately for rioting and theft. 3 C. W. N. 761, 16 C. 442, 56 I. C. 512.
7. Accused may be convicted both for rioting and hurt or grievous hurt. 2 A. 139, 7 A. 29, 16 C. 725, 7 A. 414, 31 P. R. 1916, 32 P. R. 1885, 8 P. R. 1895, 4 P. R. 1901 Cr. Contra 16 C. 442.
8. It is not open to Appellate Court to alter a conviction of rioting to one under S. 323 in the absence of specific charge. 38 C. 293.
9. If any of the rioters has been identified for causing hurt, he alone can be convicted of that offence and the rest for rioting. 91 I. C. 727.
10. Where the infliction of injury cannot be traced to any offender the conviction should be for rioting only. 35 P. W. R. 1913, 14 P. W. R. 1912.
11. Accused attacked the Police Officers in the discharge of their duties, the Court upheld the conviction under S. 332 and quashed it for rioting. 67 I. C. 721.

ting—(contd.)

12. On a charge of rioting it is not legal to convict a person of assault or abetment to assault. 65 I. C. 862.
13. If the common object was a criminal trespass the accused may be convicted of trespass though not specifically charged for with that offence. 22 I. C. 764.
14. Conviction for three separate offences under Ss. 147, 149 and 325 are bad. 1929 L. 498=120 I. C. 283.
15. Separate conviction for rioting and hurt can be legally passed. 1928 M. 18=105 I. C. 86=28 Cr. L. J. 982, 1926 A. 225=92 I. C. 463, 17 Bom. 260.
16. When the common object of the unlawful assembly was to compel by criminal force the Excise Officers to stop the house searches by smashing of Handies and attacking the Officers, they should be convicted both under Ss. 147 and 353. 6 P. 828 =1923 P. 15=106 I. C. 591=29 Cr. L. J. 79, 141 C. 836.
17. Separate sentences under Ss. 147 and 332 are not illegal in view of the amended S. 35. 1926 L. 521=27 Cr. L. J. 824, 1926 Bom. 64, 49 Bom. 916.
18. Separate sentences may be passed under S. 147 and in the section under which the accused may be found guilty, e. g., house trespass. 27 Cr. L. J. 1172.
19. If accused committed riot in pursuance of their common object of insulting and attacking "Fajrats" only one offence is committed. 1925 O. 65=82 I. C. 33.
20. In the case of rioting resulting in grievous hurt separate sentences under S. 325 are legal. Some of these assaults may result in simple hurt, others in grievous hurt but all the actual assailants are under S. 149, I. P. C. liable for all these results. 1924 R. 291=82 I. C. 473, 17 Bom. 260.
21. Sentence under S. 147 was cancelled when the accused had been punished for the specific act which constituted the object of the riot. 1923 L. 160=81 I. C. 56=25 Cr. L. J. 568.
22. S. 71 of Penal Code may be invoked to relieve the offender under S. 323 if that is said to be the common object of the assembly. 1921 P. 432=61 I. C. 833=22 Cr. L. J. 449, 16 C. 442 4 C. W. N. 245.
23. When assembly becomes unlawful because violence is used, the sentence under Ss. 147 and 325 should not be passed. 31 P. R. 1916 Cr., 38 I. C. 756, 161 P. L. R. 1911.
24. As soon as the first injury is caused to any person, force is used and the offence of rioting is complete. Subsequent injuries, though inflicted in pursuance of the same common object would be distinct injuries justifying conviction under S. 323. Hence separate sentences under Ss. 147 and 323 are valid. 1933 A. 819=34 Cr. L. J. 1099=145 I. C. 913, 1926 A. 225=27 Cr. L. J. 287 Rel. on. 1925 L. 581, 1925 O. 65 and 1927 M. 970 Dist.

6. Communal riots.

1. It is practically impossible to get disinterested evidence in communal riots. 1932 M. W. N. 427.
2. In communal riots it is unsafe to convict on the evidence of one witness alone, unless there is satisfactory circumstantial evidence. 1933 A. 834=55 A. 639, 1933 A. 314=34 Cr. L. J. 689 and 1933 A. 401=34 Cr. L. J. 765 Rel. on.

7. Conviction.

1. Conviction for an abetment of assault on a charge under S. 447 cannot stand. 1922 M. 110=65 I. C. 862=23 Cr. L. J. 206, 33 M. 264.
2. Conviction for rioting of a person who was leader of the gang whose common object is to assault passerby is not illegal. 66 I. C. 192.
3. When the common object of the Mahadon is to cause hurt to the people and loot their shops, any person taking part in it is liable for rioting and not for dacoity. 1927 O.
4. On conviction for rioting and hurt, only one sentence should be passed. 1934 L. 614 (1), 10 W. R. Cr. 63.

Rioting—(contd.)

- the title to the land is uncertain and that the *bona fide* dispute exists about it, accused are not guilty. 1925 P. 158=81 I. C. 45=25 Cr. L. J. 557.
26. Accused assembled after hearing a cry for help to rescue one of two fighters, assembly is not unlawful. 1 P. 212=1922 P. 498=77 I. C. 607.
 27. The accused were in actual possession of the land although some years back it was sold at a rent, they are not guilty of rioting as their object is to enforce their right to the standing crop. 1923 P. 299.
 28. The people of village S had no right to cut the *bund* and when they actually proceeded to destroy it, the people of K prevented them from doing so who had erected it. Held, they were justified in preventing its destruction by force and their conviction under Ss. 147, 148 and 149 could not be sustained. 1929 P. 523.
 29. Accused forcibly stopped the construction of a wall, alleging they were abetting a nuisance but were not able to prove any easement. 1929 P. 44=114 I. C. 477.
 30. When the common object of the Mahomedan rioter was both to hurt any Hindu whom they might meet and to rob the shops and houses of the Hindus; any person who has been proved to have taken a part in the disturbance must be found guilty not only of the offence of riot but also of dacoity. 1927 O. 70=23 Cr. L. J. 110.
 31. In a riot when murder follows, every member is liable unless his separation is proved. 1924 A. 233=92 I. C. 145=27 Cr. L. J. 193.
 32. Persons coming in a large body to cut *bund* without any right to do so are guilty. 1924 P. 704=84 I. C. 322.
 33. If first party is in possession, and the second party dismantled the disputed house, the second party is guilty. 1923 P. 361=73 I. C. 158.
 34. Inciting mob to violence under guise of pacifying falls under S. 147. 1922 P. 311.
 35. Persons may riot without actually committing an offence under S. 352 and theory that S. 147 is inseparable from S. 352 is fallacious. 1928 M. 21=106 I. C. 338.
 36. Once a charge of unlawful assembly fails accused cannot be made liable for injuries caused. 1922 O. 223=77 I. C. 1002=35 Cr. L. J. 538.
 37. Persons who do not bear any injury on their persons should not be convicted except on very cogent evidence. 107 P. L. R. 1916=43 P. W. R. 1916 Cr.
 38. Persons gathering to abate a nuisance and pulling down terrace and wall built on encroached area are guilty under Ss. 427—147, I. P. C. 1934 M. 95=57 M. 351, 39 M. 57 Diss., 1923 M. 523 and 1927 B. 363 Rel. on.
 39. Oral evidence in riot case must be approached with caution and carefully scrutinized. 1934 A. 776=35 Cr. L. J. 919.
- 11. First information report in—**
1. The first information report made to the Police in rioting cases is not a safe ground to charge the persons mentioned therein, for friends and the relations of the culprits are more often implicated and accused persons who bear no injury should not be convicted of having taken part in a fight except on very cogent evidence. 107 P. L. R. 1916=43 P. W. R. 1916 Cr.=36 I. C. 130=17 Cr. L. J. 450.
 2. Since when a riot is committed, it is unfortunately easy to add among the names of accused, persons against whom the informant or particular witness has a grudge, it is not safe to base conviction on the identification by the injured person, specially when the name of the person was mentioned by the identifier in his first statement. 1929 P. 705=123 I. C. 75=31 Cr. L. J. 468.
- 12. Free fight.**
1. When both parties are determined to vindicate their rights or supposed rights by show of criminal force, no question of self-defence arises. 27 Cr. L. J. 1322=5 P. 520, 28 M. 454, 98 I. C. 467, 35 C. 368.
 2. A free fight is one when both sides mean to fight from the start, go out to fight and there is a pitched battle. The question of who attacks first is immaterial. 1931 513=132 I. C. 381=32 Cr. L. J. 868.
 3. The fact that the Magistrate cannot make up his mind as to who began the battle

Rioting—(contd.)

cannot make it a free fight. 132 I. C. 381=32 Cr. L. J. 868=1931 L. 513.

4. In case of party fight, if the evidence on the side of accused was better that there was no free fight and it did not appear who were aggressors and whether the injuries were inflicted in self-defence, the accused were not guilty under Ss. 325—147. 132 I. C. 381.

13. Injuries on accused. See Marks of injury—3.

1. Injuries on the body of accused is sure guide that they took part in riot. 1934 A. 881=152 I. C. 108.

2. Persons who do not bear any injury on their persons should not be convicted of rioting except on very cogent evidence. 107 P. L. R. 1916=43 P. W. R. 1916 Cr.

3. In riot cases when evidence is perjured and motive cannot be ascertained, the sure ground upon which Judge can proceed is marks of injuries on accused. 1931 A. 439, 1931 A. 712=32 Cr. L. J. 1073.

14. Possession. See Unlawful assembly.

1. In a case of rioting with the common intention of taking possession of complainant's land the Magistrate should decide as to the actual possession of the fact of the case under S. 145, Cr. P. C., is pending. 53 C. 471=1926 C. 945=96 I. C. 527.
2. Where the common object of the assembly was to remove paddy, reaped and cut by another, Court should record a finding as to who had raised the crop. 51 C. 418=1924 C. 323=25 Cr. L. J. 776=81 I. C. 264.
3. Order under S. 144, Cr. P. C. is no evidence of possession. 1925 P. 17=81 I. C. 535=25 Cr. L. J. 919.
4. After the cessation of tenancy the possession of tenant is wrongful and landlord can forcibly eject him, provided he does not use undue force, without the help of the Court. 1925 P. 17=81 I. C. 535.
5. The resistance by tenant in possession to the disturbance by the landlord lessee is right of private defence and not rioting. 46 I. C. 413.
6. Persons who in maintaining a right to possession of land given to them by a civil court repel an attack upon them by persons who have no right to obstruct them, are not guilty of rioting. 48 C. 43.
7. S. 147 does not apply to a person in lawful possession of property who uses force to maintain his possession. 1933 O. 279=34 Cr. L. J. 748. 15 Cr. L. J. 232 Ref.

15. Procedure.

1. A joint trial of 7 persons of rioting when hurt also was caused by the separate act to another is not bad in law. 39 A. 623.
2. Where on a charge of rioting and grievous hurt the Judge disbelieves the prosecution case as to rioting he must examine the residue of the accused for the purpose of considering the criminal responsibility of each of the accused for inflicting the injuries. 50 I. C. 983.

16. Right of private defence. See Right of private defence.

If right of private defence is not established, claim of title though *bona fide* will not avail. 1932 P. 215=13 P. L. T. 288.

17. Sentence.

If the evidence as to action of individual accused is not clear, recommendation to the Local Government for reduction of sentence will be justified 1934 A. 776.

18. Trial of counter cases of—

- Two cross cases of rioting and grievous hurt were committed separately for trial before a Sessions Judge, who heard both cases and examined some of the accused as witnesses in the other case. The arguments in both the cases were heard together and the opinion of assessors was taken at one time and both cases were disposed of by one judgment. Held, that the mode of trial though irregular, did not prejudice the accused in their defence. 20 C. 537.

Rioting—(contd.)

- the title to the land is uncertain and that the *bona fide* dispute exists about it, accused are not guilty. 1925 P. 158=81 I. C. 45=25 Cr. L. J. 557.
26. Accused assembled after hearing a cry for help to rescue one of two fighters, assembly is not unlawful. 1 P. 212=1922 P. 498=77 I. C. 607.
 27. The accused were in actual possession of the land although some years back it was sold at a rent, they are not guilty of rioting as their object is to enforce their right to the standing crop. 1923 P. 299.
 28. The people of village S had no right to cut the *bund* and when they actually proceeded to destroy it, the people of K prevented them from doing so who had erected it. Held, they were justified in preventing its destruction by force and their conviction under Ss. 147, 148 and 149 could not be sustained. 1929 P. 523.
 29. Accused forcibly stopped the construction of a wall, alleging they were abetting a nuisance but were not able to prove any easement. 1929 P. 44=114 I. C. 477.
 30. When the common object of the Mahomedan rioter was both to hurt any Hindu whom they might meet and to rob the shops and houses of the Hindus; any person who has been proved to have taken a part in the disturbance must be found guilty not only of the offence of riot but also of dacoity. 1927 O. 70=28 Cr. L. J. 110.
 31. In a riot when murder follows, every member is liable unless his separation is proved. 1924 A. 233=92 I. C. 145=27 Cr. L. J. 193.
 32. Persons coming in a large body to cut *bund* without any right to do so are guilty. 1924 P. 704=84 I. C. 322.
 33. If first party is in possession, and the second party dismantled the disputed house, the second party is guilty. 1923 P. 361=73 I. C. 158.
 34. Inciting mob to violence under guise of pacifying falls under S. 147. 1922 P. 311.
 35. Persons may riot without actually committing an offence under S. 352 and theory that S. 147 is inseparable from S. 352 is fallacious. 1928 M. 21=106 I. C. 338.
 36. Once a charge of unlawful assembly fails accused cannot be made liable for injuries caused. 1922 O. 223=77 I. C. 1002=25 Cr. L. J. 538.
 37. Persons who do not bear any injury on their persons should not be convicted except on very cogent evidence. 107 P. L. R. 1916=43 P. W. R. 1916 Cr.
 38. Persons gathering to pull down terrace and wall built on encroached area. 1934 A. 776=35 Cr. L. J. 919.
 39. Oral evidence in riot case must be approached with caution and carefully scrutinized. 1934 A. 776=35 Cr. L. J. 919.
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Robbery—(concl'd.)**7. Sentence.**

A sentence of imprisonment is essential under S. 392. A fine may be added. A sentence of whipping may also be added where in the commission of robbery hurt is caused. 44 A. 538.

8. Voluntary causing grievous hurt in committing—. S. 394, I. P. C.

1. If grievous hurt is caused in a robbery, an additional charge under S. 394 or 397 may be added. 12 B. R. 232.
2. If murder is committed by one of the robbers without the knowledge of his comrades, they are not guilty of murder though guilty under S. 394. 21 P. R. 1919 Cr.=52 I. C. 395.
3. The offence under S. 394 is not a minor offence so far as dacoity is concerned. 105 I. C. 831.
4. If four persons armed with deadly weapons are prepared to commit murder in the event of resistance and two persons commit murder. Held, all are liable for murder. 1926 L. 63=89 I. C. 71=26 Cr. L. J. 1406.
5. Before a sentence of whipping can be passed under S. 394, it must be proved that the accused actually caused hurt while committing robbery. 6 R. 48.
6. Consecutive sentences under Ss. 394—397 are illegal. 89 I. C. 716=1926 L. 63=26 Cr. L. J. 1006.

ROOF—ENTRY ON. See House trespass—12.

RULING OF HIGH COURT.

A discretion conferred by statute cannot be whittled away by ruling of High Court. 1931 M. 489=131 I. C. 461=32 Cr. L. J. 756.

RUMOUR. S. 505, I. P. C.

1. A tea estate Duffadar, who had recently returned from Nepal, circulated a report among the garden coolies that a war was impending between the British Government and Nepal, that Nepalese soldiers were stationed on the frontier and that coolies would be killed by the British. The effect of the rumour was that 15 coolies ran away. The conviction of the accused under S. 505 (B) was set aside, as the coolies were not induced to commit an offence against the state or against public peace. 3 C. W. N. 1.
2. If the statement, rumour or report is true and is published without any such intent as is specified in Cl. (a), (b) or (c) a conviction cannot lie. 1924 L. 502.
3. Where an editor published defamatory matter under the guise of rumour, and when asked by complainant to express regret, wrote a letter aggravating his offence, a sentence of 6 months' imprisonment under S. 500, I. P. C., was light. 1928 A. 321.
4. A person spreading a false report and thereby preventing persons from bringing their children for vaccination is no offence. 15 M. 93.
5. Mere spreading of false rumour although resulting in serious disturbance does not amount to causing disturbance 51 I. C. 197=20 Cr. L. J. 421=17 A. L. J. 820.

RUPTURE OF INTESTINE—. See Wound—32.

RUPTURE OF LIVER—. See Wound—33—27-B.

RUPTURE OF SPLEEN. See Hurt—22, grievous hurt—15, spleen—4.

S.

SAFAID POSH. See Zaildar.

SALT. See Movable property.

SALT ACT (XIX OF 1882.)

General. Doing anything in contravention of the Salt Act or any rule made thereunder is not a separate offence under Penal Code. 1930 O. 497.

S. 9.

1. It is illegal to proceed under S. 117, I. P. C., for abetment of an act which is an offence under the Salt Act. 1930 O. 497=32 Cr. L. J. 104.

Salt Act (XIX of 1882)—(concl'd.)

2. A person guilty of an abetment of an offence under S. 9 (a) of the Indian Salt Act, may be convicted under S. 117, I. P. C., if the offence is committed generally by public or by any number or class of persons exceeding ten. 1932 A. 18.
3. The punishment under S. 117, I. P. C., for abetment of an act which is an offence under Salt Act and not an offence under Penal Code is illegal. 32 Cr. L. J. 104.
4. Prosecution must prove that salt was imported from State and was manufactured there. 1934 L. 967.
5. Accused was charged under S. 9 for contravening R. 8 under notification No. 41. Prosecution must prove that salt was imported from a State and that it was produced or manufactured there. 1934 L. 967 = 36 Cr. L. J. 463.

S. 15.

S. 15 does not apply whether salt is unlawfully manufactured at an unauthorised place to which S. 18 applies. 25 Cr. L. J. 463.

S. 27.

The importation into a part of a territory mentioned in S. 1 cannot be taken, as meaning only importation from outside those territories but includes importation from one part of territory into another part. 1924 L. 160 = 69 I. C. 460.

SAMPLE. See Cheating—6.

When a portion of property is produced in Court and received in evidence, the whole bulk is taken to have been produced before the Court. 2 Weir 670.

SANAD.

1. Renewal of—. See Legal Practitioners Act- 25.
2. Using forged—. See S. 471, I. P. C.

SANCTION. See Directing Prosecution.

1. In case of conspiracy. See Conspiracy.
2. In case of sedition. See Sedition.
3. To prosecute Judge or Magistrate. See Prosecution of Judges.
4. To prosecute members of local bodies. See S. 197, Cr. P. C.

SANCTION TO PROSECUTE— S. 196, Cr. P. C.**1. Contents and form of—. Complaint.**

1. It is not necessary that very words used in the complaint must have been sanctioned by the Government. It is enough if the institution of the complaint has been sanctioned by the Government 42 M 180, 32 M. 35, 35 C. 141, 1925 M. 106.
2. Government must specify the person against whom and matter in respect of which prosecution should be launched. 1930 L. 181, 35 C. 141.
3. Conviction under S. 124-A on sanction of offence under S. 121-A is illegal. 4 R. 131.
4. Conviction of same offence committed on different occasions is illegal. 1924 R. 371.
5. Sanction must describe definite persons. 20 C 474. See 1923 M. 328.
6. A Police Officer may be authorised to make a complaint. 32 M. 3, 22 B. 112.
7. Sanction need not be in writing. 22 B. 112, 42 M. 885.
8. Sanction may not be in a particular form but must be expressed with sufficient particularity. 1925 M. 106, 22 B. 112, 35 C. 141, 1923 L. 333.
9. Sanction is not a judicial act. 27 M. 54, 39 M. 750, 1923 M. 318.

2. Order of Government for—. Proof S. 78, Ev. Act.

1. A letter issued by the Chief Secretary to the Government conveying sanction under S. 196, Cr. P. C., or to a prosecution under S. 294-A, Penal Code, which is not signed by the Chief Secretary but by some other officer on his behalf, is no legal proof that Local Government has ordered or authorised the prosecution. The order cannot be certified on his behalf. It should be proved according to S. 78, Ev. Act. 1922 C. 298 = 50 C. 135 = 24 Cr. L. J. 111.

Search—(contd.).

10. Where there are serious irregularities in the search and a Constable is assaulted the accused is guilty under S. 323 and not S. 332. 1930 P. 387=31 Cr. L. J. 937.
11. An Excise Officer searching a house on suspicion brought no search witnesses and directed a Constable to scale the outer wall of the house. Accused assaulted him and the Excise Officer. Held, he was guilty under S. 323 and not S. 332. 37 A. 353, 8 S. L. R. 1.
12. Irregularity in search does not affect admissibility of property found. 1933 C. 187=34 Cr. L. J. 369.
13. Unauthorized persons should not be allowed to enter the house when search is proceeding without their person being searched. 1933 O. 305=34 Cr. L. J. 568.
14. Search was illegal but the discovery of prohibited articles was proved. Conviction is legal. 1933 R. 146=34 Cr. L. J. 652. 1932 R. 190=10 R. 511 and 34 M. 349 Rel. on. 1925 R. 205 Not foll. 1930 R. 49 Ref. 4 L. B. R. 121=7 Cr. L. J. 87 appr.
15. Irregularities in search would furnish reason for distrusting the evidence produced by prosecution 1933 N. 99, 1932 A. 185.
16. Search conducted outside jurisdiction is illegal. 1915 A. 442, 1923 A. 433, 1919 M. 353, 8 S. L. R. 1.
17. Non-recording of ground of belief under S. 165 makes the search illegal. 1928 A. 185, 1932 P. 66=10 P. 821, 1933 S. 174.
18. If no order in writing is delivered to a subordinate Police Officer, the search is illegal. 7 N. W. P. 209, 1915 A. 442, 6 Cr. L. J. 105.
19. If the order does not specify the thing or things to be searched for, the search is illegal. 38 A. 14, 6 Cr. L. J. 439.
20. If the copies of record of search are not sent to a Magistrate the search is illegal. 1932 P. 66.
11. **Of accused when arrested.** S. 51, Cr. P. C.
 1. Accused when pointed out by his co-accused in the Bazar was not searched. He was driven to the Deputy Superintendent where he was searched and nothing incriminating found. On going back, they decided to leave the ekka. Two coats belonging to constables were spread where the constables and accused sat and three ornaments were recovered. Held, that the evidence is of no value. 45 A. 300.
 2. It is not permissible to examine the body of a prisoner medically without his consent, not for the benefit of his health but by way of second search. The Doctor and the Police are guilty of assault. 1931 C. 601=129 I. C. 1053.
 3. In a search under S. 51 by a Police Officer, it is not necessary that the purpose should be to look for some incriminating article 35 C. W. N. 1212
 4. Documents in the possession of accused at the search of his residence is admissible in evidence, if it is either proved to be in the hand-writing or to be in his possession or answering the description required by S. 10. 13 Cr. L. J. 609.
12. **Outside local limits—.** S. 166, Cr. P. C.
 1. A Police Officer on his own responsibility has no jurisdiction to search a house outside the limits of the Police Station he is in charge of. Resistance to a person conducting unauthorized search outside the limits of his Station is no offence under S. 333, I. P. C. 49 I. C. 337=20 Cr. L. J. 145, 30 I. C. 141, 27 B. 135 Ref.
 2. In case of failure to send copies of record to the Magistrate conviction for resistance will be set aside. 1926 C. 663.
 3. Before amendment of 1923 a Police Officer could not make search outside his limit, but now he can do so, but he should send notice to the Police Station of the place. 45 A. 388=1923 A. 433.
- 12-A **Police Officer retaining property for himself on—.** S. 217, I. P. C.
 - A Police Officer retaining a piece of gold found in search and failing to report his possession is guilty of an offence under S. 217, I. P. C. 16 Cr. L. J. 453=1916 M. 1109.

Search—(contd.)

13. Refusal to attend— S. 187, I. P. C.

If a person who is requisitioned by Salt Inspector to assist him in the search under S. 103, Cr. P. C., refuses to do so he is guilty under S. 187. 38 M. L. J. 27.

14. Resistance to— See Unlawful assembly—19. Right of private defence.

1. Resistance by Public Officer in keeping out occupant of place searched is not justified. The occupant commits no offence in attempting to get in by force. 1932 A. 449.
2. If search is illegal, resistance is not an offence under Ss. 353 or 332. 1923 A. 433, 1933 S. 174, 1915 A. 442, 38 A. 14, 6 Cr. L. J. 439, 1932 P. 66=10 P. 821.

15. Right of occupant to be present at—

1. The occupant has a right to be present at the search. His exclusion will make the search irregular. 41 C. 350.
2. The occupant means a person residing in or being in charge of the place. 41 C. 350 (377).
3. Resistance by Police Officer in keeping out occupant of place searched is not justified. The occupant commits no offence in attempting to get in by force. 1932 A. 449=1932 A. L. J. 530.
4. It is not necessary that occupant must be present. 1928 C. 27.

16. Search List.

1. External evidence is admissible to prove the contents of search list. 33 M. 416.
2. A Court is competent to receive evidence other than the search list regarding the things seized in the investigation, S. 91, Evidence Act, does not apply to it. 34 M. 349.
3. A witness should not add new items to the search list after it has been signed by witnesses but his doing so would not make the search illegal. 24 I. C. 835=15 Cr. L. J. 523, 1914 L. B. 258.
4. The search is illegal if the search list is not signed by witnesses. 4 L. B. R. 134. See 34 M. 349.
5. A search list should invariably be produced by the Prosecution. 1932 A. 185.
6. Refusal by witness to sign a search list is not punishable under S. 187. 26 M. 419.
7. Officer conducting the search should strictly comply with provisions and prepare a search list. 16 Cr. L. J. 264, 1929 A. 901.
8. Failure to prepare search list on the spot is only an irregularity. 11 Cr. L. J. 453.

17. Under other Acts. S. 102, Cr. P. C.

1. Provisions of chapter VII of Cr. P. C., do not apply to searches under the Gambling Act. 3 L. 359, 1929 A. 937=120 I. C. 266.
2. Ss. 102 and 103 do not apply to the search made under the Bengal Excise Act. 54 C. 601=1927 C. 527=102 I. C. 547=23 Cr. L. J. 579.
3. According to S. 6, Burma Gambling Act, all searches must be made according to S. 102-103, Cr. P. C. 3 L. B. R. 229, 4 L. B. R. 134.
4. Searches under Opium Act must be made in accordance with the Criminal Procedure Code. 4 L. B. R. 121 *Contra*, 3 L. 359.

18. Who can conduct—

1. A Police constable deputed by his superior to make an inquiry is authorised to conduct a search under S. 165. 21 P. R. 1880.
2. A Police Officer cannot make search in non-cognizable case. 24 C. 691.
3. Police Officer should conduct search *in person*. It does not mean that he should ransack the boxes, examine the roof, dig up floor or otherwise seek property. 13 Cr. L. J. 763, 42 M. 446, 1927 A. 516, (6 Cr. L. J. 105 *Diss. from*.)
4. Where two houses had to be searched simultaneously and the Sub-Inspector searches one house and orders his constable to search the other, the procedure is not illegal. 1932 O. 249.

Search—(contd.)

5. Where the Police Officer cannot go to the spot himself, he can under S. 165 depute a subordinate by an order in writing specifying the place and things to be searched. 38 A. 14, 1915 A. 442 6 Cr. L. J. 439.
6. Subordinate Police Officer, without an order in writing, can search the house of a person charged with a cognizable offence. 7 Bom. H. C. R. 50.
7. A Circle Inspector of Police can conduct search. 1927 A. 516.

19. Witness of— S. 103, Cr. P. C.

A. Evidence of—

1. It is not the duty of prosecution to put every search witness into the witness box. The discretion is left to the Court as to require their attendance or not. 1928 C. 27=106 I. C. 545=29 Cr. L. J. 49.
2. Two of the search witnesses stated that *find* contained two ornaments, while a third stated that only one ornament was there. Held, that circumstances were suspicious. 1923 L. 683=77 I. C. 895=5 L. L. J. 572.
3. The fact that inhabitants of the locality whose signatures appear on the search list, had not been examined will not render the search illegal. 1927 L. 149=99 I. C. 49=28 Cr. L. J. 17, 23 M. L. J. 445.
4. The Court is not bound to accept as true the evidence of a search witness. 47 I. C. 801=19 Cr. L. J. 949
5. Evidence got by illegal search is not to be discarded altogether. 37 I. C. 33.
6. The fact that prosecution thought that the search witnesses had formed an opinion unfavourable to the prosecution is no reason for not examining them. 9 C. W. N. 438.
7. The Inspector cannot compel the search witnesses to attend Court to give evidence without summons in that behalf. 38 M. L. J. 27.
8. Failure to call search witnesses does not make the search illegal. 23 M. L. 445=17 I. C. 75.
9. Where the failure to comply with the provisions of S. 103 leaves the evidence in an unsatisfactory condition, conviction should be set aside. 1930 B. 169.
10. There is no harm in calling the Police Officer to prove search, but he cannot be considered to be an entirely satisfactory witness. 1930 C. 141=50 C. L. J. 518.
11. The evidence of doctor examining the body of prisoner not for his health but by way of second search, is inadmissible, when it is without his consent. 134 I. C. 1053.
12. Search witnesses should invariably be produced, though the prosecution can prove the recovery by other evidence. 1932 A. 185.
13. Prosecution should produce the search witnesses to corroborate the evidence of Police Officer about search. 136 I. C. 868.

B. Of locality.

1. A person living in a quarter of the place is "of locality" even if a river flows between. 7 Bur. L. T. 143.
2. Locality does not mean the same quarter of the town. 12 I. C. 87, 18 Cr. L. J. 1009.
3. In a densely populated town, inhabitants of locality means persons of immediate vicinity. 1925 R. 205=86 I. C. 415=25 Cr. L. J. 827.
4. Failure to call inhabitants of locality does not make the search illegal. 21 M. 83, 23 M. L. J. 445.
5. If the witness is respectable, it is immaterial if he is not an inhabitant of the same locality. 42 I. C. 753=18 Cr. L. J. 1009, 10 P. 821.
6. "Locality" may include villages within three or four miles of the village where search is to be conducted. 131 I. C. 441=1931 O. 115=32 Cr. L. J. 699.
7. Search under Bombay Prevention of Gambling Act need not comply with the provisions of S. 103, Cr. P. C. Absence of independent witnesses of the locality is only a curable irregularity. 1932 B. 610=33 Cr. L. J. 733.

Search—(concl'd.)

8. Merely because a person appeared as search witness in another case or lives about three furlongs from accused's house, he is not disqualified to act as search witness. 1934 O. 90=11 O. W. N. 62.
9. If a Police Officer takes witnesses from a far off place when respectable witnesses of the locality were available, the inference is that he was prompted by a desire to have such witnesses as would be easily persuaded to support any story which he might put forward. 1934 A. 374=1934 Cr. C. 438.

C. Respectable witnesses.

1. The words "respectable inhabitants" in S. 103 do not include ward headmen and block elders appointed by D. C. 12 Cr. L. J. 251=10 I. C. 796.
2. If respectable witnesses are not available at the time, and the search is conducted with others, the conviction is not to be set aside if there is ample evidence on the file. 1926 A. 188=92 I. C. 441=27 Cr. L. J. 265, 91 I. C. 249.
3. The Panches should be present throughout the search. It is not sufficient that they should sit outside the building while the search is going on inside. 54 B. 471.
4. A respectable person is one who is impartial and on whom the owner or occupier of the premises searched can *prima facie* rely. 15 Cr. L. J. 441=7 Bur. L. J. 143.
5. The word "respectable" means respectable and independent. 4 Bur. L. T. 91, 23 Cr. L. J. 609.
6. The witness must be respectable and not necessarily of the same locality. 42 I. C. 753=18 Cr. L. J. 1009.
7. It is objectionable to constantly call the same person to witness the search. 4 L. B. R. 121.
8. A dismissed constable is not a respectable man of the locality. 1931 L. 408.
9. Person having two convictions for serious crime is not a respectable witness. 1935 A. 520=154 I. C. 635.

D. Search of person of—

Persons should not be allowed to enter the house in course of search without their persons being searched. 1933 O. 305=3 Cr. L. J. 568.

18. When amounts to trespass. See House trespass—19.**SEARCH LIST. See Recovery list. See Search—16.****SEARCH WARRANT. Ss. 96—98, Cr. P. C.****1. Condition precedent to—**

1. A search warrant ought to be issued only after judicial inquiry and proper materials. 22 B. 949, 15 C. 109, 35 C. 1076, 8 W. R. 74.
2. Magistrate can act upon the solemn affirmation of the complainant to issue a warrant. 13 M. 18, 1910 M. W. N. 818.
3. A telegram received by the Police is not a good ground for issuing a search warrant. 22 B. 949.
4. If a complaint is laid before a Magistrate, a search warrant issued without examining the complainant is irregular. 8 A. L. J. 517, 12 P. W. R. 1916 Cr., 11 Cr. L. J. 535.
5. A search warrant cannot be issued to further Police investigation. 24 C. W. N. 405, 47 C. 597.
6. Search warrant should be issued when the Court believes that the person against whom it is issued, will not produce the thing in pursuance of mere summons. 5 Bom. L. R. 1032, 12 P. W. R. 1916, 1917 M. W. N. 494.
7. Before issuing a search warrant, the Magistrate must have information that document or thing is necessary or desirable for the inquiry before him. 9 L. B. R. 45.
8. If a Magistrate issues a search warrant merely on the suspicions as regards the

Search Warrant—(contd.)

nature of a person's business and assurance given by Police that search is necessary, such order is illegal. 1929 L. 837=31 Cr. L. J. 272, 47 C. 597.

9. Search warrants are always open to serious objections and great care is necessary before issuing it. 57 C. 718.
10. A mere statement in an affidavit that summons will not have desired effect, does not justify issue of search warrant. 41 I. C. 661.
11. A Magistrate can issue a search warrant before enquiry is begun. 57 I. C. 93.
12. S. 93 does not require a criminal proceedings as condition precedent to the issue of a search warrant. 35 C. 1076, 39 C. 953.

2. Delay in issuing—

The object of search warrant in theft case is to secure identification of stolen property. Delay in the issue thereof defeats the purpose for which it is issued. 46 I. C. 291.

3. Endorsement of—

1. The only person who can execute a search warrant is the person named therein. He cannot endorse it to any other Police Officer of similar rank. 53 B. 367 *Contra*. 10 Cr. L. J. 3.
 2. A search warrant issued under the Gambling Act can be endorsed by the Police Officer to another of equal rank. 30 A. 60.
4. For persons wrongfully confined. S. 100, Cr. P. C. See Search warrant for persons wrongfully confined.

5. General.

1. Issue of general search warrant on the application of an officer specially appointed to detect ammunition scandals is illegal, as there was no enquiry or trial before the Magistrate. 47 C. 597.
 2. A Court is authorized to go as far as is possible in the search, lest the accused should conceal or destroy the document or thing. 36 P. R. 1914.
 3. Magistrate can issue warrant for the production of copies of infringing book, proof, plates, letters, orders with reference to books, for the purpose of making an order under S. 10 of the Copy Right Act. 47 C. 164.
 4. The search must be for a specific article and not for stolen property generally. 41 C. 201, 16 C. W. N. 1078.
 5. A search ought not to be conducted for fishing out evidence. 8 W. R. 74, 9 L. B. R. 45.
 6. Issue of a search warrant for the production of all papers and books in the house is illegal. 36 I. C. 591=17 Cr. L. J. 543.
 7. Where serious riots took place, the search of the houses for arms by District Magistrate is not illegal. 39 C. 953.
 8. Discretion of Court in issuing search warrant should be exercised judicially. 1934 B. 74=58 B. 152.
 9. Accused stole money and deposited in a Bank. Money becomes property of the Bank and no order under S. 94, Cr. P. C., can be passed nor can money in Bank be attached. 58 B. 152=1934 B. 74=35 Cr. L. J. 1023.
- ## 6. Inspection of documents or thing on—
1. Once articles are brought before the Court in execution of search warrant, inspection thereof may be allowed to the complainant. 1929 C. 176=116 I. C. 721=30 Cr. L. J. 705=33 C. W. N. 369=49 C. L. J. 164, 15 C. 109, 5 Bom. L. R. 930.
 2. But the inspection or examination should be restricted to the particular portion and not the whole account book. 15 C. 109.
- ## 7. Resistance to—
- See Resistance.
- ## 8. Right of private defence against illegal—
- See Right of private defence.
- ## 9. Seizure without—
1. An order of Magistrate to seize account books without summons under S. 94 or

Search Warrant—(concl'd.)

warrant under S. 96 is illegal. 38 C. 63.

2. A search warrant under S. 93 is necessary for a general search of stolen property in the house of an absconding offender. 35 C. 304.
10. **Seizure of offensive weapons on—** S. 53, Cr. P. C.
Police Officer can seize weapons on searching accused. 35 C. W. N. 1212.
11. **Stay of—**

If the person against whom search warrant is issued gives undertaking not to sell copies of infringing book and offers security to produce them in Court it should be stayed. 47 C. 164.

12. **When can issue—**

1. Court and Magistrate are convertible terms and it is not necessary that the Magistrate in order to issue a search warrant should act as a Court or that some proceedings should have been initiated before him. 39 C. 953 (966) overruling 36 C. 433.
2. A search warrant can be issued for an inquiry being made or to be made, but it must be under Cr. P. Code. A search warrant for an inquiry under Sea Customs Act is illegal. 1934 B. 104=35 Cr. L. J. 1024=149 I. C. 1021, 47 C. 597=1920 C. 43, 22 B. 949 and 39 C. 953, Dist.

13. **Whom—can be issued.**

A search warrant cannot be issued to an accused person on trial. 12 Cr. L. J. 98.

SEARCH WARRANT FOR PERSONS WRONGFULLY CONFINED. S. 100, Cr. P. C.

1. **Application for.**

1. A Magistrate can issue a warrant under S. 100 merely upon an application of a complainant, otherwise it would necessitate the Magistrate almost in every case to try out a case before he could determine the question whether it was *bona fide* application. 1928 P. 550=113 I. C. 578=30 Cr. L. J. 175.
2. When an application is made for the issue of search warrant, it is incumbent on the Magistrate to satisfy himself by holding an inquiry that there is foundation for the application. 34 P. R. 1916 Cr.

2. **Complaint against husband—**

If complaint is made against a husband that he was keeping his wife in confinement, a Magistrate cannot make a summary order. If he finds that confinement amounted to an offence, he should let the wife go and warn the husband against interfering with her except through a Civil Court. If he finds it otherwise, he should advise the wife to go home with her husband. 29 P. W. R. 1910 Cr.

3. **Deputation of Subordinate Police Officer.**

An officer to whom a search warrant was issued under S. 100 endorsed it to another officer, that he might execute the warrant if the person was confined outside. Held, there was no justification for the Police Officer to do so. 1928 P. 550=113 I. C. 578=30 Cr. L. J. 175.

4. **Essentials of—**

1. If the Constable is acting under colour of office and in good faith executing search warrant in a village, the villagers have no right of private defence merely because there was a technical flaw in the warrant. 1936 A. 305=37 Cr. L. J. 548.
2. The Police Officer has to carry out the execution of warrant. He is not expected to disregard the finding of Magistrate as to the wrongful confinement of the person. 1936 A. 306=37 Cr. L. J. 548.
3. Magistrate cannot issue warrant unless the confinement amounts to an offence. Where natural father took away the child from the adoptive father, this section was held inapplicable. 1920 C. 562
4. Magistrate is not bound to make inquiry before issuing warrant, although it is always desirable. 34 P. R. 1916, 1928 P. 550.
5. If the person for whom a search warrant is issued voluntarily appears before the

Search Warrant for Persons wrongfully confined—(concl'd.)

Magistrate and is not brought under a warrant, the Magistrate should decline to take further action under this section. 10 Cr. L. J. 219.

6. Magistrate is bound to hear the parties when the arrested person appears under a warrant. 11 Cr. L. J. 450, 2 C. W. N. 333.

5. Form of—

1. There being no prescribed form of warrant under S. 100, a Magistrate adopted a form under S. 96 and after altering the figures, drew up a warrant in terms required by S. 100. It was held, that the warrant was perfectly legal. 45 C. 905, 11 C. W. N. 836 Diss. from.
2. A form under S. 98 may be lawfully used for a warrant under S. 100 with necessary alteration. 39 C. 403.
3. Where a warrant issued under S. 100, Cr. P. C., but the accused snatched it and tore it away. Held, that the warrant must be presumed to contain what is stated in S. 100, Cr. P. C. 39 C. 403.

6. Place to be searched.

It is not illegal for a Magistrate to issue a warrant under S. 100 without confining it to any particular place. 1928 P. 550=113 I. C. 578=30 Cr. L. J. 175.

SECRETING LETTERS. See Criminal misappropriation—20.

SECURITY FOR BREACH OF PEACE. See Breach of Peace.

SECURITY FOR GOOD BEHAVIOUR FROM HABITUAL OFFENDER. Ss. 110 to 125, S. 406, Cr. P. C.

1. Amount of security. S. 118, Cr. P. C.

1. The amount of bond shall be fixed according to the ability of the accused to furnish it and with reference to his means and station in life. 16 B. 372, 2 C. 110, 17 P. R. 1900 Cr., 6 A. 214, 30 P. R. 1890 Cr., 22 W. R. 74, 24 P. R. 1900 Cr., 2 C. 384, 1933 A. 674 (1), 28 P. R. 1901.
2. When the accused is unable to give security for the amount required and remains in jail, it is an index that the Magistrate has not exercised a proper discretion in fixing the amount. 23 A. 80.
3. There is no warrant in law for taking separate bonds from the accused and his sureties individually and severally, exceeding in the aggregate the amount for which the accused is liable. 30 P. R. 1850 Cr.
4. Where the amount of security is *prima facie* unreasonable, the High Court can call upon the Magistrate to state the grounds for fixing the amount. 2 C. 110.
5. Accused was ordered to furnish a bond for Rs 200 and a respectable surety. The surety offered security in the shape of house property worth 500 rupees. Held, that the Court should have accepted the security, though it is true that only movable property could be attached under S. 514. 46 I. C. 295=19 Cr. L. J. 711.
6. Omission to set forth amount of security under S. 112 is a mere irregularity. 8 C. 724. Court cannot ask for cash security. 2 N. W. P. 295
7. Ss. 117-118 do not contemplate the furnishing of a registered hypothecation bond as security. 136 I. C. 65=1932 A. 122=33 Cr. L. J. 239.
8. Magistrate cannot, in final order, increase the amount of security. 5 Cr. L. J. 219; or alter the nature thereof 4 Cr. L. J. 405 or increase at variance with the terms as to security contained in the order under S. 112.
9. The object is not to punish the person. 7 A. 67, 15 P. R. 1900.
10. Magistrate should exercise judicial discretion in fixing amount. High Court can interfere in revision. 2 C. 10, 31 C. 350, 23 A. 80.

2. Appeal against— S. 406 and S. 123 (2). Cr. P.C.

1. Where the District Magistrate in an appeal from a case under S. 110 disposed of the appeal in a few lines by making some general observations upon the volume of evidence, the order is bad. 67 I. C. 202=13 Cr. L. J. 9.

Security for Good Behaviour from Habitual Offender—(contd.)

2. A District Magistrate, while setting aside an appeal, from an order under S. 110, Cr. P. C., cannot remand the case for *de novo* trial, i.e., for fresh enquiry. 1929 L. 28 = 115 I. C. 544 = 30 Cr. L. J. 491 = 30 P. L. R. 416.
 3. The accused was bound over under S. 110 (f) and on appeal the District Magistrate found S. 110 (e) more appropriate and reduced the period and the amount of the security. Held, there was no ground for interference in revision. 55 I. C. 688.
 4. The appellate judgment should show that the District Magistrate has applied his mind to the consideration of evidence and pleas raised by the appellant in the memo of appeal and the Lower Court. 38 A. 393.
 5. An appeal is not properly disposed of where evidence is not duly weighed and examined by the Court. 33 I. C. 647 = 14 A. L. J. 279 = 17 Cr. L. J. 167.
 6. Where the Appellate Court did not consider the defence of the accused, although the defence counsel did not make any reference to it, retrial was ordered. 40 C. 376.
 7. Appeal against an order of a Magistrate sentencing a person proceeded against under S. 110, to three years, does not lie to the District Magistrate. 1935 Pesh. 55 = 1935 Cr. C. 346.
 8. Order of imprisonment in default of furnishing security (under S. 106) under S. 123 is not appealable. 1935 R. 363
 9. Local Government cannot move High Court under S. 417, Cr. P. C., against an order of Sessions Judge setting aside in appeal directing security, but can move in revision. 1926 O. 329, 1928 A. 1, 9 C. 878.
- 3. Applicability and scope of S. 110.**
1. S. 110 is not punitive but preventive, so it is very undesirable to proceed against a person trying to reform and lead an honest life for a fortnight. 12 Cr. L. J. 328.
 2. Powers under S. 110 should be exercised sparingly and in those cases where the evidence is clear and precise. 5 P. R. 1892 Cr., 3 M. 238, 2 L. L. J. 237.
 3. Power to proceed under S. 110 is not confined to those cases in which positive evidence is forthcoming of the commission of the offences. 3 M. 238.
 4. The Magistrate should be cautious in making sure that S. 110 is not utilized for taking private vengeance under the aegis of a Crown Prosecution. 38 C. 156.
 5. It is notorious that accusations of bad livelihood are constantly made with the object of blackening an enemy's character and satisfying feelings of spite and hatred. 4 P. R. 1898 Cr.
 6. The Court must not make use of S. 110 to secure a conviction of persons against whom substantive charge has broken down. 22 Cr. L. J. 273, 24 O. C. 317.
 7. If proceedings under S. 110 are taken soon after the acquittal on a charge of theft, the Magistrate should see that they were not taken for punishing him in an indirect way. 9 Cr. L. J. 528 = 6 A. L. J. 487.
 8. A person arrested outside the jurisdiction of a Magistrate, for an offence committed within, can on failure of the charge of substantive offence be proceeded against under S. 110. 45 C. 215.
 9. Proceedings under S. 110 against persons registered under the Criminal Tribes Act are not illegal, though inexpedient. 20 Cr. L. J. 30, 54 C. 279.
 10. The fact that S. 108 is applicable does not make S. 110 inapplicable. 46 C. 215.
 11. A Magistrate cannot pass an order that a certain person should leave a certain place or he would be prosecuted as a bad character. 1921 A. 145 = 65 I. C. 554.
 12. A double order under S. 110 and S. 7 of Burma Habitual Offenders Restriction Act is illegal. 24 Cr. L. J. 735.
 13. A District Magistrate can pass an order of restriction under Burma Habitual Offenders Registration Act on proceedings under S. 110 started by Sub-Divisional Magistrate. 2 R. 524.
 14. The effect of S. 3, Burma Opium Law Amendment Act, is to introduce additional ground on which S. 110 can be applied. 2 R. 61 = 81 I. C. 546.

Security for good Behaviour from Habitual Offender—(contd.)

15. Previous conviction 12 years before by itself is no justification for an order under S. 110. 1934 A. 735=152 I. C. 120.
16. Where a person is amenable under S. 109, Cr. P. C., he cannot be proceeded against under S. 110. 16 Cr. L. J. 626-631, 11 Cr. L. J. 50.
17. If a notice under S. 107 is issued, accused cannot be bound over under S. 110. 25 C. 793, 30 M. 282, 14 Cr. L. J. 65.
4. **Bail.**
Refusal of bail is contrary to the spirit of the provisions of Chapter VIII. 1926 S. 288=95 I. C. 391=27 Cr. L. J. 935.
5. **Consent to be bound under S. 110.**
 1. "I am prepared to give security for good behaviour" is equivalent to plea of guilty but not when the accused has flatly denied his guilt. 30 Cr. L. J. 122.
 2. Consent is immaterial. 50 A. 599=1928 A. 357, 1925 S. 321.
6. **Confiscation of surety bond.** See—19, Bond.
7. **Desperate and dangerous character.** S. 110 (f).
 1. A man of desperate and dangerous character in clause (f) means a man who has a reckless disregard of the safety of the person and property of his neighbours. 46 C. 215, 1931 A. 437, 1915 A. 352, 1934 C. 482.
 2. Evidence of acts of extortion, unless those acts are accompanied by acts causing danger to life and property, is not sufficient to bring the case under clause (f). 11 C. W. N. 789.
 3. A person who had been arrested in a dacoity case and released does not come under cl. (f). 11 C. W. N. 129, 17 Cr. L. J. 184=33 I. C. 824.
 4. A person who lives by prostituting one of his wives is not within clause (f). 5 P. R. 1892.
 5. A person who had been annoying respectable women or knocking at the door of the neighbours or throwing brickbats over their roofs, is not within cl. (f). 5 C. W. N. 249, 30 C. 366.
 6. A person who is habitual gambler is not within cl. (f). 33 P. R. 1880.
 7. A person who declines to pay his debts, abuses neighbours and makes indecent overtures to school boys is not within cl. (f). 16 Cr. L. J. 582.
 8. If a person is hazardous to a person or persons but not to community, he may be proceeded against under S. 107 and not under S. 110. 27 A. 92, 6 A. 132.
 9. Evidence which was regarded as unreliable and insufficient for a charge of dacoity should not be treated as reliable to show that such a person is of dangerous and desperate character under S. 110. 17 Cr. L. J. 184, 43 M. 450.
 10. Evidence of general reputation is only admissible under S. 117, Cr. P. C., to prove that a person is a habitual offender under S. 110, but not to prove a charge of being of desperate and dangerous character. 8 P. W. R. 1917 Cr., 62 I. C. 188=22 Cr. L. J. 492, 47 I. C. 67=19 Cr. L. J. 871, 34 M. 255.
 11. Evidence of special acts showing a man to be of desperate and dangerous character is necessary. 43 M. 450.
 12. The fact that accused was caught in the act of adultery is insufficient. 129 I. C. 276, 30 C. 366, 1930 L. 1051.
 13. That the man is of litigious nature is insufficient. 129 I. C. 276, 1918 A. 318, 1930 L. 1051, 1927 P. 126.
 14. A quarrelsome man who threatened a member of Municipal Board, disobeyed order and threw bricks in other's houses, is not desperate or dangerous. 133 I. C. 535, 1931 A. 437; or one who committed assault and was acquitted. 11 Cr. L. J. 663.
 15. Satyagraha volunteer engaging in disorderly activities should be bound down. 32 Cr. L. J. 593; or persons associating with revolutionary party. 1933 A. 674.
 16. "Neighbours" means the members of the community. 1934 C. 482.

Security for good Behaviour from Habitual Offender—(contd.)

17. Where tenants began to assault and loot in order to compel zimindar to settle, S. 110 was applicable. 1927 P. 124=6 P. 1.
18. Accused threatened an assessor with life if he did not give opinion in his favour. 1935 A. 638.
19. A person who is of quarrelsome nature or general nuisance to neighbours cannot be bound down. 1931 A. 437, 1922 N. 180, 1915 A. 352.

8. Defence.

1. Accused is entitled to have his defence thoroughly considered and proper finding recorded on the evidence. 1930 L. 1051=129 I. C. 276.
2. When a number of defence witnesses give the accused good character, he should not be bound down. 83 I. C. 659=26 Cr. L. J. 99.
3. Where the defence evidence is as good as that for prosecution, order under S. 110 should not be passed. 129 I. C. 276.
4. The decision should not depend on the number of witnesses a party is able to produce. The evidence should be examined to see whether the prosecution or defence has established the case. 1935 A. 850=158 I. C. 424.
5. Accused is entitled to appear and be defended by Pleader. 23 C. 493, 25 A. 375.

9. Detention in jail and arrest.

1. Sending an accused under S. 110 to jail will prejudice his interest and render the inquiry unfair. 26 I. C. 1003=16 Cr. L. J. 91=16 Bom. L. R. 943.
2. A Magistrate cannot keep a man in jail beyond the period for which security was ordered. 13 Cr. L. J. 62.
3. In proceedings under S. 110, the Magistrate cannot remand an accused to custody. 39 M. 928.
4. A Magistrate should not detain a person under S. 110 unless he has the information upon which he can make an order required by S. 112. 42 A. 646.
5. Police reported against a person to Magistrate under S. 110 and he did not issue any summons or warrant, subsequent arrest by Police is unauthorized. 1925 L. 623.
6. When the commission of offence cannot otherwise be prevented, Police officer can make arrest under S. 151, Cr.P.C. If without emergency arrest is made it is illegal. 1930 L. 348.

10. Evidence.

1. Evidence required under S. 110 is not necessarily evidence that the accused has committed definite criminal offences. 10 P. R. 1899 Cr.
2. Mere fact that a man has a bad character is not sufficient to bind him under S. 110. 6 A. 132, 6 C. 14, 14 A. 45, 12 P. R. 1881 Cr.
3. A man cannot be ordered to give security merely on the ground that he has a record of several previous convictions. 10 B. 174, 13 C. W. N. 318.
4. The fact that sixteen years ago accused was bound over three times is no ground for considering that he is still a bad character. 23 Cr. L. J. 507.
5. When the evidence is equally balanced on both sides no order for security shall be made. 45 A. 109, 4 L. L. J. 531, 17 I. C. 404, 20 I. C. 23, 20 Cr. L. J. 716.
6. The burden of proving bad character is on the prosecution and when the evidence on both sides is of an indifferent or interested character, the prosecution must fail. 4 P. R. 1898 Cr., 27 C. 781.
7. The mere fact that witnesses for the defence are the caste fellows of the accused, is no ground for discrediting their testimony. 54 I. C. 412=21 Cr. L. J. 60.
8. If the accused had been acquitted in a dacoity case by the Sessions Judge, it is not for the Magistrate to question the decision of the Sessions Judge and accused should not be prosecuted under S. 110. 54 I. C. 778, 20 Cr. L. J. 727.
9. In S. 110 the decision does not rest on the point whether defence evidence outweighs prosecution evidence but whether prosecution evidence is sufficient to establish the case or not. 58 I. C. 826.

Security for good Behaviour from Habitual Offender—(contd.)

10. The testimony of a Police Officer that a person is by habit a thief is inadmissible in evidence, when it is only a matter of opinion and hearsay. 1930 N. 148=120 I. C. 734=31 Cr. L. J. 165.
11. Evidence tending to show that a substantive offence had been committed or which might form the basis of a charge of substantive offence is not to be excluded under S. 110. 1927 A. 473=23 Cr. L. J. 515, 47 A. 733, 52 A. 448.
12. Evidence which is inadmissible under the Evidence Act cannot be admitted in proceedings under S. 110. 1927 A. 394=23 Cr. L. J. 502, 12 A. L. J. 937.
13. The mere fact that witnesses for the defence had commercial dealings with the appellant and others are of the same class and position as the appellant is not sufficient ground to exclude their evidence. 97 I. C. 43=27 Cr. L. J. 1067.
14. The fact that the accused has been acquitted of a particular charge may diminish or even destroy the value of evidence as to the allegations against the accused but does not render it inadmissible. 47 A. 733.
15. In order to prove a man a habitual robber, it is necessary to prove that persons gathered at his house were robbers or were there for the purpose of theft or robbery. 47 A. 733.
16. The confession of co-accused in another case cannot be used as evidence against the accused in S. 110 case. 1921 C. 557=61 I. C. 793=23 C. W. N. 239.
17. The mere fact that accused could get witnesses of fairly good status to give evidence on his behalf, is no ground for disbelieving the witness. 52 I. C. 657=20 Cr. L. J. 689.
18. Evidence of bad character is not sufficient to put a person on security. 30 P. L. R. 1916=33 I. C. 318, 11 Cr. L. J. 638.
19. Immoral relations with women is insufficient under S. 110. 12 Cr. L. J. 542.
20. No security can be demanded from an ex-convict, when he has done nothing since he came out of jail, that would justify an order under S. 110. 29 P. R. 1910 Cr., 51 A. 663.
21. Order under S. 110 should not be made on the evidence of an avowed enemy. 1925 L. 166=81 I. C. 344=25 Cr. L. J. 808, 25 O. C. 242.
22. If many persons including accused's tenants depose to his being a peaceful citizen and good landlord, Court should not demand security. 1930 O. 357=31 Cr. L. J. 1020.
23. Where the prosecution witnesses were mostly enemies of the accused and were men of influence so as to procure a large number of people to speak as to the general bad character of the accused. Held, that accused should not be convicted when there are number of persons who give him good character. 1925 O. 277=25 Cr. L. J. 99.
24. Where there was rumour about the accused being a thief but there was no evidence as to who his associates were, what were his means of subsistence or whether increase of theft synchronised with his appearance in any particular locality, the order against him is not justified. 1924 O. 187=74 I. C. 535=24 Cr. L. J. 791, 1921 A. 88.
25. A Magistrate can use his private knowledge to test the nature of evidence and to test whether a case is got up or not. 45 A. 749.
26. But where the Magistrate allows his private information to influence his judgment, his order would be quashed. 1923 A. 595=73 I. C. 337=24 Cr. L. J. 593.
27. Relationship with a person bound over is not a sufficient corroboration of an approver's evidence against the former in a proceeding under S. 110. 62 I. C. 182.
28. Consent of accused to be bound down under S. 111 is immaterial, the evidence must warrant an order under S. 110. 50 A. 599, 1925 S. 321=87 I. C. 961.
29. An isolated instance of violence of a young Zamindar on which no report was made is not sufficient under S. 110. 1930 O. 357=126 I. C. 501=31 Cr. L. J. 1020.
30. S. 110 should not be applied to a person suspected of harbouring dacoits who should be dealt with under S. 416-A. 51 A. 459.

Security for good Behaviour from Habitual Offender—(contd.)

31. If the substantive offence fails, proceedings under S. 110 should not be instituted with a view to get him punished. But if evidence is sufficient, order under S. 110 can be made. 1927 A. 473=102 I. C. 211=23 C. L. J. 515, 1925 O. 49=77 I. C. 302, 65 I. C. 551=1922 O. 26.
 32. Where accused was acquitted under S. 411, I. P. C., he was bound down under S. 110 immediately after. Held, that the order is bad. 1926 L. 190=91 I. C. 1006=26 P. L. R. 789=27 Cr. L. J. 190.
 33. It is hard on accused to run them under S. 110 shortly after they are released from Jail, since they have no sufficient opportunity to reform. 1926 S. 69=89 I. C. 710=26 Cr. L. J. 1398.
 34. A man acquitted of dacoity can be run under S. 110. But the Court must take into consideration the desire of Police to get rid of such a man from the villages. 1925 O. 501=85 I. C. 370=25 Cr. L. J. 530.
 35. Where there are two parties equally dangerous in a village, it is not proper to bind only one party without binding the other. 63 I. C. 829=22 Cr. L. J. 701.
 36. Where the man has flatly denied his guilt on every point, then his statement : "I am prepared to give security for good behaviour" cannot be equivalent to a plea of guilty. 1928 A. 357=113 I. C. 232=30 Cr. L. J. 122=26 A. L. J. 519.
 37. If the evidence is vague and general in character and consisted mostly of repetition and the definite piece was an attempt to assist in rescuing a thief, the order should be set aside. 63 I. C. 452.
 38. The accused is entitled to have his defence thoroughly considered and proper finding recorded on the evidence. 1930 L. 1051=129 I. C. 276.
 39. Confession of co-accused is admissible under S. 30, Evidence Act. 1934 A. 927.
 40. Evidence of witnesses should not be discarded merely on the ground of enmity. 1933 P. 189=34 Cr. L. J. 643.
 41. Persons associating with members of revolutionary party and having sympathy with violent revolutionary movement can be bound down. 1933 A. 674 (1).
- 11. Evidence of Headmen, Sarpanches, etc.** See Headman.
- Mukhias and Sarpanches are not quasi Police witnesses and no presumption should be made against them. Their evidence should be judged on merit. 1935 A. 850=158 I. C. 424.
- 12. Evidence of Police Officer.** See Witness.
- 13. Evidence of commission of offence—**
- Evidence of particular instances of commission of offence coupled with evidence of general repute justifies an order under S. 110. 1934 O. 49=147 I. C. 388, 1933 O. 58=141 I. C. 251 Rel. on.
- 14. Evidence of general repute—opinion.**
1. If a witness says that in the general opinion of the man's neighbours the man is a habitual thief, it is evidence of general repute. 1926 O. 473=26 Cr. L. J. 1283.
 2. A witness's suspicions and allegations unsupported by facts and without special means of knowledge as to the reputation of the accused, are worth nothing. 51 A. 663.
 3. That accused habitually commits theft is evidence of general repute. 51 A. 275.
 4. It is not necessary that the repute under S. 110 should be proved only by immediate neighbours. 2 R. 686=1925 R. 174=85 I. C. 368=26 Cr. L. J. 528.
 5. A man's general reputation is the reputation he bears in the place in which he lives amongst all the townsmen. 23 C. 621, 25 C. W. N. 334, 1903 A. W. N. 181, 2 R. 686=1925 R. 174=85 I. C. 368, 110 I. C. 674, 61 I. C. 233.
 6. It is not necessary to show that general opinion is based on the personal knowledge of the man by his neighbours, nor that such general opinion has been publicly expressed by the neighbours. 1925 O. 473=89 I. C. 147=26 Cr. L. J. 1283.
 7. Mere suspicion of complicity in this or that offence is not evidence of general reputation. 113 I. C. 909, 1928 L. 49=9 L. 133, 12 A. L. J. 937, 52 I. C. 657.

Security for good Behaviour from Habitual Offender—(contd.)

8. A witness can say "this man is by general repute an habitual thief." It is not hearsay, because he bases his knowledge on the fact that people are talking about him in a certain way or that he has such a general reputation. 1928 A. 1=106 I. C. 684 = 26 Cr. L. J. 92=26 A. L. J. 99.
9. Mere production of a string of witnesses about the general repute is of little value, unless the value of their evidence is properly checked by the Court or accused's Counsel. 51 A. 663=1929 A. 273=116 I. C. 25=30 Cr. L. J. 562.
10. In the absence of strong evidence of repute which is of universal kind, order under S. 110 should not be passed. Evidence of an enemy is worthless. 1925 L. 166=81 I. C. 344=25 Cr. L. J. 808.
11. Nothing is more easy than to put forward a general charge against a person that he is a thief. It has got to be tested in the light of tangible facts and if it cannot be supported by facts, the evidence loses its value. 1930 A. 37=121 I. C. 559=31 Cr. L. J. 301.
12. When evidence is taken of reputation, the Court cannot exclude the reasons which induced the members of the community to form a bad opinion. If their opinion is based wholly or partly on the belief that the accused person committed a crime which had not been brought home, the Court cannot rule out as inadmissible all evidence on which the belief is based. 1930 O. 357=126 I. C. 501=31 Cr. L. J. 1021.
13. Evidence of general repute may be either of general opinion of the community or neighbourhood or of personal opinion of the witness. The opinion need not be of entire community but at least of a considerable number of persons. 43 M. 450, 12 A. L. J. 937.
14. Evidence of accused's own caste fellows and neighbours is certainly the best evidence available. 12 Cr. L. J. 542.
15. A series of dacoities having taken place in a certain village, the evidence of general reputation of the accused coming from the people of that village, is certainly an evidence of general repute, although accused did not live among those people. 35 C. 243.
16. Witnesses must speak from their personal knowledge and not from mere hearsay. 45 A. 109, 19 A. L. J. 39.
17. Mere rumour is not repute. 23 C. 621, 1918 M. W. N. 751, 5 P. L. T. 166.
18. Evidence of association with bad character is evidence of reputation, but it must be proved that the association was with proved bad characters and not with reputed bad characters. 13 C. W. N. 318.
19. Mere repetition of what others told the witnesses is insufficient. 45 A. 109.
20. The repute should be universal and there should be no doubt about it. 2 P. R. 1898 Cr., 48 P. W. R. 1914 Cr., 2 P. R. 1897 Cr., 215 P. L. R. 1915.
21. If equal number of defence witnesses come forward to state that the man's reputation is good, it can hardly be held that his reputation is bad, unless there is something to corroborate the evidence of witnesses against him. 2 P. R. 1898 Cr., 1 A. L. J. 611, 21 Cr. L. J. 170.
22. Evidence of cases in which accused was suspected is no evidence of general repute. 20 Cr. L. J. 659, 11 A. L. J. 461, 12 A. L. J. 937, 46 I. C. 841.
23. The fact that a person has never been suspected of any offence may weaken the general evidence of reputation that is given against him. 22 Cr. L. J. 273=60 I. C. 673, 1923 A. 595=77 I. C. 886=25 Cr. L. J. 486.
24. That fact that a person has been suspected and named in a large number of cases extending over a considerable interval may be very useful corroboration of general evidence against him. 22 Cr. L. J. 273=60 I. C. 673, 1923 A. 595=77 I. C. 886=25 Cr. L. J. 486.
25. A person who has the reputation of habitually bringing false claim in Civil Courts cannot be proceeded against under S. 110. 47 I. C. 81=19 Cr. L. J. 885.
26. General repute must be proved by relevant evidence. 40 A. 372.

Security for good Behaviour from Habitual Offender—(contd.)

27. Evidence of mere beliefs or opinions without reference to acts or instances which are grounds for such opinion are hardly evidence of repute. Habitual criminality cannot be regarded as established by the repetition of beliefs and opinions. 43 M. 450.
28. Inference drawn by forest officers as to the persons who committed forest offences is no evidence of repute. 47 I. C. 277=19 Cr. L. J. 905.
29. Previous order under S. 110 may be proved as one of the grounds on which the witnesses to general repute believe the accused to be a habitual offender. 51 A. 275.
30. Evidence of general repute alone, when the witnesses have no personal knowledge of the accused or his business is not sufficient. 1921 A. 38=60 I. C. 1002=22 Cr. L. J. 314.
31. The fact that action had been taken against the accused on three occasion years ago and there is evidence of general repute, the order under S. 110 is not justified. 1921 L. 179=68 I. C. 43.
32. Evidence of investigating Police Officer to establish general repute, under S. 110, Cr. P. C., is inadmissible. 55 I. C. 593=21 Cr. L. J. 321, 51 A. 663.
33. Mere belief or information without reference to acts and instances which have induced the witnesses to form the opinion cannot be regarded as evidence of repute. 12 P. L. T. 880, 23 C. 621.
34. If respectable persons depose on the side of the accused he should not be bound over on evidence of bad repute. 1935 Pesh. 158.
35. Evidence of general repute that accused is a burglar is sufficient for S. 110. 1933 O. 58=34 Cr. L. J. 160.
36. Evidence of those who do not know the man but have heard of his reputation is not admissible. 1933 P. 149=34 Cr. L. J. 643. 1929 A. 650=51 A. 275 Ref.
37. A Sub Inspector is competent to give evidence about the reputation of a person residing in his jurisdiction. 1933 A. 674 (2).
38. Under S. 110 hearsay evidence amounts to evidence of general repute, provided there is reasonable foundation for it. 1933 A. 674 (2).
39. General reputation of a person is the collective opinion of his fellow townsmen. 1920 O. 255, 1923 L. 419, 1925 L. 166, 2 P. R. 1897, 2 P. R. 1893, 45 M. 450, 1914 A. 250.
40. How long it takes rumour to ripen into reputation depends on each case. 1933 P. 159, 1921 C. 625, 23 C. 621, 1923 L. 47.
41. It is the collective opinion and not the individual opinion that is admissible. 1920 O. 255, 1929 A. 273, 66 I. C. 513, 1924 P. 500, 1929 A. 650.
42. Inquiry is governed by ordinary rules of evidence. 1929 A. 273, 1920 O. 255, 26 I. C. 153.
43. It is not sufficient merely to examine the Police, or Zaildars or Sufed Posthes. 1925 R. 174, 1925 A. 1, 1930 N. 144, 1923 L. 419, 29 Cr. L. J. 738, 1920 P. 23, 1931 A. 674.

5. If there is large volume of evidence in favour of accused, which is as good as, if not better than, that of the prosecution, the order under S. 110 should not be made. 4 L. L. J. 531, 45 A. 109, 10 A. L. J. 383, 20 Cr. L. J. 716, 119 I. C. 674=29 P. L. R. 539=29 Cr. L. J. 738.
6. Where a large number of respectable people testified to the good character of the accused, an order under S. 110 should not be made, when their evidence is un rebutted. 30 P. L. R. 1916.
7. The persons testifying to good character should be respectable and need not be officials. 8 Bur. L. T. 53.
8. Evidence of accused's own caste fellows and neighbours is certainly the best sort of evidence available. 12 Cr. L. J. 542.

16. Evidence of Habit—Habitual Offender— S. 110 (d), Cr. P. C.

1. The word "habit" implies a tendency or capacity resulting from the frequent repetition of the same acts. "Habitually" implies practice or use. The words have been used in S. 110 in the sense of depravity of character as evidenced by the frequent repetition or commission of the offences mentioned therein. 6 P. 1=28 Cr. L. J. 359=1927 P. 126=100 I. C. 967, 75 I. C. 764=1924 N. 19.
2. That a man having been suspected in four thefts is not sufficient evidence of habit. 109 I. C. 510=29 Cr. L. J. 574, 32 P. R. 1880.
3. If a person to enforce his right commits offences, he cannot be held to have acquired a habit of committing offences. 6 P. 1=19:7 P. 126=100 I. C. 967=28 Cr. L. J. 359.
4. There should be evidence of specific acts showing that accused is by habit a thief. 29 C. 779, 8 C. W. N. 543, 29 Cr. L. J. 574, 1930 L. 345, 27 Cr. L. J. 1067, 1924 P. 498—500, 12 P. R. 1892, 6 M. H. C. R. 120.
5. If a person admits that he was a bad character and had been to Jail, but there was no evidence of his being habitual thief, an order under S. 110 is not justified. 3 Bom. L. R. 269, 11 Cr. L. J. 638, 1934 A. 735.
6. The fact that a Zamindar had tenants of bad character and used to lend them money and paddy is insufficient. 6 C. L. J. 711.
7. Persons in the habit of bringing false claims by forged entries or obtaining decrees cannot be said to be habitually committing extortion. 25 P. R. 1884, 21 P. R. 1914 Cr., 19 Cr. L. J. 885, 28 P. R. 1900. But now see the amendment of S. 110 (a) where word "forger" is added.
8. If servants of a Zamindar constantly commit extortion, they should be prosecuted for the offence and not under S. 110, for they are in the habit so far as they are the servants. 27 C. 781.
9. The circumstance that a man is found under a bush the whole night and has property which he cannot account for, will not make him habitual offender. 12 Cr. L. J. 359.
10. The fact that accused was convicted on a former occasion is no evidence that he is a habitual offender. 2 A. 835.
11. Evidence of acts of misconduct by a person years ago is admissible as indicating formation of habit. But such evidence unless supplemented by evidence of misconduct committed within a year cannot justify an order under S. 110. 11 C. W. N. 789.
12. The fact that accused associated with thief is not sufficient. 1933 A. 859.
13. That a Police Officer gave it as his opinion that accused was a habitual thief is insufficient. 1930 N. 148.
14. If the charge is that he gathers bad characters in his house, it must be proved that bad characters were robbers or thieves or have gathered there for committing robbery or theft. 1925 A. 694.
15. If the notice was that accused formed a habitual gang for committing robbery S. 110 does not apply, as they became a gang of dacoits. 1925 A. 250, 1929 A. 813.

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Security for good Behaviour from Habitual Offender—(contd.)

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 39. General reputation of a person is the collective opinion of his fellow townsmen. 1920 O. 255, 1923 L. 419, 1925 L. 166, 2 P. R. 1897, 2 P. R. 1898, 45 M. 450, 1914 A. 280.
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- 15. Evidence of good character.**
1. Where accused produces a number of witnesses to prove good character, the Court must give substantial reasons for not believing them. 5 P. L. T. 166=129, 13 A. L. J. 1055.
 2. Accused who was a Zamindar and money-lender produced a large number of his tenants and caste fellows to prove his good character and the Court disbelieved them on the ground that by virtue of his position, he produced a large number. Held, that his order is invalid. 13 A. L. J. 1046.
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5. If there is large volume of evidence in favour of accused, which is as good as, if not better than, that of the prosecution, the order under S. 110 should not be made. 4 L. L. J. 531, 45 A. 109, 10 A. L. J. 383, 20 Cr. L. J. 716, 119 I. C. 674=29 P. L. R. 539=29 Cr. L. J. 738.
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 1. History sheets kept by Police of persons proceeded against under S. 110 cannot :

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- considered by the Court. 21 Cr. L. J. 700, 1930 A. 37, 1920 C. 556.
2. Where the evidence of Police witnesses consists only of rumours and hearsay which they have recorded in their note books and diaries, it is wholly inadmissible. 43 M. 450, 28 I. C. 329=16 Cr. L. J. 281, 1924 A. 142.
 3. Entries in the Thana village crime Note Book are in themselves no evidence to support an order under S. 110. 22 Cr. L. J. 486.
 4. A list of cases in which the accused was suspected is inadmissible. 46 I. C. 841=19 Cr. L. J. 825, 1933 O. 251, 22 C. W. N. 148, 13 Cr. L. J. 9.
 5. History sheets are not evidence especially where the official who produced them did not make the entries. 52 I. C. 657.
 6. Reports regarding commission of burglaries and casting suspicions upon particular persons can be used for corroboration under S. 110. 1933 O. 251=34 Cr. L. J. 852.
- 18. Evidence of previous conviction.**
1. Whenever it is required to prove previous convictions against a man, they should be proved strictly and in accordance with law. 43 C. 1128, 43 M. 450.
 2. The fact that a man was once convicted of theft and his house was searched on several occasions and nothing was found, does not justify an order under S. 110. 23 P. L. R. 1907.
 3. The fact that a man was bound over three times sixteen years ago is not sufficient to consider him a bad character still. 23 Cr. L. J. 507.
 4. The mere fact that a person has a record of several previous convictions does not justify an order under S. 110. 10 B. 174, 13 C. W. N. 318.
 5. The existence of previous convictions for theft is a matter which the Court must consider as indicating the character and disposition of the accused. 51 A. 663.
 6. The evidence of a Police Officer that accused is by habit a thief coupled with two ... of belonging to and associating with a gang of ... evidence under S. 110. 1930 N. 148=
 7. No security can be demanded from an ex-convict where there is nothing to show since he got out of jail, he has been a bad character. 29 P. R. 1910 Cr.
 8. Previous convictions are not substantive evidence in a case under S. 110, though they may affect the period for which the accused is to be bound down. 10 Cr. J. L. 122=13 C. W. N. 318=2 I. C. 651.
 9. The fact that action had been taken against accused on three previous occasions, the last one being many years ago, is not sufficient for ordering security under S. 110. 1921 L. 179=68 I. C. 43.
- 19. Evidence of Harbousing thieves. S. 110 (c).**
1. S. 110 does not apply to harbouring dacoits. Accused should be dealt with under S. 216-A, I. P. C. 1928 A. 682.
 2. Mere giving food or treatment is insufficient. 11 Cr. L. J. 490.
 3. The manager of public shrine who has not got exclusive control will not be liable. 11 Cr. L. J. 603.
 4. Where thieves are living with father, son will not be liable. 1934 L. 62.
 5. One or two cases of harbouring are insufficient. 1933 P. 189.
- 20. Evidence of receiving stolen property. S. 11:**
1. Habitual receiving of ... may ... general repute. No speci-
fic offence need be ... P. R. 1892.
 2. Mere rumours or st
- 21. Evidence of repute—**
- 22. Evidence of suspicion—**
1. Evidence against accu the

a Zaildar, some lambardars and one Fazla who was enemy of the accused, that he was a habitual thief and associated with bad characters. He was suspected on three occasions under S. 457, Penal Code, and on two occasions his house was searched though no stolen property was recovered. The accused was never criminally prosecuted nor any written complaint was ever made to Police against him. He produced 17 witnesses of respectable position to testify to his good character. Held, that evidence is insufficient on the record to justify an order under S. 110. 1923 L. 419=76 I. C. 1034=25 Cr. L. J. 314.

2. Instances of mere suspicion are no evidence. 1924 P. 498=75 I. C. 723, 1924 O. 112, 1927 A. 394=23 Cr. L. J. 502, 97 I. C. 43, 40 I. C. 710.
3. Evidence as to mere suspicion on particular isolated occasions is insufficient. But there must be a large number of cases before it can be held that accused is by habit a thief. 1930 L. 345=127 I. C. 861=3 : Cr. L. J. 62.
4. Suspicion is worthless and inadmissible to support an order under S. 110 unless supported by facts on which suspicion is based. It is only the facts and reasons on which suspicion is based, to which only weight can be given. 1929 A. 599=116 I. C. 801=30 Cr. L. J. 693, 1928 A. 1=106 I. C. 884.
5. The suspicions of a witness that a particular man committed, either singly or with others, a theft in his house is wholly inadmissible under S. 110. In this respect a Police Officer stands in no better position than any other witness. 51 A. 663.
6. Mere suspicion of complicity in any offence is no evidence of general reputation. 9 L. 586, 1923 L. 49, 12 A. L. J. 937, 20 Cr. L. J. 689.
7. Evidence of suspicion in a number of cases is a corroboration of evidence of repute. Conversely that a man has never been suspected may weaken the evidence of bad reputation. 22 Cr. L. J. 273=60 I. C. 673, 1923 A. 595=25 Cr. L. J. 486.
8. That the accused was of bad character and was suspected on many occasions by the Police is insufficient under S. 110. 1905 A. W. N. 34, 11 C. W. N. 129, 40 I. C. 710, 11 C. W. N. 413.
9. That the accused was convicted of theft and his house was searched on several occasions but no stolen property recovered is insufficient under S. 110. 23 P. L. R. 1907.
10. The evidence for the prosecution consisted of witnesses produced by the Police and a few instances of suspicion and the accused produced evidence of discharge on those facts. The evidence is insufficient. 316 P. L. R. 1913=33 P. W. R. 1913 Cr.
11. Reports regarding commission of burglaries and casting suspicions upon particular persons can be used for corroboration in proceedings under S. 110. 1933 O. 251=34 Cr. L. J. 852.

23. Examination of accused.

1. S. 342 is mandatory and Magistrate should call accused's attention to important points against him. 1934 A. 735, 1933 P. C. 124.
2. Informal admission as to guilt under S. 110 cases does not amount to formal plea of guilty. 1936 C. 292.

24. Fitness of Surety and rejection. S. 122, Cr. P. C. See—1.

1. If the surety is fit from the pecuniary point of view and no other cause of unfitness is shown, he should be accepted. 37 C. 446, 35 C. 400, 6 C. W. N. 593.
2. A Magistrate cannot order that the surety must be a resident of particular locality. 12 Cr. L. J. 472=11 I. C. 1008, 38 P. R. 1880, 20 A. L. J. 520 *Contra* 24 A. 471.
3. Rejecting sureties on ground that they did not live within a radius of 5 miles from the residence of accused is bad in law. 13 Cr. L. J. 831=17 I. C. 575.
4. Where a Magistrate rejected the surety of a Pleader for the good behaviour of a certain person alleged to belong to a gang of swindlers on the ground that Pleader had no control over him, the order is reasonable. 8 A. L. J. 735, 20 A. 205.
5. A surety can be rejected only after a judicial inquiry. 43 C. 1024.
6. It is not competent to a Magistrate to delegate another, e. g., the Superintendent of

Security for good Behaviour from Habitual Offender—(contd.)

- Police, the duty of enquiry into the sufficiency of the security tendered, but should make enquiry himself. 1924 L. 672=76 I. C. 27=25 Cr. L. J. 91, 18 P. R. 1906.
7. Distant residence of the surety, by itself is no ground for rejection unless that indicates absence of control. 1924 O. 80=25 Cr. L. J. 796, 20 A. 206, 1923 O. 165.
 8. Magistrate cannot introduce any new qualifications while examining the fitness of a surety. 1925 S. 321=87 I. C. 961=26 Cr. L. J. 1041.
 9. When respectable relations of the accused give security, they should not be rejected on the ground that they live at a distant place. 1938 P. 374=112 I. C. 909=30 Cr. L. J. 45, 43 C. 1024, 20 A. 205 Dist.
 10. Magistrate can accept security even after the accused has been sent to jail. 1928 L. 64=107 I. C. 286=29 Cr. L. J. 236.
 11. Where sureties lived at a distance of 13 miles, they were rejected. 1898 A. W. N. 199, 1895 A. W. N. 143.
 12. Magistrate can order that sureties should be landholders. 20 A. 206, 16 Bom. L. R. 138, 8 S. L. R. 229.
 13. The order that the sureties must not be lambardars, inamdars and chaukidars is illegal. 18 P. R. 1906.
 14. The order that sureties must not come from *Kaharatri* or *Kunbi* caste is illegal. 1 Bom. L. R. 520.
 15. The mere fact that surety had been convicted for assault is not sufficient to reject him. 1921 C. 356=62 I. C. 179=22 Cr. L. J. 483, 26 A. 189.
 16. Rejection of surety merely on Police report is bad. 25 A. 272, 1921 O. 193=65 I. C. 574, 29 C. 455, 18 P. R. 1906, 13 A. L. J. 469, 29 A. L. J. 760, 10 C. W. N. 1027, 13 Cr. L. J. 760.
 17. Magistrate has a discretion to reject a surety, but it must be exercised after independent inquiry. 42 C. 706, 43 C. 1024, 12 A. L. J. 1004, 44 C. 737, 13 C. W. N. 80, 26 I. C. 646.
 18. Magistrate cannot reject sureties merely on conjectures and surmises but on reasonable grounds. 41 C. 764 30 C. W. N. 80, 10 C. W. N. 1027, 22 W. R. 37.
 19. The practice of calling in Police Officer for a report on the character of the surety is illegal and the Police Officer if necessary should be examined as witness. 18 P. R. 1906, 19 A. L. J. 324.
 20. A Magistrate should not reject sureties on his own personal knowledge. 14 C. W. N. 709, 7 S. L. R. 94=23 I. C. 746=15 Cr. L. J. 378.
 21. Hearsay evidence of general repute is not admissible against the sureties. 1922 O. 227=68 I. C. 959=23 Cr. L. J. 639.
 22. The Magistrate rejected the brother of the accused as surety on the ground that accused was a notorious dacoit and the brother will not be able to control him. Held, the order is reasonable. 41 C. 764.
 23. The failure of surety to show that he has sufficient control over the accused is not a valid ground for rejection of the surety. 43 C. 1024, 55 I. C. 857=22 Bom. L. R. 190.
 24. The fact that the surety was once chalaned for theft is not sufficient to reject him. 55 I. C. 733=21 Cr. L. J. 365=18 A. L. J. 324.
 25. If the sureties are solvent and respectable, they should not be rejected on the ground that they live at a distance and are not in a position to exercise control over the accused. 55 I. C. 857=22 Bom. L. R. 190=21 Cr. L. J. 377.
 26. Magistrate in rejecting a surety must record reasons in his own handwriting. 44 B. 355.
 27. Rejection of surety on the ground that he has already stood surety for some other man is improper. 1924 O 132=73 I. C. 53=24 Cr. L. J. 517.
 28. The mere fact that surety looks young or resides 4 miles away is not sufficient to reject him. 67 I. C. 585.

Security for good Behaviour from Habitual Offender—(contd.)

29. Where sureties are offered, it is the duty of the Court to accept them unless it is satisfied that they are not proper persons. It should not reject them on Police report but hold inquiry himself. Otherwise it would afford a good ground for transfer under S. 526, Cr. P. C. 1935 A. 517=1922 A. 541=23 Cr. L. J. 499=63 I. C. 35, 25 I. C. 646=16 Cr. L. J. 54.

30. A Magistrate cannot reject a Surety merely on the report of the Police, unless he inquires himself or orders an inquiry by a Magistrate. 1935 P. 421=1935 Cr. C. 1064.

31. Criminal Courts should not accept certificate of Pleders as to sufficiency or solvency of Surety. 1934 S. 142.

5. Forfeiture of security. See Bond.

A bond cannot be forfeited on the ground that accused is again found under circumstances bringing him under S. 109, Cr. P. C. 136 I. C. 373=33 Cr. L. J. 281.

5. Fresh proceedings.

1. If after the expiration of the period of bond, fresh proceedings are to be taken, they must be confined to facts and circumstances alleged against him after release from his last security. 19 C. W. N. 223=16 Cr. L. J. 312=28 I. C. 648.

2. Where accused was run in under S. 110 and was discharged and after seven months proceedings were taken again. Held, that the Court must see that there is sufficient evidence after the order of discharge, on the file. 1924 O. 84=73 I. C. 261=24 Cr. L. J. 565.

3. An order of discharge under S. 110 is no bar to subsequent proceedings under the section. 44 A. 691.

7. From persons promoting sedition and class hatred. S. 103, Cr. P. C. See Security from persons promoting sedition or class hatred.

8. From vagrants. S. 103, Cr. P. C. See Security from vagrants.

9. Habitual offenders. See—13.

0. Harboursing Thieves.

If the dacoits have been living with father, son cannot be bound down. If the son lends father's mare, he would not be liable 1934 L. 62=35 Cr. L. J. 653.

1. Imprisonment in default of security. S. 123, Cr. P. C.

1. When a security for more than a year has been ordered and is not furnished, it is the Sessions Judge who can order fixing a period of imprisonment in default. 1922 L. 475=23 Cr. L. J. 454, 1928 L. 189=23 Cr. L. 657

2. According to S. 123 a person who is ordered to furnish security for good behaviour but fails to do so, shall be detained in prison for the period for which security was demanded. The order of imprisonment for a shorter period is bad in law. 1930 L. 49=123 I. C. 835=31 Cr. L. J. 583.

3. The period of imprisonment does not begin from the date of the order of Sessions Judge under S. 123 (2), but from the date of Magistrate's order. 1924 S. 120=83 I. C. 883=26 Cr. L. J. 179.

4. The imprisonment in default is provided as a protection to society against the perpetration of crimes and not as punishment for crimes committed. 2 C. 384, 17 P. R. 1900 Cr.

5. It is illegal to send a person to jail pending the receipt of report from the Revenue and Police Officers as regards adequacy of the security. 18 P. R. 1906 Cr.

6. If an accused while undergoing imprisonment under S. 123, is convicted of an offence and sentenced to imprisonment, the sentence for substantive offence must commence at once and should not be postponed after the expiration of imprisonment under S. 123, Cr. P. C. 27 M. 525, 31 M. 515, 36 B. 178, 14 P. R. 1895 Cr.

7. An order requiring security for good behaviour for a period of six months and, in default, awarding rigorous imprisonment for three months is illegal. The period should be the same. 23 A. 422.

Security for good Behaviour from Habitual Offender—(contd.)

8. The period of imprisonment must be definite. An order directing the accused to be imprisoned until he gives the security is bad. 8 C. 644.
9. An order under S. 123 directing that in default of security, the petitioner should suffer simple imprisonment for one year cannot be upheld. 1927 M. 976=106 I. C. 218=78 Cr. L. J. 1034.
10. Solitary confinement cannot be awarded for failure to furnish security under S. 110. 1927 A. 272=102 I. C. 342=23 Cr. L. J. 534.
11. When a notice issued under S. 110 to be of good behaviour for 3 years is made absolute, the Magistrate cannot sentence him to imprisonment if security is not furnished. The case should be submitted to the Sessions Judge. 1935 Pesh. 80 (2).

32. Inquiries privately made by Magistrate.

1. Private knowledge of a Magistrate is not in itself substantive evidence, but it is a form of check which the Court may use in order to test the nature of evidence or investigation. A finding that "inquiries about the accused satisfy me that he is badmash" is objectionable but "the result of my enquiries in the neighbourhood, so far as they appear in the case of this accused tend to show that the case against him is not got up without reason" would be quite legitimate. 45 A. 749=1924 A. 451=81 I. C. 269=25 Cr. L. J. 781.
2. If the Magistrate allows his private knowledge to influence his judgment in a judicial decision, his order should be quashed. 1923 A. 596=73 I. C. 337=24 Cr. L. J. 593, 21 A. L. J. 513.
3. Magistrates are not competent to base their orders on their local and personal knowledge of the accused and witnesses. 29 C. 392.
4. The proper procedure, where it is important to utilize the personal knowledge of a Magistrate, is that he should appear as a witness. 29 C. 392, 27 P. R. 1903 Cr.
5. Where the Magistrate merely used his enquiries to confirm the result at which he had arrived on a consideration of the evidence, the procedure is irregular and is not sufficient to set aside the order. 1925 O. 441=26 Cr. L. J. 1149.

33. Interim security. S. 117 (3), Cr. P. C.

1. It is incumbent on a Court to state reasons in writing for an order under S. 117 (3) of *interim* security. Merely stating that it is passed "on account of emergency" is not sufficient. 1927 S. 148=99 I. C. 605=28 Cr. L. J. 173.
2. It is not necessary for the Magistrate for passing an order under S. 117 (3) to take further evidence. 1926 S. 276=96 I. C. 982=27 Cr. L. J. 1030.
3. The order of the High Court reducing *interim* security does not fetter the discretion of the Magistrate as to the amount of the security which may ultimately be demanded. 1930 L. 529=25 I. C. 322=31 Cr. L. J. 812.
4. The *interim* order of security should not be more onerous than the one issued under S. 112. 1926 S. 276=96 I. C. 982=27 Cr. L. J. 1030.
5. Court can pass *interim* order for public safety. 1926 S. 276, 43 C. 277.
6. Court can order *interim* security notwithstanding that an application is made under S. 526 (8). 1928 A. 268, 1927 S. 148.

34. Joint trial. S. 117 (5), Cr. P. C.

1. Two or more persons may be jointly tried where they have associated together in the matter under inquiry, but there must be clear evidence of association. 1925 P. 131=86 I. C. 274=26 Cr. L. J. 738, 65 I. C. 484=1923 P. 104, 64 I. C. 842=23 Cr. L. J. 58, 88 I. C. 282=1925 N. 381.
2. The legality of the joint trial must depend on what is alleged by the Prosecution and not on the facts subsequently found to be true. 1921 C. 625=22 Cr. L. J. 377.
3. In order to have a joint trial, it is not necessary that accused shall be shown to be associated together in the order itself. 1926 S. 69=26 Cr. L. J. 1398.
4. Joint trial is not illegal when part of the enquiry is under Cl. (f), S. 110. The evidence

Security for good Behaviour from Habitual Offender—(contd.)

of general repute should be admitted against all. 1930 M. 873, 1923 C. 35, *Contra* 27 C. 781, 1925 M. 189=86 I. C. 49.

5. Joint trial should be held, when the whole of evidence against all of them is precisely the same, so that they are not compelled to fight their individual battles during a prolonged enquiry. 45 A. 109=13 C. W. N. 244.
6. If a gang of disorderly persons join together in committing acts of violence and criminal intimidation, they can be jointly tried. 23 Cr. L. J. 741.
7. If association is not proved the joint trial is bad. But it need not be set aside unless accused is prejudiced. 9 A. 452.
8. If the servants of common master jointly commit extortion, they may be jointly tried. 9 C. W. N. 898.
9. The mere fact that accused belonged to the same tribe or village is no evidence of association. 1 P. R. 1895 Cr.
10. The fact that accused are close neighbours and had been previously implicated in good many cases together, is no evidence of association to justify a joint trial. 21 Cr. L. J. 700.
11. When the question is that accused are of desperate and dangerous character, they should not be tried together. 27 C. 781.
12. Joint trial of two contending parties opposite to one another is illegal. 31 M. 276, 11 C. W. N. 472, 8 C. W. N. 180, 14 A. L. J. 228. *See* 9 A. 452.
13. In a joint trial, the Magistrate must give separate finding against each accused individually. 35 C. 929, 37 C. 91, 37 A. 33, 1 P. R. 1895.
14. The case of each accused is to be considered on its own merit and should not be allowed to be mixed up or prejudiced by that of the others. 6 A. 214, 45 A. 109.
15. The mere fact that accused are members of undivided family is not sufficient to have them tried jointly, when they live separately. 47 I. C. 277.
16. In cases under S. 110 each accused can claim an entirely independent examination of his own case. 4 P. R. 191C Cr., 9 A. 452, 6 A. 214.
17. Where there is an association of several persons belonging to different villages for committing offences mentioned in S. 110 joint trial is not bad. 23 Cr. L. J. 58.
18. If there is evidence of association that all accused were concerned in robberies, house breaking and theft, they all may be jointly tried. 12 P. L. T. 880.
19. A joint trial is only permissible when two or more persons have been associated for the purpose of committing offences mentioned in clauses (a) to (f) of S. 110, otherwise the conviction is illegal. 3 P. L. T. 538.
20. If several persons are alleged to be members of terrorist organization, joint trial is the only procedure. Separate finding against each accused is however necessary. 1934 C. 412=61 C. 588. 27 C. 781, 1923 A. 35, 1925 M. 189 and 1923 P. 104 Dist. 46 C. 215 and 11 C. W. N. 789 Rel. on.
21. If joint trial is illegal, it does not vitiate proceedings unless prejudice to accused is proved. 1934 C. 482=61 C. 588, 1927 P. C. 44 Rel. on.
22. Persons alleged to be members of association for committing theft, can be jointly tried. 1934 R. 121=35 Cr. L. J. 1257. 1930 M. 873 Rel. on. 1929 A. 273 and 4 L. L. J. 531 Ref. 27 C. 781 Appr. 4 L. B. R. 46 Diss. from.
23. Persons who are members of secret society to spread terrorist activities can be jointly tried. 1933 A. 676

35. Jurisdiction.

1. A Magistrate can take action under S. 110 when the accused resides within the local limits of his jurisdiction. 12 P. R. 1901 Cr., 3 C. L. J. 195, 1918 M. W. N. 751.
2. It is not contemplated that persons should be brought from other districts by Police and placed before a Magistrate under S. 110. 43 P. R. 1885 Cr.
3. But if a person has been arrested outside the jurisdiction for an offence committed within jurisdiction and the charge of substantive offence fails, he can be prosecuted

Security for good Behaviour from Habitual Offender—(contd.)

under S. 110. 46 C. 215, 41 A. 272.

4. Magistrate cannot issue a warrant so as to pursue the person concerned into another jurisdiction. 27 C. 993, 39 A. 139.
 5. Permanent residence is not required to give jurisdiction to the Magistrate. Residence at the time of taking action is sufficient. 36 M. 96, 23 C. W. N. 10, 14 Bom. L. R. 889, 49 I. C. 165, 1922 A. 86=55 I. C. 438, 9 Bom. L. R. 244, 1927 S. 59=27 Cr. L. J. 1261, 43 C. 153, 1931 C. 65, 31 C. 419, 45 C. 215.
 6. If the various acts of house breaking and theft are committed at a place within the Magistrate's jurisdiction, he can take action under S. 110, although accused does not reside there. 43 C. 153.
 7. If the accused has a residential house within the jurisdiction of the Magistrate, to which he occasionally went for his business, the Magistrate has jurisdiction, provided the accused committed acts of oppression while he so resided. 31 C. 419, 43 C. 153.
 8. A person undergoing imprisonment within the Magistrate's jurisdiction, cannot be said to be residing there. 27 C. 993, 23 B. 32, 43 C. 153. *Contra* 46 C. 215 (235), 32 I. C. 680.
 9. Person proceeded against under S. 110 at Barisal was in jail at Calcutta at the date of report by the Police. Held, that the Magistrate had no jurisdiction. 111 I. C. 394=29 Cr. L. J. 842.
 10. The fact that it would be inconvenient for the person against whom proceedings have been started under S. 110 to summon witnesses from the place of his residence is no ground for transferring the case to the Court within whose jurisdiction such a person resides. 1927 S. 59=98 I. C. 109=27 Cr. L. J. 1261.
 11. A person residing within the local limits of a Magistrate's jurisdiction can be proceeded against by such Magistrate though he was arrested in another jurisdiction in connection with another proceeding. 35 I. C. 495, 35 M. 96, 9 Bom. L. R. 244, *Contra* 37 C. 993, 6 C. L. J. 195.
 12. Dishonest receipt of stolen property in a Native State by a British subject is a breach of the security bond under S. 110, to give jurisdiction to the Magistrate in British India. 28 P. R. 1910 Cr.
 13. A Magistrate cannot issue warrants under S. 114, Cr. P. C., against a person who has already left the local limits of his jurisdiction. The actual presence of the accused there is necessary. 14 Bom. L. R. 889. *See* 46 C. 215.
 14. Within the local jurisdiction means that accused should be physically present there. 129 I. C. 688
 15. The burden is on the accused to show that Court has no jurisdiction, when he is present there. 35 C. W. N. 255=129 I. C. 688=1931 C. 65 (1).
 16. Order should be made by Magistrate mentioned in the section. 17 Cr. L. J. 141, 1933 A. 676, 1920 P. 25.
- 36. Notice of—** S. 112, Cr. P. C.
1. If the accused is not taken by surprise and has cross-examined the witnesses at great length, the omission to give details of information in the notice is not irregular. 51 I. C. 260.
 2. Notice should give the time and place of facts charged and give sufficient details which should enable the accused to know what he has to meet. 47 I. C. 277, 1925 M. 189, 1930 M. 859=127 I. C. 652, 27 A. 172, 35 C. 243.
 3. A notice is illegal if it does not give the substance of information. 18 P. W. R. 1910 Cr., 10 L. 155, 92 I. C. 702, 49 A. 5. *See* 1926 S. 69=89 I. C. 710.
 4. If the original order is only initialled by the Magistrate and the amount and period of security is not mentioned, the proceedings would be quashed. 17 P. W. R. 1910 Cr.
 5. Merely informing an accused that he was suspected to be a habitual thief is not sufficient notice. 42 A. 646, 49 A. 5.

Security for good Behaviour from Habitual Offender—(contd.)

6. Repetition of the words of the section should be avoided and the substance should be conveyed briefly. Details cannot be insisted upon. 1929 C. 739=33 C. W. N. 852, 35 C. 243, 17 C. W. N. 238. See 43 M. 450, 1926 A. 759.
 7. The portion of the clause of S. 110 which is applicable to the case, must be specified in the notice. 52 A. 448, 1927 O. 306, 1929 C. 739, (1926 A. 759, 43 M. 450 Diss. from)
 8. Proceedings started on robkar, based on Police Report not on file and in the absence of substance of information are illegal. 1924 A. 695=85 I. C. 46.
 9. An order under S. 112 is illegal in so far as it travels beyond the terms of S. 119. Cr. P. C. 47 A. 733.
 10. When the charge in the notice under S. 110 amounts to specific offence, proceedings under the preventive sections cannot be taken. 1929 A. 813=119 I. C. 571=30 Cr. L. J. 1086=1929 A. L. J. 981, 1925 A. 250.
 11. A joint notice to more than one person under S. 110 is undesirable. 51 A. 663.
 12. That "you have been strongly suspected to have committed the following burglaries" cannot be the ground of proceedings under S. 110. 1929 A. 813, 1928 A. 351.
 13. The notice that "you have only a nominal means of livelihood except the proceeds of theft and burglary" is not a proper one. 1929 A. 813.
 14. That "you possess bad reputation in the vicinity of your village" is invalid notice. 1929 A. 813=119 I. C. 571.
 15. Parties are entitled to know the nature of accusations they have to meet and to cite witnesses for that purpose. 11 C. 13, 6 A. 214, 43 M. 450.
 16. That "you are a habitual cattle thief and receiver of stolen property" is a sufficient notice. 1896 A. W. N. 73.
 17. Magistrate is not bound to give the source of information in the notice. 29 C. 392, 1 A. L. J. 685.
 18. It is not necessary that the list of prosecution witnesses should be given in the order. 35 C. 243.
 19. Omission to set forth the substance of information is by itself not sufficient to set aside the Magistrate's order, unless the accused has been prejudiced and failure of justice has been occasioned. 3 A. 544, 8 C. 724, 1891 A. W. N. 40.
 20. Omission to specify the amount of the recognizance and surety is a mere irregularity which does not vitiate further proceedings. 8 C. 724.
 21. When it was not clear from the preliminary order whether the accusation was one under S. 109 or S. 110 the order was set aside. 11 C. 13.
 22. The Court has no power after the order under S. 112 is drawn up and communicated to the accused to alter the period from 12 months to 3 years. 1933 S. 8=34 Cr. L. J. 9.
- 37. Personal attendance of accused—Exemption.** S. 116, Cr. P. C.
1. Where the person proceeded against lived at a distance and there was no special circumstance making his personal attendance necessary, he should be exempted from appearance. 12 C. 133.
 2. S. 116 does not apply to periods proceeded against under S. 110. (1903) 2 Weir 54.
- 38. Period of security.**
1. Security for good behaviour should be taken at the most for one year except in very exceptional cases. 30 I. C. 438=16 Cr. L. J. 614.
 2. The order under S. 112 should set forth the period of security. 3 M. 238.
 3. The period should not be unnecessarily lengthy. 6 A. 214.
 4. Magistrate cannot in the final order direct the accused to give security for a longer period than what was mentioned in the notice under S. 112. 26 M. 471, 1933 S. 8.
 5. If the term for which the bond is to be in force is not set forth, as required by S. 112, the order is invalid. 2 R. 524=85 I. C. 33.

Security for good Behaviour from Habitual Offender—(contd.)

39. Procedure.

1. Accused under S. 110 should be allowed an opportunity for further cross-examining the prosecution witnesses before he enters upon his defence. 1927 A. 660=104 I. C. 232=25 A. L. J. 749=28 Cr. L. J. 792, 52 A. 448 *Contra* 8 L. 255, 1934 L. 62=35 Cr. L. J. 653.
 2. The provisions of S. 190 (c), Cr. P. C. (taking statements) do not apply to proceedings under S. 110 by a Magistrate. The order must be made by a person other than a Police Officer. 27 A. 172. *Contra* 47 I. C. 95=19 Cr. L. J. 899.
 3. Magistrate should not bind a person under S. 107 or S. 110 merely because he agrees to furnish security. 1926 A. 614, 37 A. 30, 54 I. C. 411, 54 I. C. 784.
 4. Two persons were arrested and on the date fixed the Magistrate recorded the evidence given by the Police and without giving the accused an opportunity to obtain legal assistance, called upon them to conduct their case. Held, that the procedure is irregular. 42 A. 646, 1926 S. 288=96 I. C. 391=27 Cr. L. J. 935.
 5. The omission to comply with S. 342, Cr. P. C., is only an irregularity curable under S. 537, Cr. P. C. 50 C. 935, 50 C. 223 Not foll.
 6. A person cannot be bound down both under S. 109 and S. 110. 38 M. 555.
 7. Where the Magistrate refused to examine more witnesses for the defence than the number of prosecution witnesses, the order is illegal. 49 I. C. 649.
 8. Unless accused is allowed time to bring his witnesses, order is illegal. 41 C. 806.
 9. Examination of some prosecution witnesses after the close of the defence is irregular. 13 Cr. L. J. 772=17 I. C. 404=10 A. L. J. 383.
 10. If a charge of dacoity against some persons fails, the Magistrate can bind them under S. 110. 32 A. 55.
 11. During the continuance of an order under S. 109, an order under S. 110 cannot be passed. 8 C. W. N. 543, 15 C. W. N. 2019. But see 1929 S. 166.
 12. The mere fact that S. 108 may have been applicable does not necessarily make S. 110 inapplicable. 46 C. 215 (234).
 13. If the notice was issued under S. 107, final order under S. 110 is not justified. 25 C. 798, 6 A. 132. See 24 Cr. L. J. 65, 27 A. 92.
 14. If the notice is under S. 110, the final order under S. 107 is not justified. 30 M. 282.
 15. If the accused was discharged from dacoity case before trial, immediate proceedings under S. 110 are not unjustifiable. 1934 C. 482=61 C. 588.
 16. Inquiry under S. 110 is not one into an offence and therefore S. 162, Cr. P. C., does not shut out statement before the Police. 56 M. 987=1933 M. 688 (2).
 17. Proceedings under S. 110 may follow on the arrest of person under S. 55. 1930 P. 103, 35 A. 407, 1926 S. 190.
 18. A Magistrate should not detain a person arrested on suspicion of a cognizable offence when no case is made out against him with a view to enable Police to take action under S. 110. 1914 A. 413, 43 A. 186, 41 A. 483, 13 Cr. L. J. 827.
 19. Court is bound to hear arguments. 1925 O. 228.
 20. Whether proceedings under S. 110 can be transferred. See 16 A. 9, 5 P. R. 1914 Cr., 19 A. 291, 41 C. 719, 1 P. R. 1913, 1933 P. 116.
 21. Merely that facts of a case fall under S. 108, does not make S. 110 applicable. 46 C. 215, 47 C. 154, 1934 S. 195.
- 40. Reference to Sessions Judge. S. 123, Cr. P. C.**
1. When a person does furnish security, it is not necessary to send the record to the Sessions Court. 40 A. 39.
 2. S. 435, Cr. P. C., does not enable a Sessions Judge to call for the record of proceedings under S. 110, Cr. P. C., taken before an inferior Court and the other provisions of this Code enable him to refer the matter to High Court. 1923 A. 596=73 I. C. 337.

Security for good Behaviour from Habitual Offender—(contd.)

3. Where the case is submitted to a Sessions Judge under S. 123 (2), he is bound to come to an independent finding. 1928 L. 189=103 I. C. 193=28 Cr. L. J. 657, 15 P. R. 1900 Cr., 25 A. 75, 85 I. C. 944.
4. After a reference under S. 123, the seisen of the case is with the Sessions Judge. If he merely confirms the order of the Magistrate without notice to the petitioner and without examining the record, the order must be set aside. 1923 L. 189=103 I. C. 193, 35 B. 271, 1925 O. 517.
5. The Sessions Judge cannot order rehearing of the case, though he can ask for further information or evidence 1925 C. 191=81 I. C. 936=25 Cr. L. J. 1112, 1932 S. 88.
6. The Sessions Judge need not write a full judgment in a case submitted to him under S. 123 (2). 26 Cr. L. J. 179.
7. A Sessions Judge cannot test sureties under S. 123 (2). 1930 P. 217.
8. A Sessions Judge can make over all references under S. 123, Cr. P. C., to the additional or Assistant Sessions Judge. 50 C. 969.
9. If an accused is sent to jail for failure to furnish security, he must be considered as undergoing a sentence of imprisonment and it begins from the day he was sent to jail and not when the Sessions Judge ordered it under S. 123. 134 I. C. 406=1931 O. 387=32 Cr. L. J. 1186.

41. Registration under Criminal Tribes Act—If Bars—

It is not illegal to take proceedings against person already registered under Criminal Tribes Act 1911. 54 C. 279=1927 C. 213, 48 I. C. 510.

42. Release of persons by District Magistrate. Ss. 124-125, Cr. P. C.

1. District Magistrate cannot use S. 125, as if he were sitting as a Court of appeal. If he thinks that the order of Trial Court is not maintainable on evidence, he should refer it to High Court. 44 A. 614, 35 A. 103, 71 I.C. 668=1923 A. 484, 39 A. 466, 41 A. 651. See 33 A. 624, 40 A. 140.
2. District Magistrate in his executive capacity can cancel a bond, 1922 P. 420=73 I. C. 515, 37 M. 125, 1893 A. W. N. 183.
3. District Magistrate is not bound to look into the events that have happened subsequent to the execution of the bond. 37 M. 125, 34 C. 1, 12 P. W. R. 1908 Cr. See 44 A. 614, 39 A. 466, 35 A. 103, 33 A. 624.
4. If a District Magistrate is moved under S. 125 to cancel a bond, the applicant or his Pleader must be heard before it is rejected. 39 A. 466.
5. An order of cancellation of bond cannot be passed before its execution. 32 C. 948 overruled 34 C. 1 (F. B.)

43. Revision—

1. High Court will not interfere on merits except in very exceptional cases. 17 Cr. L. J. 451, 20 Cr. L. J. 689, 45 A. 749, 1927 A. 394=101 I. C. 886.
2. Although it is very difficult in revision to interfere in a case under S. 110, still the High Court must be satisfied that the evidence is sufficient to support the order. 1924 A. 569, 1927 A. 473=102 I. C. 211, 6 A. L. J. 487, 37 A. 30.
3. High Court will see if the case has been fairly considered from the point of view of the accused and secondly if the defence evidence is equally good, the order may be quashed. 45 A. 109, 1925 O. 473=89 I. C. 147=26 Cr. L. J. 1283.
4. High Court will not interfere unless there is miscarriage of justice. 1923 N. 53 I. C. 629=23 Cr. L. J. 741, 23 P. R. 1889 Cr.
5. If the accused is sufficiently informed, order under S. 110 cannot be set aside on ground that the provisions of Ss. 112-115 were not duly complied with. 1927 A. 365=94 I. C. 143=27 Cr. L. J. 575.
6. The High Court will interfere where the order is based on no evidence. 195 P. L. R. 1912, 14 A. L. J. 215.
7. High Court will interfere where the defence evidence was rejected on substantial reasons. 13 A. L. J. 1046, 13 A. L. J. 1055, 17 Cr. L. J. 441.

Security for good Behaviour for Habitual Offender—(concl'd.)

8. Where the amount of security was very much beyond the means of the accused, High Court will interfere. 2 C. 110.
9. In cases under S. 110 the Sind Judicial Commissioner does not sit as a Court of appeal. It can look into the record to satisfy itself about the correctness of order. 136 I. C. 753.
10. High Court will not weigh evidence in revision. 1934 O. 49=147 I. C. 388, 1925 O. 473=26 Cr. L. J. 1233 Rel. on.
44. **Substantive offence committed—Proceedings under S. 110.**
 1. The mere fact that accused has committed some substantive offence, is no obstacle for the institution of proceeding under S. 110. 1933 A. 676=1933 Cr. C. 1188. 1930 A. 74=52 A. 448 Rel. en. 1925 A. 250=25 Cr. L. J. 746 Not foll.
 2. On allegations that accused had been stealing electric current he should not be run in under S. 110, but for the substantive offence of theft 1933 A. 859=147 I. C. 551.
 3. S. 110 does not apply for harbouring dacoits as it is an offence under S. 216-A. 1928 A. 682.
 4. Section does not provide an indirect means for securing conviction of an offence which has failed in Court. 9 Cr. L. J. 528, 5 Cr. L. J. 191, 60 I. C. 673, 1932 O. 26 or is likely to fail in Court if instituted. 1928 A. 682=51 A. 459.
45. **Surety—** See—24.
46. **Suspicion.** See—22.

SECURITY FOR GOOD BEHAVIOUR FROM PERSONS PROMOTING SEDITION. S. 108, Cr. P. C.**1. Disseminates.**

1. It is not necessary that there should be number of acts performed, showing something in the nature of habit. A single act is enough, if there is something to show that a repetition of the offence was probable. 13 P. L. T. 275.
2. There must be evidence to show that a repetition of the offence was probable. 1932 P. 213, 1928 A. 344 Diss. from.
3. The matter disseminated must be seditious. 19 Bom. L. R. 211.

2. Grounds of—

1. There should be evidence, that accused if not prevented would continue to act in the same way. 50 A. 854=1923 A. 344=26 A. L. J. 813.
2. A publisher of a seditious matter is liable under S. 108, 47 B. 438=25 Cr. L. J. 150.
3. *Preaching of Swaraj or Home rule is not sedition.* 34 C. 991, 19 Bom. L. R. 211.
4. Merely because a person does not plead guilty and wants an opinion of the Court, is no ground for binding him. 54 C. 59=1926 C. 1133=27 Cr. L. J. 1154.
5. Magistrate has to see whether the accused had been disseminating seditious matter and whether repetition of offence is feared. 11 Bom. L. R. 743=10 Cr. L. J. 379.
6. In case of isolated speech on special occasion no proceedings under S. 108 (a) can be started when there is no intention of doing it in future. 1934 O. 70=35 Cr. L. J. 562, 1928 A. 44 Foll. 1933 L. 236 and 1932 P. 213 Ref.
7. Section is *preventive* and not *punitive*. 1932 L. 559.
8. In the case of printer or keeper of Press, the knowledge of the contents of the matter must be proved. 47 B. 438.

3. Joining Congress Procession.

The fact that accused joined Congress procession and delivered speeches which were not seditious is insufficient under S. 108. 32 Cr. L. J. 1172=1932 L. 7.

4. Procedure.

1. The procedure applicable to proceedings under S. 108 is that prescribed for warrant cases except that a charge need not be framed. 47 B. 438=1923 B. 255.

Security for good Behaviour from Persons Promoting Sedition—(concl'd.)

2. Where proceedings are taken under S. 103 against the accused convicted under S. 153-A to avoid trouble and possible refusal of Government to prosecute under S. 153-A, the procedure is not permissible. 50 A. 854.
3. Speeches not included in the complaint cannot be relied upon and must be excluded from consideration. 1932 L. 559.
4. Offer of an undertaking to refrain from repetition of offence must arise from penitence and the Magistrate can reject it. 11 Bom. L. R. 743=10 Cr. L. J. 379.
5. A person can be run in under S. 110 although S. 103 is applicable. 46 C. 215 (234).
6. The amount of bond should not be excessive and should be fixed with due regard to the position in life of accused. 1932 L. 559.
5. Promoting enmity between classes. S. 153-A, I. P. C. See Promoting enmity between classes.
6. Re-arrest after release.

Government can re-arrest a person after he is released. 1932 L. 559.

SECURITY FOR GOOD BEHAVIOUR FROM VAGRANTS. S. 109, Cr. P. C.**1. Concealment in order to commit an offence See—9.**

1. A person cannot be called upon to furnish security under S. 109 for his temporary concealment in his father's house to avoid arrest. 39 C. 456.
2. A person who gives false name and delivers letters secretly containing incitement to commit crimes comes within the provisions of S. 109 (a). 15 Cr. L. J. 255.
3. S. 109 (a) refers to continuous concealment and not to an isolated effort of concealment. 1929 C. 729=112 I. C. 295, 22 C. W. N. 163, 97 I. C. 648.
4. One who conceals his presence when he goes in dark or by a deserted road or by some other secret means to commit a crime is not said to conceal himself. 49 A. 240, 57 C. 949.
5. Accused, who was an old offender, was loitering at 3 A. M. on a road and attempted to conceal himself when caught by a constable. Held, it is not concealment. 1925 C. 616=86 I. C. 666=41 C. L. J. 142.
6. If a person first gives a false name to the Police and then corrects it and there is nothing else to show that he was taking precautions to conceal his presence, an action under S. 109 is not justified. 1924 A. 202=81 I. C. 598.
7. Giving out false name is concealment of identity but is not necessarily concealment of presence. 1924 A. 202.
8. If a man is found with implements of house breaking near the house of a wealthy man and he admits his object, he can be dealt with under S. 109, cl. (a) and cl. (b). 1935 P. 69=155 I. C. 729.
9. If a beggar's son poses as Maharaja ostentatiously in order to cheat another, his case does not fall under S. 109 (a). 1934 A. 45=56 A. 314, 1929 A. 33=50 A. 909 Not foll.
10. Even a single attempt at concealment is enough. 1934 O. 367, 1935 P. 69, 1925 P. 529 *Contra* 1929 C. 729, 97 I. C. 648.
11. Concealing a man's presence is not identical with his concealing himself, and a man may conceal his presence at a place and may yet not conceal his identity. 50 A. 909=1929 A. 33. See 56 A. 314.
12. Where a man gives true name and address, there is no concealment. 1929 C. 729.
13. A man when challenged by Police admits his intention of committing burglary, his case does not fall under S. 109, 49 A. 844=1927 A. 592.

2. Essentials and Evidence.

1. The fact that a man does not work or was bound over under S. 110 is not sufficient for S. 109, unless the Magistrate is satisfied that since his release from jail, he has no ostensible means of livelihood. 1925 C. 616=86 I. C. 666=26 Cr. L. J. 842.

Security for good Behaviour from Vagrants—(contd.)

2. The fact that the accused had previously been connected with a criminal conspiracy or might still be in correspondence with criminals is not relevant under S. 109, 39 C. 456.
 3. Three respectable citizens of Delhi came to Meerut by a night train and were found on the road near to a place where a burglar's jammy was found, an order under S. 109 is illegal. 17 A. L. J. 432=51 I. C. 161.
 4. Magistrate should take evidence of general character and not convict the accused on the report of Police. 5 W. R. 2.
 5. If accused has been convicted under S. 411, I. P. C., he cannot be proceeded against under S. 109 on the same facts. 1928 L. 928=29 Cr. L. J. 1043.
 6. A person preparing to commit a burglary should not be dealt with under S. 109, when caught, and admits his intention. 49 A. 844.
 7. When accused give correct names and addresses to the Police, the mere fact that they did not give satisfactory account is not sufficient under S. 109. 1929 C. 729=122 I. C. 295=31 Cr. L. J. 408, 1925 C. 616.
 8. Accused was found coming out of a neighbouring sugarcane field at 1 P. M. and tried to run away, he cannot be bound over under S. 109. 1928 A. 476=111 I. C. 448=29 Cr. L. J. 864.
 9. An attempt to avoid a Police Patrol is not sufficient to take action under S. 109 against a resident shopkeeper. 1926 L. 368=94 I. C. 141=27 Cr. L. J. 573.
 10. Accused who was Kaviraj by profession was found at midnight in a lane in a town with two others who had house breaking implements with them, who on being discovered fled and when arrested gave false explanation of their presence. Held, that an order under S. 109 is not justified. 41 I. C. 649=18 Cr. L. J. 825.
 11. Simply avoiding Police or taking unfrequented route by itself is no ground for action under S. 109. 1935 P. 69=155 I. C. 729.
 12. Care should be taken to see that the stringent provisions of the section are not abused and made an engine of oppression. 53 C. 345.
- 3. Giving satisfactory account of himself—False name.**
1. Cl. (b) applies not only to vagrants or vagabonds but also covers suspected persons who cannot give a satisfactory account of themselves. 13 Cr. L. J. 239.
 2. "Satisfactory account" means satisfactory in accordance with the known facts that are consistent with the surrounding circumstances. 49 A. 844.
 3. The explanation of the accused was that a month and a half ago he came to the city and worked as cooly and has no fixed abode. Held, it is a satisfactory account. 1925 C. 616=86 I. C. 666.
 4. A municipal peon whose residence and occupation were well known, was found to prowl at night in the company of scoundrels with a *lathi* and he used the *lathi*. He cannot be called upon to furnish security. 8 A. L. J. 1097.
 5. A person who gives false name and address, is liable under Cl. (b), S. 109. 22 Cr. L. J. 749=64 I. C. 141.
 6. If a person gives a false account or cannot give a satisfactory account of his association with persons who are dangerous political conspirators, he is liable under Cl. (b), S. 109. 13 Cr. L. J. 239.
 7. The words "cannot give satisfactory account" do not mean failure to satisfy the Magistrate that he spends his time or his leisure hours in a satisfactory manner. 8 A. L. J. 1097.
 8. Accused who were residents of another District, where they had their houses, were found with money in an open ground. They are not liable under S. 109. 55 I. C. 734.
 9. If a man is unable to explain his course of conduct, as distinct from failure to explain a momentary behaviour, he comes under S. 109. But a man's failure to explain his presence does not come under S. 109. 1929 A. 33=50 A. 909.
 10. 'Satisfactory account of himself' does not necessarily mean that he should give his correct name or address or even the object of his being present at night but should explain the suspicious circumstances against him. 1935 P. 69=155 I. C. 727

Security for good Behaviour from Vargents—(contd.)

11. Mere fact that accused gave false name and tried to escape when arrested will not justify action under S. 109 (b). 1936 O. 383. 1929 A. 33=50 A. 909, 1925 C. 616=26 Cr. L. J. 842 and 1935 P. 69 Rel. on.
12. Where the explanation if true, is consistent with circumstances, it is sufficient. 39 C. 456.
13. Where a person was found in another District in the house of political conspirators and gave false account, he came under S. 109. 13 Cr. L. J. 239.

4. Jurisdiction.

1. The fact that accused was illegally arrested outside the Magistrate's jurisdiction will not oust his jurisdiction under S. 109. 26 M. 124, 31 C. 557.
2. When a person gives satisfactory account of his presence within the limits of the Magistrate's jurisdiction, he cannot be called upon to account for his presence in another jurisdiction. 39 C. 456.
3. It is not necessary that the accused person should have a residence within the Magistrate's jurisdiction. (1900) 2 Weir 53.
4. The Magistrate in whose jurisdiction concealment is to be effected has jurisdiction under S. 109 and not one in whose jurisdiction precautions are taken. 50 A. 909.
5. If a person is concealing his presence in a Magistrate's jurisdiction and his residence is well known, yet he can call upon him to furnish security. 50 A. 909.
6. The words "within the local limits of such Magistrate's jurisdiction" are part of the predicate "to conceal his presence" and do not define the tribunal which has jurisdiction. 49 A. 844, 1927 A. 50=49 A. 240.

5. No ostensible means of subsistence.

1. A person dependent upon his father, who earns an honest living is not a person who has no ostensible means of living. 64 I. C. 141=22 Cr. L. J. 749, 39 C. 456.
2. The fact that the accused is not engaged in work at the time of arrest or is penniless does not necessarily mean that he had no ostensible means of subsistence. 1925 C. 616=86 I. C. 666=26 Cr. L. J. 842, 53 C. 345.
3. The fact that a man is doing no work at present and was previously convicted of bad livelihood is not sufficient. 5 C. W. N. 23, 9 Cr. L. J. 527.
4. The fact that accused belongs to a wandering tribe or to a gang carrying on illegal games is not sufficient. (1883) 2 Weir 53, 6 A. L. J. 253.
5. The fact that the accused is a gambler or opium smoker is not sufficient under S. 109. 1 Bur. S. R. 246.
6. If accused has no other means of subsistence except ring game which is a game of skill, he cannot be ordered to furnish security under S. 109. 40 C. 702.
7. Section applies to a person sustaining himself by dishonest means. 53 C. 345.

6. Procedure.

1. Two persons unless they are proved to have acted in concert should not be tried jointly under Ss. 109-110. 11 Cr. L. J. 50=5 I. C. 156.
2. Bond under both the sections, viz., 109 and 110 cannot be taken. 38 M. 556.
3. Imprisonment in default should be simple. 1936 N. 265.

7. Revision.

1. Question whether circumstances are suspicious is mainly one of fact. If a Magistrate is satisfied that there are no grounds of suspicion and refuses to demand security from an accused, High Court will not interfere with the order. 1934 A. 24=147 I. C. 433.
2. If a Magistrate demands security, when he is not entitled in law to demand it; the High Court will interfere. 1934 A. 24.

8. Security bond—forfeiture of—.

A security bond is forfeited when accused commits or attempts to commit an offence

Security for good Behaviour from Vargants—(concl'd.)

punishable with imprisonment and not when he is again found under circumstances that bring him under S. 109, Cr. P. C. 1932 A. 59 (1)=136 I. C. 373.

9. With a view to commit an offence. See—1.

1. Concealment must be with a view to commit an offence. Concealment with a view to avoid arrest is no offence. 13 Cr. L. J. 161, 1925 C. 616, 50 A. 909, 1926 L. 368.
2. Mere going about under an *alias* alleging falsely that he was going in for B.A. Examination is not enough. 1932 M. W. N. 1347.
3. Accused taking precautions to conceal his presence and running away at the approach of Police, comes under S. 109. 1930 P. 497.
4. Section applies to a person giving false name and delivering letters secretly containing incitement to commit crime. 1914 C. 585.
5. S. 109 should be used with proper discretion. It does not apply to persons talking to bad characters at night. 1926 P. 569.
6. If a person falsely personates another with a view to commit an offence by such personation, he does not come under S. 109. 56 A. 314=1934 A. 45.

SECURITY FOR KEEPING PEACE. S. 107, Cr. P. C. See Breach of Peace.

SECURITY FOR KEEPING PEACE ON CONVICTION. S. 106, Cr. P. C.

1. Appellate Court—Powers of—

1. The Appellate Court can act in appeal from cases even when the lower Court had no power (being 2nd or 3rd class Magistrate) to take security. 1927 P. 37=97 I. C. 424=27 Cr. L. J. 1112, 1924 N. 49=81 I. C. 145, 43 A. 372, 60 I. C. 676=22 Cr. L. J. 276, 37 M. 153 (overruling 29 M. 190 and 30 M. 48), 30 M. 182, 33 A. 35, 33 B. 33, 23 O. C. 380, 60 I. C. 676=22 Cr. L. J. 276.
2. In view of the amendment of 1923, the decisions that Appellate Court had no power to act under S. 106, where the original Court could not exercise such powers, are rendered obsolete. 35 C. 434, 7 P. R. 1909 Cr., 1924 C. 540=24 Cr. L. J. 308, 21 P. R. 1905, 6 P. R. 1907, 5 P. R. 1918, 23 Cr. L. J. 457=1923 L. 91.
3. The Appellate Court is wrong in acting under S. 106, where there is no finding that any breach of the peace occurred. 1923 M. 133, 29 M. 190, 37 M. 153.
4. An Appellate Court can require the accused to furnish security, even after the working out of the substantive punishment passed by the original Court and such an order would not amount to enhancement of punishment under S. 423 (1) (b). 21 P. R. 1905, 20 Cr. L. J. 760.
5. An Appellate Court can cancel the order of security passed by the original Court, while upholding the sentence. 30 C. 101.
6. If the conviction and sentence are cancelled by the Appellate Court, the order of security is *ipso facto* also cancelled. 30 C. 101, 22 P. R. 1901, 1895 A. W. N. 141.
7. The Appellate Court can order security under S. 106, Cr. P. C., even if the order is not made by the trial Court. 1928 B. 134=109 I. C. 230, 33 B. 23.

2. Essentials for—

1. Unless the offence is one which necessarily involves a breach of the peace, there must be an express finding by the Court that the offence committed did in fact involve a breach of the peace for proceeding under S. 106. 1930 C. 646=34 C. W. N. 988.
2. The fact that accused have been convicted of an offence involving a breach of the peace is not alone sufficient to pass an order under S. 106. There should be some grounds for requiring security. 1927 P. 37=97 I. C. 424=27 Cr. L. J. 1112.
3. Apart from the offence, there need not ensue breach of the peace, when it is an ingredient of the offence. 47 M. 846.
4. In the absence of finding that there is likelihood of the breach of peace, an order under S. 106 cannot be passed. 1925 N. 36=81 I. C. 889=25 Cr. L. J. 1064, 1924 N. 118=75 I. C. 983, 26 C. 576, 33 A. 771.

Security for Keeping Peace on Conviction—(contd.)

5. "The offence involving a breach of the peace" means an offence in which breach of the peace is an ingredient and not merely an offence provoking or likely to lead to breach of the peace. 2 L. 279=1921 L. 96=63 I. C. 869, 30 C. 366, 29 M. 190, 25 M. 469, 35 C. 315, 1930 C. 802=34 C. W. N. 651. See 43 B. 554, *Contra* and 33 A. 771.
6. Upon a conviction of criminal trespass where the intention is to commit a breach of the peace, an order under S. 106 may lawfully be passed. 42 A. 345.
7. The conviction must be for an offence specified in S. 106. Where the accused was charged for criminal intimidation but was convicted of theft or unlawful assembly, an order under S. 106 is illegal. 35 C. 315, 2 L. 279, 8 C. W. N. 517.
8. In all ordinary cases of conviction under S. 323, Penal Code, there is a conviction for an offence involving a breach of peace and the order under S. 106 will be made only when there are circumstances which indicate that breach of peace is likely to recur. 51 A. 540, 1926 A. 144=89 I. C. 1025=26 Cr. L. J. 1457.
9. Where there was no finding that there was an apprehension of the breach of the peace but the Magistrate convicting the accused for assault, expressed an opinion that accused appear to be very troublesome. Held, that an order under S. 106 was justified. 46 A. 105, 1923 M. 618=72 I. C. 615.
10. "Other offences" in S. 106 are those *ejusdem generis* with the offences against public tranquillity and of assault which are mentioned in the section. 47 M. 846.
11. The expression "breach of the peace" implies some offence against the public. 1921 O. 140=71 I. C. 691, 72 I. C. 955=1923 O. 37.
12. An order under S. 106 cannot be made when accused is convicted of any offence read with S. 149, I. P. C. 3 P. 870=1925 P. 117=85 I. C. 42.
13. Where a person is convicted of an offence not involving breach of peace, the Magistrate must give clear finding as to facts which make the section applicable. 1932 S. 17=33 Cr. L. J. 713, 30 C. 93 and 26 C. 576 Foll. 1924 N. 118 Ref.
14. Accused was found guilty of rioting and also under Ss. 326—149 but was convicted only under the latter offence. Held, that order under S. 106 was illegal. 1932 L. 489.
15. Persons convicted of substantive offence read with S. 149, I. P. C., cannot be proceeded against under S. 106. 1934 O. 279=35 Cr. L. J. 1159, 1925 P. 117 Rel. on. 1927 O. 101 Dist.
16. Breach of peace does not necessarily mean breach of public peace. 1933 A. 609.
17. Accused was convicted under S. 147 and there were numerous injuries to the person by *lathi*. Order under S. 106 is proper. 1936 P. 36=37 Cr. L. J. 63. 1927 P. 37=27 Cr. L. J. 1112 Diss.

3. Object of—

1. The object is the prevention and not the punishment of offences and S. 106 is aimed at persons who are a danger to the public. 43 P. R. 1885, 11 Bom. L. R. 743.
2. The Magistrate must exercise this provision with caution and watchful care. 6 Bom. L. R. 34, 1 C. L. R. 268.
3. The object being not penal, the security should not be excessive. 1924 S. 120=83 I. C. 885=26 Cr. L. J. 179.

4. Offences involving breach of peace.

1. Offences under S. 323. 51 A. 540, 49 A. 131, 1921 A. 35=63 I. C. 460, 1924 O. 233=72 I. C. 79.
5. Rioting. 1929 M. W. N. 583.
3. Trespassing in a man's house for causing him injury. S. 452, I. P. C. 1925 L. 621=89 I. C. 1030, 42 A. 345.
4. Wrongful confinement committed with violence and tying the hands. 47 M. 846.
5. Assaulting a prosecution witness in a public place. 44 M. L. J. 485.
6. Other offences involving a breach of the peace about which a finding is arrived at by

Security for Keeping Peace on Conviction—(contd.)

- the Magistrate. 30 C. 93, 29 C. 393, 1932 S. 86, 26 C. 56, 27 C. 983.
- 7. Assault or hurt in which breach of peace is involved. 1926 A. 144=89 I. C. 1025=26 Cr. L. J. 1457. 1923 M. 618 Dist., 1933 A. 609.
- 8. Forming an unlawful assembly to overawe and intimidate other persons. 131 I. C. 539, 1936 P. 36=37 Cr. L. J. 63.
- 9. Offence under S. 324, I. P. C. 1932 L. 435=13 L. 336, 2 L. 279=1921 L. 96, 1926 A. 144=26 Cr. L. J. 1457, 1927 A. 157.
- 10. Offences of assault or causing hurt involving breach of peace and order under S. 106 can be passed without separate finding as to breach of peace. 1933 A. 609=34 Cr. L. J. 859. 1927 O. 101 Foll. 1926 A. 144, 1927 A. 157=49 A. 131, 43 C. 671 Diss. from.

5. Offences not involving breach of peace.

- 1. Wrongful confinement. 24 Cr. L. J. 271. 2. Criminal trespass 26 C. 576.
- 3. Causing disturbance to religious worship. 2 Weir 47.
- 4. Criminal trespass with intent to have illicit intercourse with the complainant's wife. 25 C. 628.
- 5. House trespass with intent to commit theft. 4 L. B. R. 277.
- 6. Grievous hurt. 4 N. W. P. H. C. R. 154, 24 Cr. L. J. 227.
- 7. Defamation. 43 B. 554.
- 8. Breaking open locked shop and criminal trespass. 1885 A. W. N. 303.
- 9. Robbery. 16 Cr. L. J. 611. 10. Offence under S. 297, I. P. C. 2 L. 279.
- 11. Attempt to seduce married woman and behaving indecently and immodestly towards her. 39 C. 366.
- 12. Merely being a member of an unlawful assembly. (S. 143, I. P. C.). 2 L. 279, 26 C. 576, 43 C. 671. 35 C. 315, 26 M. 469.
- 13. Offence under S. 143 or S. 427, I. P. C. 1927 A. 136=99 I. C. 348.
- 14. Offence under S. 452, I. P. C. 1926 L. 675=94 I. C. 139=27 Cr. L. J. 571.
- 15. Offence under S. 325 read with S. 149. 3 P. 870=1925 P. 117, 1932 L. 489.
- 16. Offence under S. 427, I. P. C. 1927 A. 136=99 I. C. 348=28 Cr. L. J. 140.
- 17. Offence under S. 504, I. P. C. 8 O. W. N. 1286.
- 18. Offences under Ss. 143—297, I. P. C. 2 L. 279.

6. Powers of Magistrates.

- 1. A Presidency Magistrate can pass an order under S. 106. 7 Bom. L. R. 833.
- 2. If a Bench of Magistrates has first class powers, the Bench is competent to pass an order under S. 106, Cr. P. C. 21 W. R. 12.
- 3. A Sub-Divisional Magistrate, even though he is a Magistrate of the second class, can pass an order under S. 106. 37 A. 230.
- 4. If a second or third class Magistrate is of opinion that the accused should be bound down under S. 106, he should refer the whole case to a superior Magistrate under S. 349, Cr. P. C., without passing any sentence himself. 35 C. 1093, 21 C. 622.
- 5. All first class Magistrates can act under S. 106. 1932 M.W. N. 151.

7. Procedure.

- 1. An order under S. 106 must be made at the time of conviction and sentence and not subsequently. 1924 A. 230=81 I. C. 613=25 Cr. L. J. 965.
- 2. Order under S. 106 can be made by the same Magistrate who tried the accused for the principal offence and not by another Magistrate. 1924 A. 141=74 I. C. 443.
- 3. A Magistrate cannot order security in lieu of other punishment. 22 P. R. 1901.
- 4. An order made at the instance of prosecutor, behind the back of the accused is bad in law. 3 B. H. C. R. 1.

Security for Keeping Peace on Conviction—(concl'd.)

5. To adopt proceedings under S. 106 without notice to parties is an incorrect procedure. 1927 P. 37=97 I. C. 424=27 Cr. L. J. 1112.
6. Inquiries under Chapter VIII are governed by the ordinary rules of evidence about admissibility. 1927 A. 394=101 I. C. 886=28 Cr. L. J. 502.

9. Revision.

1. When the Magistrate has exercised his discretion in the matter and passed an order under S. 106, High Court will not interfere in revision. 1921 P. 472.
2. High Court is reluctant to interfere upon a mere question of discretion unless the order is on the face of it improper. 42 A. 345.
3. Where it was not clear that the acts for which accused was convicted necessarily involved a breach of the peace, High Court set aside the order. 43 C. 671.

9. When order should not be made.

1. An order under S. 106 should not be made when a sentence of transportation or imprisonment for a long time is passed. 5 L. B. R. 34.
2. An order should not be made when it would prevent the party bound down from exercising his lawful rights. 11 C. W. N. 1128, 11 C. W. N. 840.
3. An order under S. 106 should not be made when there are *bona fide* disputes about land or water. 3 C. W. N. 297, 3 C. W. N. 463.
4. An order under S. 106 should not be made an instrument of punishment by demanding excessive security disproportionate to the means of the person and thus making him undergo further imprisonment. 16 B. 372, 2 C. 384, 2 C. 110, 6 C. 14, 28 P. R. 1901, 17 P. R. 1900.
5. Order under S. 106 should not be passed with non-appealable sentence. 1935 R. 363.

10. Who can be bound down.

1. A witness for defence cannot be bound down on the ground that his evidence in the trial proved that he was one of the rioters. 5 M. 380.
2. A Magistrate is not authorized to demand security from the complainant in a case under S. 323, I. P. C. 3 P. R. 1902.

SEDITION. S. 124-A., I. P. C.

1. Attempt.

1. An attempt to publish a seditious article is complete when copies of Magazines containing the articles are sold, although it is not perused by buyers 34 B. 378.
2. Attempt is merely trying. If its failure is attributed to something which accused cannot control, its failure is no excuse. 2 Bom. L. R. 286, 8 Bom. L. R. 421, 22 Bom. 112.

2. Boycott of English goods

1. Advocacy to boycott the foreign goods not as a means of helping industry but to get rid of English from India saying that the presence of English is a curse to India amounts to sedition. 19 M. L. J. 81=9 Cr. L. J. 140, 1 I. C. 42, 38 C. 253.
2. Language advising strike or boycott of foreign goods is not sedition. 32 M. 3.
3. Accused urged the boycott of British goods and asked people to make sacrifice for it. Held, that it was not sedition. 32 Cr. L. J. 1172=1932 L. 7.

3. Charge.

1. Accused may be tried and convicted in one trial under Ss. 124-A. and 153-A. on charges framed on the disconnected articles. 33 B. 221.
2. There is no misjoinder of charge of offences under Ss. 124-A. and 153-A. as they are substantially of the same kind 33 B. 77.
3. Omission to state the substance of speeches in the charge amounts to only irregularity. 1931 L. 186=32 Cr. L. J. 1202, 33 B. 77, 32 M. 3=384.

4. Comments and criticism.

1. Mere criticism is not sedition. 27 P. R. 1914 Cr., 54 I. C. 578,

Sedition—(contd.)

2. Expl. II of S. 124 does not apply when there are charges, attacks and malicious motives against the Government. 14 P. R. 1913 Cr., 39 M. 385.
3. Comments must not excite hatred. 1925 P. 99, 15 P. R. 1915 Cr., 19 P. R. 1915 Cr., 54 I. C. 578, 27 P. R. 1914 Cr.

5. Complaint.

1. The sanction or complaint is only required to prevent vexatious prosecution. The complaint must conform to its legal requirements. 35 C. 141 (150).
2. If a complaint for sedition does not set out the dates of speeches or the alleged seditious words, the defect is at the most an irregularity within S. 537 (a), Cr. P. C., and conviction cannot be set aside unless it has occasioned failure of justice. 32 M. 3.
3. The commitment of the accused upon evidence recorded before the sanction of the Government is illegal. 28 P. R. 1882 Cr.
4. The order or sanction required may not necessarily specify the seditious matter in respect of which prosecution has been ordered. 22 B. 112.

6. Disaffection.

1. To advocate expulsion of Englishmen from India is tantamount to asking for the subversion of Government. 1930 L. 309=121 I. C. 425=31 Cr. L. J. 266.
2. The words "Jang" or war against the Government is often used metaphorically and does not excite disaffection. 1930 L. 309=121 I. C. 425.
3. Articles attributing to Government deliberate policy of fomenting communal trouble is within the purview of S. 124-A. 1929 P. 10=113 I. C. 696=30 Cr. L. J. 213.
4. Speeches imputing communal motives to the Government such as desire of adding the people to evil habit and running them coupled with wholesale denunciation of Government is seditious. 1929 L. 817.
5. Speech in which the speaker approves of violence as a means of achieving self-Government amounts to offence under S. 124 A. 1930 L. 306=31 Cr. L. J. 201.
6. To ascribe to Government the intention of dividing and ruling so as to destroy indigenous culture and to state that Government was ruling by brute force are seditious. 1925 P. 99=83 I. C. 638.
7. Disaffection includes disloyalty and ill-feeling of political enmity. 19 C. 44, 20 A. 55.

7. Essentials and Evidences.

1. Evidence of every speech is not admissible not even for the purpose of determining the sentence. 1930 L. 870=31 P. L. R. 625.
2. If certain speeches form part of series of lecture on one topic delivered within six months, any of such speeches or lectures are admissible under S. 14 of Evidence Act as evidence of the intention of speaker. 1930 L. 867.
3. The memory of witnesses as to actual words used is not to be relied upon after a considerable time. 1930 L. 373=120 I. C. 798.
4. The mere fact that the title page of the pamphlet bears accused's name does not justify the conclusion that he is the author. 1925 L. 569=88 I. C. 356.
5. Stock witnesses like Zaildars, Lambardars and Police witnesses giving exaggerated versions should not be believed in political and semi-political cases. 1923 L. 333=76 I. C. 871=25 Cr. L. J. 279.
6. A speech is not exempted because by this hatred and contempt should not be increased from the standard that already exists in the minds of the people. 1930 A. 324=122 I. C. 596=3 Cr. L. J. 429.
7. Historical articles suppressing and avoiding truth or anything that is in favour of Government amounts to sedition. 34 C. W. N. 1095.
8. Vilification of Government by contrast is sedition. 1930 C. 363.
9. Accused in a speech said that war of independence of 1857 unluckily failed and advised his hearers to obtain the same objects by different means and nowhere advocated violence. Held, that he is not guilty. 1930 L. 892=129 I. C. 700.

Sedition—(contd.)

10. A speech that the Penal Code enforced by the Government attacks our religion comes under S 124-A. 1930 L. 885=32 Cr. L. J. 199=129 I. C. 20.
 11. Editor is responsible for a seditious article in a newspaper although it was not written by him. 1930 L. 875=31 Cr. L. J. 1170=127 I. C. 148.
 12. If certain alleged facts are used as a peg on which to hang seditious comments, the truth of the facts is no excuse. 1930 L. 371=120 I. C. 798=31 Cr. L. J. 168.
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 15. Although the report of the speech is not verbatim and the excerpts is for representation of general drift, conviction is justified. 1930 L. 86=31 Cr. L. J. 562.
 16. Accused caused a leaflet to be printed, he is liable whether he is responsible for its publication or not. 1928 R. 226=117 I. C. 49.
 17. The speech should be read as a whole. 39 I. C. 807.
 18. The statement that Bengalis are trodden under foot is not seditious. 38 C. 214.
 19. Whether words are seditious or not should be determined by the Judge and not to be left to the judgment of witnesses. The actual words of the accused should be proved. 32 M. 384.
 20. Where the words written on the occasion of the execution of a Bengali Revolutionary, expressed the view that law had been employed as a weapon of tyranny and those responsible for execution were pleased, it amounted to sedition. 36 C. W. N. 510.
 21. Accused while congratulating a political offender recited a poem containing the words 'a stream of blood will flow.' He was guilty under S. 124-A. 1931 L. 52.
 22. A speech which declares that Government showered bullets on the Sis Ganj Gurdwara in the name of law and order from the Kotwali, is seditious. 1931 L. 31 (2)=130 I. C. 431=32 Cr. L. J. 538.
- 8. Forfeiture of seditious matter.** S 99-A, Cr. P. C. to 99 Cr. See Forfeiture of Newspaper, etc.
1. Advertisements of forthcoming books unless seditious by itself cannot be forfeited. 1930 A. 401=125 I. C. 470.
 2. To justify forfeiture under S. 99-A, Court should be satisfied by Government that the evidence can sustain a conviction under S 153-A. 9 L. 663
 3. High Court is to consider only the question if the documentary matter is seditious or not. 47 A. 298.
 4. Where a series of books are alleged to be published the whole series must be looked into to determine whether the passages are seditious. 47 A. 298.
 5. If the documents admit of two reasonably possible views, the applicant must have the benefit of the doubt 1930 A. 401=125 I. C. 470.
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- 9. Government established by law** See Government.
1. 'Government' includes the local as well as Central Government. 36 C. W. N. 510=1932 C. 547
 2. The Government established by law includes the executive power in action and does not merely mean the constitutional frame work. 1932 C. 547=59 C. 1197.
 3. What is Government established by law. See 14 P. R. 1913 Cr., 41 C. 466, 27 P. R. 1914 Cr., 19 P. R. 1915 Cr., 39 M. 1035, 42 A. 233, 59 C. 1197.
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Sedition—(contd.)

5. Indictment against Imperialism used in an interchangeable sense with Government falls under S. 124-A. 1933 C. 140=34 Cr. L. J. 309.

10. Hatred and contempt.

1. Any advocacy regarding the change in the form of Government as bringing into hatred or contempt the present Government comes within the meaning of S. 124-A. 1930 C. 244=34 C. W. N. 277.
2. Government may be brought into hatred and contempt by abuse of officials. 56 C. 1085=1930 C. 420=31 Cr. L. J. 313=121 I. C. 749, 1929 C. 309, 22 Bom. 112.
3. Writer can discuss policy of Government. Attributing base motives to Government amounts to offence. 1930 L. 186=124 I. C. 348=31 Cr. L. J. 694.
4. To attribute acts of oppression, high-handedness, tyranny and dishonesty to Government and attributing massacre of Jallianwala Bag, Guruka Bag, etc., bring the Government into hatred or contempt. 1930 L. 156=124 I. C. 681=31 Cr. L. J. 734.
5. Publication of a life sketch of a person who was a member of a society to overthrow the Government falls under S. 124-A. 1930 L. 153=31 Cr. L. J. 720.
6. Article can be both seditious and provocative of class enmity. 1925 S. 59.
7. So long as a man only tries to inflame feelings he is not guilty but if he incites the people to action he is guilty. 1922 B. 284=75 I. C. 299, 35 B. 394 (408).
8. An attack on a school of opinion does not necessarily involve excitement to hatred or contempt. 43 M. 144.
9. Speech as a whole not calculated to bring Government into hatred or contempt does not fall under S. 124-A. 1932 L. 559.
10. If Government, Talukdar or Zimindars are accused of hostility and indifference to the welfare of the people and calamity and misfortune were attributed to them and the people were asked to follow the example of Ireland and Russia. Held, the accused was guilty under Ss. 124-A and 153-A. 1935 O. 347=36 Cr. L. J. 541=154 I. C. 671.
11. To suggest some other form of Government is not necessarily to bring the present Government into hatred and contempt. 1935 C. 636=158 I. C. 204.

11. Intention or Motive of writer.

1. An article should be read in a fair, free and liberal spirit and if any doubt should arise with regard to intention the benefit of that doubt should be given to accused. 34 C. W. N. 1095, 22 B. 122, 1 P. R. 1905.
2. Intention necessary under S. 124-A, should be gathered from expressions used by the accused. 1930 L. 870=31 Cr. L. J. 1187=127 I. C. 218.
3. Book or report like Ramsay Macdonald's "Awakening of India" or a despatch of Secretary of State is intended to educate public opinion. 1925 P. 99.
4. Articles published in the same issue of papers can be used to prove intention. 34 C. W. N. 1095.
5. Intention will be presumed from language and conduct of the accused who must rebut presumption. 1925 L. 16=82 I. C. 574=6 L. L. J. 379.
6. Intentional attempt to rouse feelings of disaffection must exist. 1927 C. 698.
7. Intention is the gist of the offence and in gathering intention allowance must be made for a certain amount of latitude for writers in the public press. 29 Cr. L. J. 381.
8. Publisher of articles must be deemed to intend the natural result of his words. 1925 C. 277=30 Cr. L. J. 850.
9. If a pamphlet containing seditious matter is published in a Press in the absence of proprietor and keeper of Press and there is no evidence to show that proprietor had any knowledge, he is not guilty. 12 L. 483, 35 C. 945.
10. Speeches professing non-violence but indirectly pressing violence amount to sedition. 1930 A. 324=122 I. C. 596=31 Cr. L. J. 429.

Sedition—(contd.)

11. It is the duty of an historian to make an endeavour to be impartial and not to paint evil deeds only. 1930 A. 401=125 I. C. 450=31 Cr. L. J. 840.
12. Motive of writer is immaterial in considering effect of writing. 14 P. R. 1913, 27 P. R. 1914, 19 P. R. 1915, 39 M. 1085, 3 L. 405, 1920 C. 473.

12. Jurisdiction.

1. The offence is triable where sedition was written or spoken or where it was published by the authority or with the assent of the accused. 22 Bom. 112.
2. If a leaflet is printed at R the mere fact that it was published elsewhere would not oust the jurisdiction of R Court to try the case. 1923 R. 276. See 1919 P. 407.

13. Liberty of the press—Editor's Responsibility.

1. A man who criticises or comments upon any measure of the Government whether Legislative or Executive may freely express his opinion upon it and condemn such measures severely, unreasonably, perversely and unfairly but if he goes beyond this and imputes base motive and accuses it of hostility to the welfare of the people then he is guilty. 22 B. 112 (137), 8 Bom. L. R. 421.
2. If a pamphlet containing seditious matter is printed from a press in the absence and without the knowledge of the proprietor, he is not guilty. 12 L. 483, 35 C. 945, 35 B. 55, 1923 B. 255, 1928 A. 400.
3. A journalist is not expected to write with the accuracy of a lawyer or a man of science; he must do himself injustice by hasty expression out of keeping with the general character and tendency of the article. 38 C. 253, 22 B. 112.
4. In gathering intention allowance must be for a certain amount of latitude to writers in the public press. 1927 C. 751=105 I. C. 228=28 Cr. L. J. 900.
5. A journalist expressing disapprobation of Government measures, to obtain their alteration, must do so without exciting hatred and disaffection. 1932 C. 758.
6. Editor is responsible for a seditious article in a newspaper although it was not written by him. 1930 L. 875.

14 Principles of construction.

1. A book must be judged as a whole with its introduction and dedication. 1930 A. 401=125 I. C. 470=31 Cr. L. J. 840.
2. The speech should be construed as a whole in a fair, free and literal spirit and one should not pause on an objectionable sentence here and a strong word there. 1929 L. 817, 19 B. L. R. 211, 1933 B. 65=57 B. 253.
3. Article alleged to be seditious must be read as a whole and some latitude should be given to writers in the public press. 1927 C. 751=105 I. C. 228, 1929 P. 10=113 I. C. 696, 1927 C. 698=103 I. C. 771, 1925 P. 99=83 I. C. 638.
4. Speech must be viewed as a whole and from the stand-point of the persons addressed and the time and place of delivery. 1 R. 211=1923 R. 212=74 I. C. 954.
5. Sedition is such a wide term that unless it is very strictly construed there is real danger that legitimate criticism may be stifled altogether. 1927 C. 698, 1927 C. 747, 1927 C. 751=105 I. C. 228.
6. Liberal construction should be put on the seditious article and the article should be considered as a whole with reference to surrounding circumstances. 19 C. 35, 22 B. 112 (139-144), 2 Bom. L. R. 286-304, 57 B. 253, 1925 P. 99, 1923 B. 212, 32 M. 35, 38 C. 214, 35 C. 141, 32 M. 384, 14 P. R. 1913 Cr. 47 C. 190, 1927 C. 698-751, 1929 P. 10.

15. Printer—Proprietor.

1. Knowledge of a printer of the nature of the matter printed is a question to be determined on the particular facts of a case. 1923 L. 258=81 I. C. 446.
2. The printer is liable under S. 121-A no matter whether he is responsible for its publication or not. 1923 R. 276=117 I. C. 49, 1 P. R. 1905 Cr.
3. When the article is printed in the absence and without the knowledge of the proprietor, he is not guilty. 47 B. 434=1923 B. 253, 12 L. 483=1931 L. 182, 1931 C. 349.

16. Procedure.

1. A complaint was filed under S. 124-A and no original or translation of alleged speech was attached to it and the sanction contained a short abstract of the words used by the accused. The statement by the complainant did not mention this sanction: well Held, that there was no proper complaint. 1929 L. 284=120 I. C. 10.
2. It is within the discretion of Magistrate to try the charge himself or send the accused to higher tribunal for trial. 33 Bom. L. R. 1515, 53 B. 611=1929 B. 313.
3. A trial for sedition should be held by a special jury. 1928 B. 74=103 I. C. 509.
4. The commitment of the accused upon evidence recorded before the sanction of the Government is illegal. 28 P. R. 1882.
5. Interpretation of speech is a question of law and High Court can interfere in revision. 1932 L. 559.
6. Joint trial of printer and publisher is legal. 1928 B. 139.

17. Publisher's responsibility.

1. It is no defence to say that the accused had only copied or circulated matters which had already been published. 19 C. 35, 22 Bom. 112.
2. The declaration signed under S. 5 of the Press and Registration of Books Act to the fact that declarant is a printer or publisher of the periodical carries with it the presumption that whatever is published, is published by the declarant. 22 Bom. 11, 35 C. 945.
3. The proprietor has to show that the seditious matter was printed and published in his absence and without his knowledge. 131 I. C. 671, 12 L. 483.
4. But this presumption may be rebutted by showing that the declared publisher or printer was ill or absent at a given time and had therefore no knowledge of the publication. 35 C. 945 (953).
5. Printer and publisher should be more severely dealt with than the author. 131 I. C. 671. They can be jointly tried. 1928 B. 139.
6. There is no presumption that Assistant Manager has knowledge of seditious matter being printed at the press. 1928 R. 276=117 I. C. 49.

18. Recommending change of Government.

To suggest some other form of Government is not necessarily to bring the present Government into hatred and contempt. Recommending Bolshevism as preferable to present form of Government and encouraging youths to join Bengal Youth League and carry propaganda to obtain supporters of commission is no sedition. 1935 C. 636=158 I. C. 204=39 C. W. N. 1245.

19. Security of good behaviour from persons promoting sedition. S. 108, Cr. P. C.

20. Sentence.

1. Where accused in his newspaper published an article headed "Swaraj or death" and which was seditious. Held, that accused was liable although the writer of the original was not prosecuted. It is a good ground for passing a lesser sentence. 1930 A. L. J. 1251.
2. A heavy sentence is not called for when speaker does not advocate violence. 1930 L. 892=129 I. C. 700, 1930 L. 870=31 Cr. L. J. 1187.
3. In considering the question of sentence the circumstances and atmosphere of the time when a speech was delivered must be considered. 1930 L. 885=32 Cr. L. J. 199.
4. Where speech is not in intemperate language and accused is an old man a severe punishment is not called for. 1930 L. 874=31 Cr. L. J. 169=127 I. C. 147.
5. In the case of violent political speeches, the dividing line between culpability and an honest desire to obtain redress from the Government is very thin. A severe sentence is not justified. 1930 L. 870=31 P. L. R. 631=31 Cr. L. J. 1187.
6. When the offence is a first offence and accused is a person of peaceful character the sentence of 2 months' rigorous imprisonment and a fine of Rs. 500 is severe

Sedition—(concl'd.)

- and should be reduced to one already undergone. 1930 L. 306=31 Cr. L. J. 201.
7. The object of the Crown in instituting proceedings of this nature is not to take vindictive action. 1927 C. 698=103 I. C. 771.
 8. Where the 'author was an inexperienced young man who does not realize that he is bringing himself in clutches of law should be dealt with leniently especially when the article appeared in another publication about which Government took no action. 1931 L. 106=131 I. C. 219=32 Cr. L. J. 649.
 9. Accused in congratulating a political offender, said that a stream of blood will flow. Held, it amounted to sedition and two years' rigorous imprisonment was sufficient. 1931 L. 52=130 I. C. 655.
 10. Just as receivers are probably worse than thieves, worse than that is the printer or publisher because the seditious act of author would be far less extensive without their help. 131 I. C. 671=32 Cr. L. J. 742.
 11. Sentence of two years is not severe where Union of E. I. Ry. exhorted people to follow the example of Soviet Russia and Ireland. 1935 O. 347=36 Cr. L. J. 541,

21. Similar articles.

1. To use other articles for showing the meaning of expressions used in the article complained of and also to show the intention of writer, it must be proved as to who the writer of those articles was. 38 C. 251.
2. Prior writings of the accused under S. 124-A, I. P. C., are admissible under S. 14, Evidence Act. But the writing should be within a reasonable time of the particular article or document in respect of which he is being charged. 1928 B. 78=108 I. C. 30=30 Bom. L. R. 315, 32 M. 3, 34 B. 394, 20 A. 55, 22 B. 152.
3. In a sedition case evidence of previous sedition is inadmissible. 84 I. C. 448.
4. In a charge of sedition against Editor, Publisher and Printer, other articles appearing in the same newspaper are admissible to prove intention and animus. 24 B. 112, 35 C. 945.
5. No question of intention arises in restrictive order under the Newspaper Incitement and Abetment Act. 26 C. 405.

22. Similar speeches.

1. Where there is a series of speeches on one and the same topic, within a short period of time, one may be considered as throwing light on the meaning and import of author and on the state of mind of the speaker with reference to the subject matter of other speeches. 32 M. 3.
2. Previous speech though made about six months before, is admissible as evidence of intention of speaker if both speeches form part of series of speeches on one topic. 1930 L. 867=31 Cr. L. J. 1182=127 I. C. 209, 20 A. 55.

SEIZURE OF CATTLE. See Cattle Trespass Act, wrongful loss—3.

SELF-INFLICTED WOUNDS. See Wound—37.

SEMEN. See Consent—11. Rape—23.

SENSATIONAL CASE. See Transfer—80-A.

The case should not be committed to the Sessions because it has created sensation. 1926 B. 251=93 I. C. 703.

SENTENCE. Ss. 376-397-401-402. 35 Cr. P. C., Ss. 56—59 I.P.C.

1. Adequate—. When Magistrate cannot pass See S. 349, Cr. P. C. See—52.

2. Age of accused—. See—21.

3. Aggravation of offence.

1. If the thief makes an unfounded imputation of unchastity to complainant's wife, he aggravates his offence. 13 P. L. R. 1913.
2. Accused by making stolen property irrecoverable aggravates his offence. 37 P. R. 1866 Cr.
3. Where an accused is clearly guilty and instead of throwing himself at the mercy of

Sentence—(contd.)

the Court, throws mud at the respectable witnesses, the Magistrate should consider his conduct in awarding sentence. 1929 S. 233.

4. False allegations against innocent and respectable persons of criminal conspiracy to bring false charges, when used as defence aggravates greatly the original offence. This type of defence is much too common. 51 A. 864.
5. If in a clear case, an advocate on the instructions of his client argues that the prosecution story is an entire concoction on the part of the Police and no evidence whatever elucidated in cross-examination or offered by him is ever produced in support of this argument, the offence is aggravated and it should be considered in awarding the sentence. 1930 P. 195=124 I. C. 396=31 Cr. L. J. 641=9 P. 31.
6. False defence of enmity with complainant and witnesses aggravates the offence and affects the question of sentence. 1930 A. 277=124 I. C. 45=31 Cr. L. J. 630.
7. Use of lethal weapons at dacoity is an aggravating circumstance. 10 I. C. 773.
8. Theft from places of public resorts like the fairs, and railway trains deserve severe punishment as such offences are extremely difficult to discover. 14 Bom. L. R. 504=15 I. C. 803.

4. Aggregate—. See Distinct offence—1.

For two offences arising out of the same transaction, a double sentence should not be imposed. 1932 L. 365=33 Cr. L. J. 413.

5. Alteration of—. See Appeal—14 Revision.

Even if the accused has not appealed, his sentence can be reduced when his co-accused has preferred the appeal. 1932 L. 615 (1).

6. At the request of accused.

Where a Magistrate passed a non-appealable sentence and then enhanced it at the request of accused to make it appealable, the Sessions Judge cannot decline to hear the appeal on the ground that the original sentence was non-appealable. 35 B. 418, 58 C. 392.

7. Capital. See Murder—18.

8. Commencement of—.

1. A sentence of imprisonment to take effect at a future date is bad in law. It cannot be postponed at the request of accused. 12 W. R. 47, 97 P. L. R. 1918.
2. A sentence of imprisonment for the time already passed in the lock-up is illegal. 9 P. W. R. 1907.
3. A Magistrate has no power to adjourn the passing of sentence for an indefinite period. 14 Bom. L. R. 144.

9. Commutation of—by High Court. S. 376, Cr. P. C.

1. Where the condition of the convict was such that if he were hanged decapitation would ensue owing to an aperture in the neck communicating with the larynx, the High Court commuted the sentence of death into transportation of life. 2 C. L. R. 215.
2. Where it took six months in the disposal of murder appeal, the High Court commuted the death sentence into transportation for life. 21 I. C. 882, 1926 N. 461.
3. Accused was sentenced to death and set aside the conviction on the ground of After 4½ years was sentenced to death. High Court commuted the sentence into transportation for life. 7 L. 396.
4. In case of death sentence, High Court may commute the sentence to 10 years. 17 Cr. L. 403, 1 533.

10. Commutation of—.

1. In cases of murder, the Court may call for mitigation of the sentence. 10 B. 100, 17 Cr. L. 403, 1 533.
2. In cases of murder, the Court may call for mitigation of the sentence. 10 B. 100, 17 Cr. L. 403, 1 533.
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4. In cases of murder, the Court may call for mitigation of the sentence. 10 B. 100, 17 Cr. L. 403, 1 533.

Sentence—(contd.)

provocation. A recommendation for mercy was made by the High Court. 8 L. 684, 30 P. R. 1918 Cr., 1924 A. 413, 23 C. 604.

3. Where a young girl of 18 was married to a boy of 13 and gave birth to an illegitimate child and to conceal her shame she strangled it. Held, it was a fit case for the exercise of powers vested in the Local Government under Ss. 401-402, Cr. P. C. 7 L. 70.
4. Where young man was convicted under Ss. 302-149, I. P. C. He played a minor part and was under the influence of bad company. Held, these were extenuating circumstances. 1929 L. 601=11 L. L. J. 203.
5. The fact that accused is a pregnant woman is not sufficient ground for commutation of sentence. 15 W. R. 66.
6. When a plea of insanity raised by the accused was not made out, but there were exceptional circumstances in his favour, the Court while confirming the death sentence, recommended his case under S. 401. 1931 L. 276=32 Cr. L. J. 1230.
7. Where the accused committed murder of a five months' old baby when, as he alleged, he was possessed by the Goddess and was labouring under delusion that sacrifice was necessary to appease the Goddess and a plea of unsoundness of mind was rejected by the Court, the High Court recommended his case to Local Government under S. 401, Cr. P. C. 1931 M. W. N. 719.
8. Accused were sentenced to death by Special Tribunal under Ordinance III of 1930. The execution was stayed by Local Government till the decision of appeal to Privy Council. It was contended that as Tribunal ceased to exist and the time for execution had expired the custody was illegal. Held, that even if there was difficulty in carrying out the sentence, it could commute the sentence under S. 402, Cr. P. C. 135 I. C. 189=33 Cr. L. J. 126=1931 L. 359.
9. The accused a young lad of 17 years was shown to have participated in the crime under the influence of his father and brother. His conviction under S. 302 read with S. 149 was confirmed. Held, it was a fit case for the Local Government to exercise powers under S. 401. 1932 L. 259=137 I. C. 293=33 P. L. R. 191.
10. The accused was of tender age being not more than 16 years, committed murder on provocation caused by deceased's having committed sexual intercourse with a female relative of his in an open manner three days before the occurrence. The High Court while confirming his conviction recommended his case to the Local Government. 1932 L. 308=33 P. L. R. 279.
11. Accused became pregnant on account of illicit intimacy and administered opium to the child, as it was shown that she was alone at the time of birth and she had opium four days before the occurrence. Held, it was a fit case for the Local Government to reduce sentence to one year's imprisonment. 1932 L. 297, 7 L. 70 Rel. on.
12. The fact that accused is the only son of a widow or is penitent is no reason for not inflicting death sentence. 1935 C. 591=36 Cr. L. J. 1254.

11. Concurrent. Ss. 35, 397, Cr. P. C.

1. It is illegal to direct a sentence of imprisonment to run concurrently with a sentence of transportation. 21 P. R. 1913 Cr.
2. An order directing that the term of imprisonment in default of payment of fine shall run concurrently is illegal. 1926 B. 62=91 I. C. 543, 1929 S. 179=118 I. C. 224.
3. If the Court omits to direct whether the sentence is to run concurrently or consecutively, it makes the sentence defective in form. 21 C. W. N. 603.
4. Court can order two or more sentences to run concurrently only when they are passed in the same trial. 47 A. 59=1925 A. 305=85 I. C. 714=26 Cr. L. J. 570.
5. Where the total number of years for which imprisonment is ordered, does not exceed four years, the appeal lies to the Court of Sessions, even though there are other concurrent sentences of lesser period. 1927 N. 255=103 I. C. 208=28 Cr. L. J. 672, 1921 C. 152 Foll, 15 C. W. N. 734 and 17 C. W. N. 72 Not foll.

12. Confirmation of— Ss. 374, 375, 376, Cr. P. C.

1. In determining whether sentence is to be confirmed, the High Court may consider

Sentence—(contd.)

- whether conviction is right on facts and by competent Court. 2 A. 218, 27 Cr. L. J. 378, 1926 N. 368, 1921 S. 84, 1924 C. 625, 1922 C. 124, 13 M. 426, 1929 M. 667.
2. If the High Court thinks that it would be wrong or improper to carry out a sentence of death, it would not confirm it. 1926 N. 461=27 Cr. L. J. 955.
 3. In confirmation cases, the High Court has power to go behind the verdict of jury and substitute its own finding on facts for unanimous finding of the jury. 1921 S. 84=64 I. C. 657, 17 Bom. L. R. 1072.
 4. Persons convicted in trial by jury along with others can appeal on facts. 1932 P. 302.
 5. Reference to High Court is necessary in case of death sentence under special law. 1933 C. 1, 1932 C. 818.
 6. When evidence as to prisoner's state of mind was insufficient, *additional evidence* was called for under S. 375, 19 B. 195, or when Chemical Examiner's report was defective. 14 M. 334.
 7. Where Sessions Judge refused to summon some evidence called by accused, High Court permitted it. 12 Cr. L. J. 412, 1925 M. 106, 1928 M. 1174, 44 C. 876.
 8. High Court can take evidence in the absence of accused. 3 A. L. J. 112.
 9. In cases sent up for confirmation, it is the Practice of Court to be satisfied on facts as well as law of the case. Rat. Un. Cr. C. 710, 2 C. W. N. 49.
 10. In reference under S. 374 entire case is open to High Court. 1927 C. 631=28 Cr. L. J. 742, 1935 S. 145 (179).
 11. S. 375 does not enable a Court to remedy an illegality which vitiates a trial. 1935 S. 145 (179)=1935 Cr. C. 753.
 12. High Court admitted evidence under S. 375, Cr. P. C., of a confession rejected by Sessions Judges although evidence without such confession was "amply sufficient". 25 B. 168.
 13. When High Court, on reference, pronounces judgment, accused has no right of appeal. 33 P. R. 1867.
13. **Commulative**— See distinct offence—6.
14. **Continuing**— See Fine—3.
15. **Daily fine**. See Fine—4.
16. **Delay in confirming death**.
1. In the case of an ordinary murder the delay in confirming death sentence may be taken into consideration but not so when the murder is not ordinary. 1930 S. 225, 21 I. C. 882 Dist., 7 L. 396=1926 L. 582. See 1926 N. 461.
 2. Where it took six months in the disposal of murder appeal, the High Court commuted death sentence into transportation for life. 14 Cr. L. J. 642, 1936 C. 73.
17. **Departmental punishment**.
- A Police Constable punished departmentally under the Police Act is liable to be punished under Penal Code. 26 P. R. 1915 Cr.
18. **Double**— See General Clauses Act, 5.
1. A man cannot be punished twice for the same offence. 1932 N. 174, 1932 L. 365.
 2. If two offences arise out of the same transaction, double sentence should not be imposed. Accused got a pistol and was showing it to another when bullet accidentally hit another. He was sentenced to 7 years under Arms Act and 18 months for the homicide. Held, that only one month's imprisonment is sufficient. 1932 L. 365=33 Cr. L. J. 413.
19. **Enhanced**— See Enhanced punishment, S. 75, I. P. C.
20. **Enhancement of**— See Enhancement of sentence.
21. **Extenuating circumstances**. See—44.

*Sentence—(contd.)***A. Age or sex of accused.**

1. Mere youth of the accused is not a sufficient ground for not awarding capital sentence. 1930 L. 50=120 I. C. 276 1930 Cr. C. 965, 107 I. C. 99 *Contra* 11 I. C. 792, 16 M. L. T. 555, 1928 L. 531, 129 I. C. 228, 45 I. C. 840. *See* 1935 Pesh. 170, 1933 C. 1, 29 Cr. L. J. 540, 1 R. 751, 29 Cr. L. J. 211, 1924 N. 29, 1930 L. 50=31 Cr. L. J. 81, 1931 R. 171, 1933 L. 305, 1931 L. 536, 16 Cr. L. J. 167, *Contra* 1926 N. 461,
2. It is undesirable that a girl of ten or eleven years should be sent to prison even for an offence of murder. The proper place is the Reformatory. 65 I. C. 609.
3. Age or sex of a murderer, of itself, cannot generally be a sufficient reason for leniency in sentence. But if there are other reasons, then the youth or sex may certainly tip the scale to the side of mercy. 1922 N. 66=64 I. C. 277, 26 I. C. 324.
4. If a person convicted of murder is a minor, he should not be made to pay the death penalty where the law allows an alternative punishment. 1929 L. 64=113 I. C. 177.
5. Where the conviction is based on circumstantial evidence, age or sex of accused is an element to be considered in awarding sentence. 26 I. C. 324=16 Cr. L. J. 20, 16 Cr. L. J. 38=26 I. C. 332.
6. In awarding sentence, consideration of youth, individual suffering and interest of community must be looked into. 37 P. W. R. 1907 Cr.
7. Although tender age is no ground for passing a lenient sentence, yet circumstances vary in every particular case. 1926 N. 461=96 I. C. 507, 11 C. W. N. 904.
8. To send a youth of 17 years, who is a first offender and commits an offence of criminal breach of trust being prompted by another, to jail is to make him a hardened criminal. The Courts should avoid passing sentence of imprisonment for short terms specially on first offenders of immature age. 1930 L. 424=126 I. C. 578=31 Cr. L. J. 1076.
9. Old age should be considered in awarding sentence 103 I. C. 797

B. Confession

1. Confession is no ground for reducing sentence. It may indicate repentance, but that can only effect a reduction of that part of sentence that is purely reformatory and that factor has disappeared from the capital sentence. 73 I. C. 266, 1934 P. 330.
2. Plea of guilty by an Indian criminal is due to hope of leniency of punishment, it is not proper to enhance the sentence, as it might attach suspicion of perfidy to Judiciary. 83 I. C. 881.
3. An immediate apology may lessen the punishment. 26 A. L. J. 509.

C. Conviction on circumstantial evidence.

1. In cases of murder, the mere fact that conviction is based on circumstantial evidence, is no reason for awarding lesser sentence. 1930 S. 225=31 Cr. L. J. 1026, 1929 S. 179 and 1921 M. 423 Foll. 76 I. C. 97 Not foll.
2. Where the conviction is based on circumstantial evidence, age or sex of the accused must be considered in awarding sentence. 26 I. C. 324.

D. Drunkenness *See* Drunkenness**E. Honourable Motive** *See* Motive—2.

1. Honourable motive for committing an offence is an extenuating circumstance. 6 P. 471=104 I. C. 436=1928 P. 159.
2. A Baluchi custom justifying the accused in killing his sister for unchastity is not a mitigating circumstance 24 I. C. 589.
3. Suspicion of misconduct of wife is a mitigating circumstance in case of murder. 157 P. L. R. 1911.

F. Ignorance of law.

Ignorance of law can be taken into consideration in mitigation of punishment. 29 Cr. L. J. 506.

*Sentence—(contd.)***G. Respectability and high position of accused.**

1. Respectability or high position of the accused is no ground for awarding small sentence, as law is the same for rich and poor. But the fact that accused suffered in his reputation and of his position is a much greater punishment, should be considered. 1927 O. 319=103 I. C. 797=23 Cr. L. J. 749.
2. Although in rare and extreme cases a Court may evade statute, still accused being a respectable man or not a hardened criminal are not extenuating circumstances. 1929 M. W. N. 114.
3. High position of the accused is an extenuating circumstance. 317 P. L. R. 1913.

H. Service to Government.

1. If the accused rendered service to Crown by giving evidence against members of his gang, the death sentence should be altered to transportation for life. 46 A. 236=1924 A. 220=81 I. C. 604=25 Cr. L. J. 956.
2. A man is not entitled to get off with a small sentence because of his high position and of his having done service to the Government in the past. 1927 O. 319.

I. Sudden quarrel and provocation.

1. A capital sentence is not to be passed when a murder is committed under a serious though not sudden provocation. 33 I. C. 830, 98 I. C. 603=1927 A. 105.
2. The commission of murder without premeditation in the heat of passion, upon a sudden quarrel is an extenuating circumstance. 1930 L. 311=30 P. L. R. 582, 17 P. L. R. 1915, 116 I. C. 187. See 37 I. C. 465.
3. If the elements of preparation and premeditation are absent, the sentence should be transportation and not death. 1927 L. 516=106 I. C. 451=28 P. L. R. 674, 101 I. C. 484.
4. Extreme penalty should not be exacted when the murder is committed under grave provocation. 1930 L. 171=11 L. L. J. 451, 1929 L. 791=116 I. C. 613.

J. Miscellaneous.

1. Bentham mentions nine circumstances in mitigation of punishment.
- (a) Absence of bad intention. (b) Provocation. (c) Self-preservation. (d) Preservation of some near friend (e) Exceeding self-defence. (f) Submission to menace. (g) Submission to authority. (h) Drunkenness. (i) Childhood.—*Bentham Principles of Penal Law.*
2. Starvation is no ground for committing murder. 1935 R. 49.
3. The mere fact that a petition for compromise has been filed in Court (but is not allowed) is no ground for the reduction of a sentence. 12 Cr. L.J. 243=10 I. C. 773.

K. Master's instructions

A servant committing an offence at master's instructions is no defence but it is an extenuating circumstance. 1935 A. 346 (2)=153 I. C. 999.

L. Playing Dupes in the hand of others.

1. If the accused are impressionable youth and were under the domination of some more powerful character, so that they were deprived of their independent judgment, it would be an extenuating circumstance. 1935 C. 513 (525)=36 Cr. L. J. 1115.
2. Youth affected by outside influence may be considered extenuating circumstance. 1935 Pesh. 170.

M. Penitence by accused.

The fact that accused is penitent and filled with remorse is no ground for inflicting lesser penalty than death. 1935 C. 591=36 Cr. L. J. 1254.

N. Widow's son.

The fact that accused is the only son of a widowed mother is no ground for not inflicting death sentence. This is a matter for Local Government to be considered. 1935 C. 591=36 Cr. L. J. 1254.

entence—(cont.)

22. Factors for determining suitable—.

1. When the respect for law is undermined, the Courts should hold the scales even, whatever the attitude of the politics of any party may be. Where a respectable woman of sixty dissuaded people from drinking, a sentence of 4 month's rigorous imprisonment and a fine of Rs. 100 is vindictive. 32 Bom. L. R. 1506.
2. Where it was only a chance that an unlawful assembly of Mohammedans did not come across a Hindu to beat, but if they had come across they would have even killed him. These circumstances call for maximum punishment. 1927 O. 151.
3. The sentence should be proportionate to the nature and gravity of the crime. 1930 A. 279=124 I. C. 46.
4. Punishment varies with the circumstances of each case. 1930 L. 867, 10 L. 524.
5. Inadmissible evidence or extraneous circumstances should not be considered in awarding sentence. 1926 C. 1163=27 Cr. L. J. 1329=98 I. C. 401=53 C. 706.
6. Punishment is itself an evil and is justified only by its prevention of greater evil. It should be the least that will prevent repetition of crime by the accused and deter others. 1927 N. 221=101 I. C. 669.
7. Escape from custody after conviction should not influence the Court in arriving at the amount of punishment to be inflicted 1926 L. 617=27 Cr. L. J. 944.
8. The sentence should not be such as to be open to criticism, that it is an unmitigated exhibition of superior force unredeemed by a tinge of judicial balance. 1928 A. 150=118 I. C. 577=30 Cr. L. J. 933.
9. In estimating what should be the proper sentence, the Court must take into account the period of detention as under-trial prisoner. 11 Cr. L. J. 9.
10. In a petty quarrel, the accused inflicted a Dah wound, the mere fact that there was a petition to compound, is no ground for reducing a sentence of 4 months. 12 Cr. L. J. 243.
11. Motive for the crime should be considered in inflicting the sentence. 1923 O. 180.
12. Penalty sections must not be used vindictively for technical offences. 1924 A. 200.
13. Where the offence is utterly trivial and the prosecution is started by malice, a nominal sentence should be imposed. 9 P. 113.
14. Matters occurring after conviction should be ignored 60 P. R. 1905 Cr.
15. The Court should consider the youth of accused, individual suffering and the interest of community in awarding sentence 37 P. W. R. 1907 Cr
16. The Court may take into consideration the criminality of the District while passing sentence. A large discretion must be left to the trial Judge awarding sentence, for he has seen the accused and knows the effect of imprisonment which is likely to have on him. 123 I. C. 43=31 Cr. L. J. 477.
17. Sentence even with previous conviction must fit the crime. 1924 B 453, 1930 L. 100 (1).
18. In a case under Ss. 149—325 when a murder is committed, the persons who actually attacked should be given a higher sentence. 1931 C 605.
19. The law vests discretion in the Magistrate to pass an adequate sentence after taking into consideration the pertinent circumstances. 1930 S. 58.
20. The Magistrate should take into consideration the conduct of accused during trial. If he throws mud at the respectable witnesses he deserves little consideration. 1929 S. 253

23. For various offences. See Under each offence.

24. Illegal.

1. A conditional sentence on enticed woman failing to reside with her husband is illegal. 40 P. R. 1866 Cr.
2. Double sentence of fine and imprisonment is illegal under the Gambling Act. 25 P. R. 1880 Cr.

Sentence—(contd.)

3. Imprisonment on trial of two or more offences exceeding 14 years is illegal. 23 P. R. 1880 Cr.
 4. Sentence of imprisonment for period already passed as under-trial prisoner is illegal. 1923 L. 101=23 Cr. L. J. 593=114 I. C. 234.
 5. Imprisonment till the rising of the Court is not illegal. 9 P. W. R. 1907 Cr.
 6. On second conviction for theft, a sentence of 7 years' rigorous imprisonment is illegal. 38 P. R. 1882 Cr.
 7. Transportation in lieu of fine is illegal. 17 P. R. 1880 Cr.
 8. Transportation for 14 years is illegal. 53 P. R. 1860 Cr.
 9. Two amalgamated sentences of imprisonment cannot be commuted to one of transportation. 63 P. R. 1866 Cr.
 10. It is not competent for a Magistrate to award by an order imprisonment for several periods with interval between each period.
 11. Passing appealable sentence at the request of accused is wholly wrong. 58 C. 392=1931 C. 448=134 I. C. 536=32 Cr. L. J. 1181.
- 25 Imprisonment in default of security.** See Security for good behaviour—24.
- 26 Interference in appeal with—**
- In matter of sentence a large discretion must be left to the trial Judge who has seen the accused and knows the effect which imprisonment is likely to have and who is also aware of the criminality of the District. 123 I. C. 43=31 Cr. L. J. 477.
- 27 Imprisonment till rising of Court.**
- Imprisonment till the rising of Court is evading the statute, for imprisonment means that offender shall go to jail. 114 I. C. 234=1929 M. 236=30 Cr. L. J. 247. *Contra* 9 P. W. R. 1907 Cr.
- 28 Maximum and deterrent.**
1. A deterrent sentence is justified where a large body of men has deliberately set out to defy the law. 1929 P. 502=119 I. C. 839=30 Cr. L. J. 1100.
 2. If the offence, but for chance, would have been more serious, the maximum punishment should be inflicted. 1927 O. 151=23 Cr. L. J. 337.
 3. Deterrent punishment should be given for setting fire to a thatch. 1924 A. 781.
 4. A sentence of 10 years' rigorous imprisonment is wholly disproportionate to any possible aspect of the crime under ss. 147—325 coupled with setting fire. 1924 A. 731=23 Cr. L. J. 1150.
 5. Offence of counterfeiting coins is detected with great difficulty and calls for deterrent sentence. 1927 L. 22=101 I. C. 529=23 Cr. L. J. 305.
 6. The fact that there was fear of stirring communal disturbances is no ground for inflicting a deterrent sentence. 55 I. C. 594=27 Cr. L. J. 1378.
 7. It is a fair plea of public necessity, such as fairs, railway trains and the like deserve deterrent sentences, as such offences are extremely difficult to discover. 14 Bom. L. R. 24=10 I. C. 773.

Sentence—(contd.)

2. An order for notifying address of previously convicted offenders passed under S. 555, Cr. P. C., is no punishment. 2 N. L. R. 88.
3. An order of release upon probation of good conduct under S. 562, Cr. P. C., is no sentence. 1924 N. 37=74 I. C. 66=24 Cr. L. J. 738.

30. Of fine. See Fine.**31. Of imprisonment.**

1. It is imperative to pass a sentence of imprisonment under S. 193, I. P. C. 30 P. R. 1886 Cr.
2. Sentence of imprisonment is essential under S. 325, I. P. C. 28 P. R. 1866 Cr.
3. It is imperative to pass a sentence of imprisonment under Ss. 380 or 456, I. P. C. 80 P. R. 1866 Cr.
4. It is altogether inappropriate to add a fine to a substantial term of imprisonment. 134 I. C. 1136=1931 C. 710.
5. A breach of peace involving assault on public officer of a mild character does not call for sentence of imprisonment. 32 Cr. L. J. 1116=1931 P. 342.

32. Of non-appealing accused. See Non-appealing accused.**33. Of penal servitude. S. 56, I. P. C.**

The punishment of penal servitude is reserved for Europeans and Americans. 19 M. 483.

34. Of solitary confinement. See Solitary confinement.**35. Of transportation for 7 years S. 59, I. P. C.**

1. The Court has no option in determining the duration of the term of transportation excepting when the case falls under S. 59. 1 A. 43.
2. Transportation under S. 59 cannot be given for a conviction under a special or local Act. 11 M. L. J. 127.
3. The sentence must be for one offence for at least 7 years. It cannot be made up by adding two or more sentences passed at the same trial for different offences. 63 P. R. 1866 Cr., 4 P. R. 1866 Cr., 14 P. R. 1866 Cr., 27 P. R. 1901 Cr.
4. No Court can avail of S. 59, I. P. C., unless it has power to award sentence of 7 years. 17 P. R. 1880.
5. Commutation for transportation for life in default for payment of fine is illegal. 5 M. 28.
6. A sentence of transportation for 14 years for an offence under S. 304 (1) is illegal. 44 M. 297, 58 P. R. 1860 Cr.
7. Substituted sentence of transportation should not exceed the term of imprisonment provided by law for the offence. 31 P. R. 1903 Cr.

36. Of transportation for life See Murder—75.**37. Of whipping—. See Whipping and Whipping Act.****38. Offence falling under Penal Code and another Act.**

When the act is punishable both under the Penal Code and another Act, the accused cannot be punished under both. 1931 M. 18=129 I. C. 451=1930 M. W. N. 529=32 Cr. L. J. 354

39. On offender already under another sentence S. 397, Cr. P. C. See—11.

1. The word "sentence" in S. 397 and its provisos of the Cr. P. C. includes an order of committal or detention in prison under S. 123 of the Code. 9 R. 612, 9 R. 110.
2. Where accused was first sentenced to one year's rigorous imprisonment in default of furnishing security under S. 123, Cr. P. C., and again convicted under S. 379, I. P. C., for an offence committed prior to the previous order and sentenced to pay a fine of Rs. 75 or in default to three months' rigorous imprisonment and fine was not paid. Held, that three months' imprisonment must run from the expiry of the order of detention passed under S. 123, Cr. P. C. 9 R. 612=135 I. C. 644.
3. The High Court has power under S. 397 to direct separate sentences of separate trials to run concurrently. 134 I. C. 1239=33 Bom. L. R. 1163, 51 A. 888.

Sentence—(contd.)

4. Where a person sentenced to imprisonment in a foreign territory is subsequently convicted of an offence in British India, the Magistrate can order that the sentence shall take effect after the expiration of sentence in the Foreign State. 20 M. 444.
5. If a person who is imprisoned under S. 123, Cr. P. C., in default of furnishing security, is subsequently sentenced to imprisonment for an offence committed prior to the passing of the order under S. 123 the latter sentence shall take effect immediately. 34 B. 326, 31 M. 515, 37 B. 178.

40. On offender under sentence in a Foreign State.

When a person sentenced to imprisonment in a foreign territory, is subsequently convicted of an offence in British India, the Magistrate can order that the sentence shall take effect after the expiration of sentence in the Foreign State. 20 M. 444.

41. Period undergone as under-trial if—

1. A Magistrate cannot order that any period undergone as an under-trial prisoner should be counted as part of the sentence. 1923 L. 104=23 Cr. L. J. 593.
2. Sentence of imprisonment for period already passed in lock-up as under-trial is illegal. 27 P. R. 1919 Cr.

42. Principles or Maxims governing award of—. See—53.

1. *Lex uno ore omnes alloquitur*—The law speaks to all with the same mouth. *Wharton's Law Lexicon*.
2. *Melior est justitia vere Praeveniens quam severe puniens*—Justice truly preventing is better than severely punishing. *Ibid*, 3 Inst. Pil.
3. *Mitius imperanti melius paretur*—He is better obeyed who commands leniently. *Ibid*, 3 Inst. 24.
4. *Ignorantia legis excusant neminem*—Ignorance of law is no excuse. *Ibid*, P. 376.

43. Postponement of—. See—8. S. 382, Cr. P. C.

1. A sentence should commence at once and cannot be postponed till the expiry of the term of imprisonment which the accused is undergoing in default of security. 97 P. L. R. 1918.
2. Execution of death sentence is to be postponed in the case of pregnant woman till delivery or it may be commuted. 2 Weir 441, 34 P. R. 1878.

44. Reduction of—. See—21.

1. If the abducted woman goes to the accused of her own accord, a nominal sentence is sufficient. 33 P. L. R. 1910.
2. If the woman abducted is of bad character and married to an immature boy, the sentence should be lenient. 224 P. L. R. 1911.
3. If the accused merely exceeded the right of private defence, his sentence should be reduced. 1924 L. 61=5 L. L. J. 121.
4. If the woman was an active abettor in her abduction the accused should be treated with leniency. 1927 L. 91=99 I. C. 84, 20 P. W. R. 1914.
5. If the accused paid money to the owners of a car under hire purchase agreement even after he sold it, his sentence should be reduced, as his intention was to avoid loss to the owner. 45 A. 588.
6. A mild assault on public officer should not be punished with imprisonment. 1931 P. 342.
7. Mere fact that a petition for compromise is filed is no ground for reduction. 12 Cr. L. J. 243.
8. Even if the accused has not preferred appeal, his sentence can be reduced when his co-accused has appealed. 1932 L. 615 (1).

45. Remission of by local Government S. 491, Cr. P. C.

Release of prisoner temporarily so as to enable him to be at bed side of his sick relative does not amount to remission of unexpired portion of sentence. Subsequent re-arrest and confinement in jail without fresh trial is not illegal. 1935 A. 181=153 I. C. 351=36 Cr. L. J. 325.

*Sentence—(contd.)***46. Revision against—.**

Crown has no right to influence Court in revision on question of punishment, unless invited by Court to do so. 1933 C. 870.

47. Separate—. *See* Distinct offence. Commulative sentence.**48. Suspension of—imprisonment.** S. 388, Cr. P. C.

1. Where the accused is sentenced to pay fine only, he can be released on security to enable him to pay it. S. 388 (1), Cr. P. C. 7 Cr. L. J. 452, 28 C. 164, 21 C 979, 26 M. 127 are no longer good law.
2. Where even a nominal sentence of imprisonment (till the rising of Court) is passed in addition to a sentence of fine, the provisions of S. 388 are not applicable and the execution of sentence of fine cannot be suspended. 1934 R. 11=11 R. 451=35 Cr. L. J. 608.
3. S. 388 (2) refers only to order for payment of money which is not inflicted as punishment, while S. 388 (2) refers to sentence passed in trial. 1934 R. 11=35 Cr. L. J. 608.
4. A Sessions Judge has no power to suspend the execution of his own sentence. 4 M. H. C. R. App. 1.

48-A. Suspension of—by Appellate Court. S. 426, Cr. P. C.

1. Sentence can be suspended, if appeal is pending. 9 P. 131, 56 M. 149.
2. An order under S. 10, Reformatory Schools Act, is not a sentence. 16 Cr. L. J. 134.
3. Period of release should be left out of account. 1936 A. 12.

49. Technical offence.

A breach of peace even if involving an assault on a public officer of a mild character, should not ordinarily be punished by sentence of imprisonment. 1931 P. 342=134 I. C. 432=32 Cr. L. J. 1166.

50. Under Local or Special law *See* Local Law.**51. Under Martial Law Ordinance.**

Sentences passed under Martial Law Ordinance are not subject to usual rules as to appeal and revision. 55 B. 263=1931 B. 57=129 I. C. 596=32 Cr. L. J. 403.

52. Uniform.

1. If an accused is tried separately before another Judge, it is impossible to maintain uniformity of conviction and sentence with the original trial. 1924 C. 435=72 I. C. 65=24 Cr. L. J. 305.
2. Justice should be even handed. Other things being equal, the same offence should receive the same punishment. 1932 S. 143

53. Vindictive. *See*—42.

1. A sentence of 4 months' rigorous imprisonment and a fine of Rs. 100 or in default one month's rigorous imprisonment passed on a respectable lady of 60 years for picketting liquor shop is excessive and can be criticised as vindictive. Such sentences defeat their object and produce a contrary effect. 55 B. 220.
2. The sentence should not be such as to be open to criticism, that it is unmitigated exhibition of superior force, unredeemed by tinge of judicial balance. 1928 A. 150 =30 Cr. L. J. 933=118 I. C. 577.

54. When Magistrate cannot pass adequate—. Procedure. S. 349, Cr. P. C.

1. If a Magistrate considers a person guilty and to deserve a higher penalty than the Magistrate himself can impose, he should send him to a superior Magistrate. 3 P. 1015=1924 P. 764.
2. If the punishment which the subordinate Magistrate proposed was one which he could himself inflict the reference was improper. 1881 A. W. N. 99.
3. When a case was sent to District Magistrate not because the referring Magistrate could not pass an adequate sentence but that it was desirable that it should be tried

Slight Harm (Act Causing)—(concl'd.)

3. S. 95 has no application, unless the act in question is otherwise an offence under the Code. 29 C. 489.
4. A servant was ordered to burn waste paper but he kept it at home for sale. Held, no offence under S. 406 is committed and there was no need of applying S. 95. 29 C. 483, 2 C. W. N. 216.
5. The triviality of an offence must not be judged solely by the measure of harm. The offence of a soldier striking his master does not fall under this section. 24 W. R. 67.
6. Pulling of ear by way of gentle admonition or in sport is within the section. 1 C. W. N. 134.
7. While it will be an assault if a stranger caught hold of the hand of a modest maiden in a public place, the case would be different if the woman was of questionable character and the hand was caught in jest though it had the effect of arresting her movement and causing her annoyance. 1887 A. W. N. 73.
8. If a debtor tears up rough jotting of accounts, which was in the custody of the obligee as token of the obligor's indebtedness, he is guilty of destroying valuable security under S. 477 and S. 95 does not apply. 12 M. 148.
9. Accused made away with cancelled cheques which were to be filed as exhibits in a case, he cannot plead intrinsic worthlessness of the cheques. His act is not covered by S. 95. 27 A. 28.
10. Court refused to apply S. 95 to a theft of dung cakes worth one pie and mangoes worth 3 pies. 1888 B. M. J. 400.
11. A stranger entered Pleaders' room. One of the Pleaders objected. On his refusing to leave, the Pleader abused him and apologized soon after. The case fell under S. 95. 15 Bom. L. R. 1039=22 I. C. 158, 36 I. C. 142.
12. Indulging in practical jokes causing actual harm is covered by S. 95. 9 I. C. 586.
13. If a person plucks fruits from a road side tree or digs some earth from an open private ground he is protected by S. 95. 1882 A. W. N. 229.
14. Section applies when accused lopped off the branch of a tree overhanging his house because it inconvenienced him. 1881 A. W. N. 100.
15. Where two Pleaders in the midst of a case quarrelled and in reply to a remark, the other called him a liar, the case falls under S. 95. 1883 A. W. N. 46.
16. Where the guard of a train asked a passenger for his ticket, stating that he suspected him of travelling without ticket, the Court held that the matter was too trivial. 13 M. 34.
17. Slight harm like the act of a traveller who tears a twig from a hedge, of a boy who takes stones from another's ground to throw at birds or of a servant who dips his pen in his master's ink falls under S. 95. But it would not exempt the wanton and reckless damage done to one's property. 8 C. P. L. R. 15.
18. Taking pods from a tree standing on Government land fall under S. 95. 5 Bom. H. C. R. 35.

SLUR ON MAGISTRATE. See Transfer.

SNAKE-BITE. See Culpable homicide—26.

SOLITARY CONFINEMENT. Ss. 73-74, I. P. C.

1. Applicability of— S. 73, I. P. C.

1. Solitary confinement can be ordered when the conviction is under the Penal Code and not under any other law. It cannot be ordered under S. 110, Cr. P. C. 1927 A. 412=102 I. C. 342=28 Cr. L. J. 534, 1933 A. 676.
2. Solitary confinement cannot be ordered under Criminal Tribes Act. 43 A. 114.
3. Solitary confinement cannot be ordered under special or local Act, e. g., Arms Act. 4 P. R. 1875 Cr., 24 P. R. 1879 Cr., 17 P. R. 1889 Cr., 20 P. R. 1870 Cr., 76 I. C. 184=1924 L. 607.
4. Solitary confinement cannot be ordered as part of rigorous imprisonment under S.

Solitary Confinement—(concl'd.)

8, Frontier Crimes Regulation. 4 P. R. 1880 Cr., 36 P. P. 1881 Cr.

5. Solitary confinement cannot be ordered under Post Office Act nor under Ex 24 P. R. 1879 Cr., 17 P. R. 1889 Cr.

2. **Period of—** S. 74, I. P. C.

1. Solitary confinement for one month out of four months' rigorous imprisonment legal, although the sentence cannot be executed for more than 28 days. 1878 Cr.
2. The solitary confinement for a period of 3 months out of imprisonment of 6 and one day though legal under S. 73, is illegal under S. 74 and the Court reduced it to 84 days. (1879) 1 Weir 15.
3. There can be solitary confinement of as many three months as there are convictions. 11 P. R. 1877 Cr., 13 P. R. 1877 Cr., 37 P. R. 1905 Cr.
4. Separate sentences of solitary confinement are not illegal, but as a matter of principle more than 3 months should not be awarded to a person convicted at one trial for more than one offence. 1923 L. 104=68 I. C. 817.

3. **When should be ordered.**

1. Solitary confinement cannot be awarded as part of alternative sentence of imprisonment in lieu of fine. 26 P. R. 1873 Cr., 9 P. R. 1882 Cr., 20 P. R. 1869 Cr., 53 P. R. 1887 Cr.
2. Sentence of solitary confinement in case of rigorous imprisonment in lieu of whipping is legal. 14 P. R. 1899 Cr.
3. Solitary confinement can be ordered in a summary trial. 6 A. 83.
4. Magistrate ordered that sentence in trial No. 3 should begin on the expiry of that trial No. 4 but solitary confinement in both cases should run concurrently. Held that cumulative sentences of solitary confinement are illegal. 1 R. 306=192 L. 197=76 I. C. 21.
5. Court cannot order that a sentence of solitary confinement shall be executed in the first week of every month. 5 C. P. L. R. 17=23, 3 P. W. R. 1913 Cr.
6. 'Authorised solitary confinement' without clearly specifying the period of solitary confinement is illegal. 33 P. R. 1869 Cr.
7. District Magistrate cannot supplement a sentence of a subordinate Magistrate by ordering solitary confinement. 38 P. R. 1866 Cr., 79 P. R. 1886 Cr.

SONGS—OBSCENE. S. 294, I. P. C. See Public Nuisance—26.

SORCERY—DEATH BY— See Culpable Homicide—27.

SPECIAL OATH. See False evidence.—30.

Agreement to be bound by the evidence on oath of a certain evidence is ineffectual. 13 B. 389.

SPITTING.

Water can be fouled by spitting. Accused spitting in a public well is guilty under S. 277, I. P. C. 40 I. C. 298=18 Cr. L. J. 650.

SPLEEN.

1. **Enlargement—**

1. A normal spleen measures 5" x 2" x 1". Dr. Modi's "Medical Jurisprudence and Toxicology" at page 85. 1935 O. 381=36 Cr. L. J. 573=154 I. C. 808.
2. In fever-saturated districts the spleen is often much enlarged by disease. Lyon's Medical Jurisprudence, 1901, P. 141.
3. The spleen has two surfaces one external and convex, the other internal and concave; two ends the upper thick and rounded, the lower thin and pointed; and two margins, anterior and posterior, the former often being notched. Among Europeans the spleen measures according to Gray as follows—Europeans—Length 5 inches, Breadth 3—4 inches; thickness 1—1½ inches. Among Indians whose size and weight is usually much less than those of Europeans, the weight

Spleen—(concl'd.)

and dimension should be somewhat less than the above. But in Bengal normal spleens are less common than are enlarged and the average size and weight is greater than those quoted above. "*Lyon's Medical Jurisprudence*", 1904, Page 141, (footnote).

2. Noting size, etc., at Post Mortem Examination.

At the time of post-mortem examination, the doctor should note the size, colour and consistency of the spleen as well as the condition of its capsule. *Dr. Modi on "Medical Jurisprudence and Toxicology"*, 1932, Ed. page 85. 1935 O. 381 (383)=154 I. C. 803=36 Cr. L. J. 573.

3. Period of survival after rupture of—.

Death may occur in a few minutes from shock or not for several days. Chevers mentions one case of survival for five days and another of death on the eighteenth day. Considerable power of locomotion may remain after receipt of the injury. Recovery often follows the removal of a ruptured spleen. *Lyon's Med. Jur.* 1935, P. 214.

4. Rupture of—.

1. Spleen which is enlarged by disease is rendered liable to rupture from very slight violence. Indeed the enlarged spleen sometimes undergoes spontaneous rupture with fatal results without the application of any external violence. Mcleod quoted by Chevers, *Med. Jur.* (P. 162) points out that rupture of spleen is liable to occur in cases of (1) simple engorged spleen, (2) hypertrophied spleen, (3) small hard spleen, (4) large hard spleen. *Lyon's Med. Jur.*, 1904 Ed., P. 141, *Lyon's Med. Jur.*, 1935 Ed., P. 211, *Taylor's Med. Jur.*, 1928, P. 460.

2. Rupture of the spleen may be caused by accidental violence, e.g., a fall or from the sufferer having been run over by a wheeled vehicle. In non-accidental cases it is often the result of a blow or a kick or push against the wall or other hard body, without a weapon. Rupture of spleen may occur without any external marks of violence being present. Rupture even of an apparently healthy spleen, may be unaccompanied by external marks of violence, but in such cases the subcutaneous tissue will probably (but not certainly) show sign of bruising. *Lyon's Med. Jur.*, P. 143.

3. Death may occur in a few minutes or not for several days. Considerable power of locomotion may remain after receipt of injury. In two cases recovery took place after rupture or bruise of the spleen, the diagnosis in one case being confirmed by dissection of the victim, who died several years afterwards *Ibid*, pp. 143-144.

5. Weight of—.

1. The average weight of spleen in an Indian male of U. P. is 6.03 oz., the minimum being 2.5 oz. and maximum being 11 oz. For other provinces also see *Modi's Med. Jur.*, 1932, P. 87. 1935 O. 381 (383)=36 Cr. L. J. 573=154 I. C. 808.

2. Spleen weighing 7 oz. was held to be normal one. 1935 O. 381 (383)=36 Cr. L. J. 573.

3. The average weight of spleen in Indian males is 10½ oz., Indian females 6½ oz., and Europeans is 5—7 oz. *Lyon's Med. Jur.*, 1904, P. 88.

SPY. See Agent Provocateur.

1. Distinction between informer and—, See Accomplice—2.

2. Evidence and privilege of—, See Privilege—5.

SQUEEZING TESTICLES—DEATH BY—. See Testicles.

STAKE HOLDER. See Breach of trust—28.

STAMP ACT (II OF 1899).

S. 62.

1. The mere execution of a document requiring stamp duty without the same being duly stamped is an offence. The question of intention does not enter into S. 62. 1926 A. 389=93 I. C. 694=27 Cr. L. J. 470, 2 C. 399, 31 A. 36, 7 M. 537.

2. Arbitrators signing un-stamped partition deed are liable to prosecution. 1924 O. 240=73 I. C. 336.

Stamp Act (II of 1899)—(concl'd.)

3. For a conviction under S. 62 dishonest intention to avoid payment of stamp duty should be proved. 54 I. C. 406=21 Cr. L. J. 54, *Contra* 1934 A. 201.
4. A document informing the Court of an agreement entered into by party out of Court to compromise a suit does not require a general stamp. 40 A. 19.
5. A receipt for money due under rent decree must be stamped. 31 A. 36, 1933 B. 462.
6. Voucher by one servant to another for money received on behalf of the master does not require stamp of one anna. 42 I. C. 328.
7. Where signatures of the parties were not necessary to complete an arbitration award which was duly signed by the arbitrator, the parties cannot be convicted under S. 62. 32 A. 198.
8. Where the accused is not given any opportunities of plying the duty and penalty and there is nothing to show that he has any criminal intent he should not be convicted. 1921 P. 233=64 I. C. 285=22 Cr. L. J. 766.
9. The mere engrossing of document, requiring stamp on unstamped paper is no offence. 1 B. H. C. R. (Cr. C.) 37, nor mere signing it as witness. 2 B. H. C. R. (Cr. C.) 129.
10. The refusal to give a stamped receipt for money paid is no offence. 1 B. H. C. R. (Cr. C.) 92.

S. 64.

1. Person in whose favour the document is executed is not liable under S. 64-A. 1929 C. 723, 1934 N. 261.
2. Where there is no evidence of the intention of evading the payment of proper duty conviction under S. 64 does not lie. 108 I. C. 427=29 Cr. L. J. 397.
3. Person selling the property ostensibly for Rs. 1,000 while the real consideration was Rs. 1,000, in cash and Rs. 1,900 as deposited with the vendee to be drawn by the vendor, is guilty under S. 64-A. 32 A. 171.
4. Mere non-payment of proper stamp duty does not make a person liable for prosecution under S. 64-A. 45 I. C. 275.
5. The mere fact that a person puts a stamp on the document, which he knows is not of proper value, cannot bring the case within class (c) of S. 64. 64 C. 321, 23 M. 155.

S. 65.

1. Private individuals cannot start criminal law in motion in respect of offences under the Stamp Act. 1927 N. 202=104 I. C. 108.
2. Sanction of the Collector is essential before a Magistrate can try an accused under S. 65. 21 P. R. 1915 Cr., 9 B. 27.

S. 68.

The essential question in a case under S. 68 (c) is whether the act complained of is a device intended to defraud the Government of the duty payable in respect of a document. 40 I. C. 725=21 C. W. N. 758.

S. 69.

Endorsement in sale register by an unlicensed vendor of license is not sufficient evidence of abetment. 1929 S. 118=118 I. C. 206=30 Cr. L. J. 881.

S. 70.

For a prosecution under Ss. 30 and 65 the previous sanction of the Collector is indispensable. 1927 N. 202=104 I. C. 108=28 Cr. L. J. 780.

STANDING COUNSEL.

A standing counsel of a client accepting brief against that client in another suit guilty of professional misconduct. 1930 P. C. 60=112 I. C. 4=34 C. W. 432.

STATE OF MIND OF THE ACCUSED. S. 14, Evidence Act. *See Similar Act, Conduct.*

*State of Mind of the Accused—(concl'd.)***1. Agitated—**

The fact that accused was in agitated state of mind soon after the crime and pointed out places where weapons were concealed, makes the crime highly probable. 1925 M. 574 (2)=26 Cr. L. J. 840.

2. Evidence of—

To judge what the real state of mind of a person on a previous occasion was, the surrounding circumstances and subsequent events can be referred to. 1931 P. 52=32 Cr. L. J. 478=130 I. C. 269.

3. Previous conviction.

1. Evidence of previous conviction is not admissible to prove state of mind but amounts to evidence of bad character and therefore inadmissible. 60 I. C. 331, 27 C. 139, 5 P. L. J. 706, 1 C. W. N. 146.
2. Conviction for dacoity 25 years old is admissible to prove that accused is a man of criminal tendencies to commit theft and who may be a member of gang of thieves. 1925 B. 195=89 I. C. 527, 38 C. 403, 14 Bom. L. R. 373
3. Evidence of previous conviction is admissible under S. 400, I. P. C., to prove habit and association 1930 O. 455=128 I. C. 739.
4. Previous convictions are relevant under S. 14, Exp. (2). But the conviction of accused rests exclusively on the evidence adduced by the prosecution. 18 P. L. R. 1910

4. Statement by accused after the offence

A statement by an accused person immediately after the offence is relevant as showing his state of mind, but a repetition of what some other persons said to the accused, by the accused, is not relevant. 1924 L. 733=81 I. C. 717=25 Cr. L. J. 1005.

5. Statement of co-accused.

Statements implicating co-accused but not implicating maker, are inadmissible. Parts of such statement are admissible against maker as indicating knowledge on his part. 120 I. C. 81=30 Cr. L. J. 1121=1929 S. 250.

STATEMENT.

1. After, before or during transaction See S. 6, Ev. Act
2. Contradictory— See False evidence—9
3. False—in a petition. S. 182, I. P. C. See False information—12.
4. False—to save one's self See False information—11
5. In Court by Counsel, Judge, parties and witnesses See Defamation—44.

No statement of Counsel about relevant facts can be accepted unless he is examined as witness. 1935 N. 69=17 N. L. J. 189.

6. Of accused See Accused—10, Examination of accused
7. Of witness. See Examination of witness.
- 7-A. Out of Court See Extra Judicial information.
8. Recording of accused S. 364 See Examination of accused, Confession (recording of).
9. Self exculpatory See Confession by co-accused.
10. To Police See Statement of Police.
11. To Magistrate during investigation See Statement to Magistrate during investigation

STARVATION See Murder—32 A

1. *Accidental.*—The most common causes of accidental starvation are shipwreck, mining accidents, disease, famine and want as in the case of labourer thrown out of employment. *Lyon's Med. Jur.*, 1955, P. 359
2. *In homicidal cases*—The victim is usually an infant or a child. In fatal cases the

Starvation—(concl'd.)

body should be carefully examined for signs of disease, specially chronic wasting disease. In non-fatal cases unusually low body-weight, coupled with a rapid gain in weight when proper nourishment is administered, is very strong evidence in favour of starvation. *Ibid*, P. 340.

3. *Post-mortem appearances.*—The post-mortem appearances are chiefly great emaciation and shrunken and contracted condition of the stomach and intestines with pale, pearly and translucenced coats, etc. In some cases it will be difficult to form a definite opinion as to whether death was due to disease or starvation. *Ibid*, P. 339.
4. *Time and rapidity of death.*—Total deprivation of food and water will kill in 10 to 15 days. Chronic starvation, though not totally deprived of food may be spread over months. Death in these cases is brought about by some inter-current disease. Old persons bear deprivation of food better than adults and adults bear it better than children. Fat people bear deprivation of food best. Complete abstinence from both food and water kills more rapidly than abstinence from food alone. *Ibid*, pp. 338-339

STATEMENT OF INJURIES.

- A copy of statement of injuries recorded in the register of medico-legal cases may be used by the medical witness for the purpose of refreshing his memory, but it cannot be treated as evidence. 1926 L. 51=89 I. C. 458, 9 C. 455.

STATEMENT RECORDED BY MAGISTRATE DURING INVESTIGATION. S. 164, Cr. P. C. See Confession or Statement (Recording of.)

1. S. 164 does not enable the Police Officer to send a person to a Magistrate Practically under custody to have him examined, for fixing him down to that statement in subsequent judicial proceedings 27 C. 295.
2. A statement must be recorded during the investigation and before the commencement of inquiry or trial. 31 C. 467.
3. The person making a statement is a witness and oath must be administered to him. A charge of perjury under S. 193 can be framed against the person making false statement. 16 M. 421, 1908 A. W. N. 73, 29 M. 89. 1933 M. 125=34 Cr. L. J. 92, 45 B. 834 Not foll.
4. A statement can be recorded by a Magistrate although he had no jurisdiction in the case. 29 C. 483.
5. S. 164 does not empower a Police officer to compel a witness to go to a Magistrate not competent to deal with the case 29 C. 483.
6. When the witness is likely to be gained over by the accused, the proper course is to send the accused and the witness to the Magistrate having jurisdiction without delay. 29 C. 483.

STATEMENT TO MAGISTRATE OUT OF COURT.

- If a statement is made to Magistrate out of Court, it is improper for him to rely upon it. 14 B. 572.

STATEMENT TO POLICE. S. 162, Cr. P. C. See Diary, Examination of witness—4.**1. Admissibility of—**

1. Statement of approver to the Police before he is tendered pardon, is a previous statement of a witness and can be used to corroborate and contradict him. 9 L. 389=1928 L. 257=108 I. C. 167.
2. List of stolen property handed over to Police during investigation is inadmissible. Its admission causes misdirection to jury and the sentence should be set aside. 1929 C. 448=120 I. C. 458=31 Cr. L. J. 127. But if it was given before investigation started, it is admissible. 131 I. C. 72.
3. The accused was charged under S. 46, Excise Act. A statement was made by his co-accused to the Excise Inspector to the effect that, as soon as Excise Inspector came, there was a man with him who ran away. Held, that it was not a statement to Police and therefore admissible. 1930 C. 710=52 C. L. J. 177, 1927 C. 17.

4. A statement to the Police after the Police have commenced investigation should not be treated as first information report and is inadmissible except for purposes mentioned in S. 162, Cr. P. C. 1923 P. 634=110 I. C. 584=29 Cr. L. J. 723.
 5. Evidence of Police Officer that certain accused were identified by prosecution witnesses in an identification parade is not inadmissible in evidence under S. 162, as their evidence does not relate to any statement made to the Police but is simple exposition of a fact or circumstances witnessed by themselves. 1929 N. 36=112 I. C. 51=29 Cr. L. J. 953.
 6. The investigating officer is not debarred from making explanatory remarks in reference to his own conduct even though it may inferentially have reference to the statements of witnesses and their admissibility is not to be questioned. 1929 C. 298=119 I. C. 139=56 C. 110b.
 7. A telegram was sent to the Police that an offence has been committed. The Police Officer went to the spot and recorded the statement of the person sending the telegram. Held, that the statement was not taken in the course of investigation and was admissible as F. I. R. 1923 M. 791=110 I. C. 461=29 Cr. L. J. 771.
 8. S. 162 does not prohibit the use of statements made to a Police Officer in the course of investigation, in proceedings under S. 476, Cr. P. C., in cases where the alleged offence which is under consideration under S. 476, was not under investigation at the time when the statements were made. 1927 K. 113=28 Cr. L. J. 433.
 9. No statement made to the Police by any person whether accused or witness, during an investigation can even be mentioned in evidence except as under S. 162. 1926 N. 368=27 Cr. L. J. 731, 1926 C. 550, 1926 C. 320, 1925 C. 161
 10. Statement to the Police whether oral or written cannot be used to corroborate a prosecution witness or contradict a defence witness. 1924 B. 510=83 I. C. 1007=26 Cr. L. J. 223, 4 R. 72, 1933 P. 589=147 I. C. 142
 11. Statement of a Police officer what a witness said or did not say to him is inadmissible. 1923 L. 507=108 I. C. 162=29 Cr. L. J. 343
 12. Statements to Police can only be used for contradicting the prosecution witnesses. 8 L. 605=1928 L. 17=105 I. C. 807=28 Cr. L. J. 983.
 13. S. 162 does not prevent prosecution, after a witness has made a statement, from asking simply whether he made that statement to the Police or when a witness has made a statement in his evidence, from asking the Police Officer whether in fact the witness made that statement to him. 4 P. 204=1925 P. 450=27 Cr. L. J. 524.
 14. In the course of an investigation a Police Officer recorded in his diary statement of villagers. He was subsequently murdered and the diary was sought to be used. Held, it was admissible under S. 32 (2) of the Evidence Act and S. 162 did not prohibit its use. 1932 A. L. J. 301
 15. A first information report given by A can be used against him in a subsequent proceeding against him under Ss. 192-193 and 211, I. P. C. S. 162 is a no bar to its use. 1931 C. 637=134 I. C. 1265=35 C. W. N. 838.
 16. Statement by one accused to Police is not admissible against co-accused. 1922 A. 24=65 I. C. 849=23 Cr. L. J. 193.
 17. Identification of a person amounts to a statement and therefore inadmissible. 1921 A. 215, 1925 C. 161. 1935 C. 311 *Contra* 1929 N. 36.
2. Application for—copy of—may be oral.
- A Magistrate cannot insist on a written application for the supply of copies of Police statement, an oral request being sufficient. Insistence on written application for refusing copies on any other pretext is a good ground for transfer of the case. 1932 A. 737=123 I. C. 685=31 Cr. L. J. 555.
3. By accused See First Information Report—Confession to Police Officer
1. S. 162 does not apply to statements made by accused but applies only to statements made by witnesses. 1933 A. 440=55 A. 463, 1 L. 84, 1934 L. 695, 16 P. R. 1876, 63 L. J. 100, 1934 L. 232, 54 C. 237, 1930 C. 710, 1923 C. 298=56 C. 110b (1923) 1923 N. 36, 1926 R. 116, 1933 N. 136, 1928 N. 103. 1925 S. 237=275, 1925 L. 137 I. C. 9.

Statement to Police—(contd.)

2. Statements made by accused to Police Officer before his arrest are inadmissible and the investigating officer cannot be made to disclose them in his examination as Prosecution evidence. 1926 N. 1=91 I. C. 945=27 Cr. L. J. 161.
3. It is wrong for a Judge to allow Police report containing the statement of the accused regarding the place of crime to be exhibited and to refer to the report in his judgment. 1930 S. 305=1930 Cr. C. 1142.
4. An accused did not know the contents of the previously made statement by another co-accused, he did not know that he was being charged with any offence. He had not in fact been charged with any offence nor was he in custody and under such circumstances he made a statement. Held, the statement was a mere admission and admissible against the accused but not against his co-accused. 1928 P. 473=111 I. C. 721=29 Cr. L. J. 913.
5. A Police Officer has no power to require the attendance of or to examine under Ss. 160-161 a person accused of the offence under investigation. 4 R. 72=1926 R. 116=96 I. C. 145, 27 C. 295, 4 Bom. L. R. 644.
6. Any incriminating statement to Police made by an accused person would be excluded at the trial under S. 25, Ev. Act. 1925 S. 237=26 Cr. L. J. 778.
7. Where a driver of a motor-car driving without license, when asked for his name by the Superintendent of Police gave a wrong name. Held, that he was not holding an investigation and the question put to the driver was not under S. 161, Cr. P. C., so as to give him the benefit of S. 162. 1929 P. 4=113 I. C. 587.
8. An accused stated before Police that another accused is also in possession of stolen property, the statement is inadmissible in evidence. 1922 A. 24.
9. Confession recorded by Magistrate at the thana at night is most improper. 1932 L. 204=136 I. C. 19.
10. A statement made by accused to the Police immediately after they were seized explaining the circumstances which brought them to the scene of crime, when at variance with that made by them in Sessions Court, is admissible as showing that conduct of the accused was not that of innocent persons. 25 S. L. R. 391, 20 S. L. R. 74 foll.
11. A statement made by accused to the Police in the course of investigation immediately after the accused pointed out to the Police the place where the jewels worn by the murdered boy were hidden, is not admissible in evidence though it may materially assist the defence, though it is open to the accused to repeat that statement in Court and call witnesses to support that statement. 1931 M. 779.
12. Accused told the Police Officer that he got the bundle of ammunition from the co-accused. Held, that it is inadmissible under S. 25, Evidence Act. 46 B. 961.
13. A statement by one accused to Police is not admissible against co-accused. 1922 A. 24=65 I. C. 849=23 Cr. L. J. 193.
14. S. 162 excludes any statement to Police made by any person, whether accused or witness, during an investigation. 1926 N. 368=95 I. C. 59=27 Cr. L. J. 731, 1926 C. 350=92 I. C. 174 *Contra* 1929 N. 17=114 I. C. 273, 51 M. 967, 1926 L. 88.
15. S. 162 does not apply to the statement of an accused person and it does not override the provisions of S. 27, Evidence Act. 7 L. 84=1926 L. 88=27 P. L. R. 583.
16. A statement made by an accused to the Police may be proved if it is not a confession and if it is confession, it is admissible under S. 27 if a fact is discovered in consequence of information 34 C. 237=1927 C. 17=99 I. C. 227=28 Cr. L. J. 99.
17. S. 162 refers only to statements made by witnesses and not to statements by an accused person. 1935 N. 125 (2)=155 I. C. 258=36 Cr. L. J. 740, 1927 N. 17=114 I. C. 273=30 Cr. L. J. 258.
18. Statement of the accused to Police that his name was introduced as conspirator on account of enmity, can be proved at the trial and is admissible under S. 8 and 21 (iii) of Evidence Act. 1935 S. 145 (164-165)=1935 Cr. C. 733.
19. Statements by accused under arrest in Police investigation are not excluded under S. 162. 1933 N. 136=34 Cr. L. J. 505, 1926 P. 232=5 P. 63, 1926 L. 88=7 L. 84, 1926 R. 116=27 Cr. L. J. 881, 54 C. 237=1927 C. 17, 51 M. 967=1928 M. 1023. *See* 1932 M. 391=55 M. 903.

Statement to Police—(contd.)

20. Where the accused prays that all the statements made by accused, other than those exhibited in Court, be produced, they ought to be produced. The counsel is entitled to benefits of points he can make out of comparison of the statements with oral evidence of witnesses 1936 P. C. 242.

21. Placing before jury statements by accused to Police amounts to misdirection. 1934 C. 151.

4. By Approver.

A statement by approver to Police is inadmissible except as provided by S. 27, Ev. Act. 1924 A. 207, 9 L. 389, 1930 P. 510. The discrepancies between the statement of witness and approver cannot be explained by referring to the evidence of approver before Police. 1934 L. 102

5. By Criminal Investigation Department.

When in a case the sanction of Government is necessary under S. 197, Cr. P. C., a confidential enquiry was made by an officer of Criminal Investigation Department before such sanction was granted or before enquiry was directed by the Magistrate. The statements of witnesses were recorded by him and by a Magistrate. Held, that statements recorded by Criminal Investigation Department are not statements under S. 162, nor were the statements recorded by Magistrate under S. 164, Cr. P. C. 1927 B 501=106 I. C. 100=28 Cr. L. J. 1012.

6. By inducement, threat, etc. S. 163, Cr. P. C.

1. As to what is inducement or not *see*.—Confession by inducement.

2. Police Officer should not extract information by using force. Such evidence is useless. 17 Cr. L. J. 351.

7. Consent to the use of—

Consent or desire of the accused cannot legalize the procedure of using Police diaries as evidence in the case either for or against the accused 1925 O. 1=25 Cr. L. J. 49

8. Contradiction—omission.**A. Mode of proving—**

1. It is only what is written in the Police diaries that can be used under S. 145, Evidence Act, to contradict the witness. The way to prove those portions, specifically put to the witness, is for the accused to mark the passage or passages in the copy from the Police diary supplied to him and then ask the writer of the statement to say that it is true copy. 1928 L. 507=108 I. C. 162=29 Cr. L. J. 343.

2. The only way to contradict a witness is to prove his statement and put it to him under S. 145, Evidence Act, to permit him to explain the contradiction, if any. Statements made to Police cannot be used in any other way. 8 L. 605=1928 L. 17=105 I. C. 807=28 Cr. L. J. 983=28 P. L. R. 649.

3. If a witness admits to have made the statement, the previous statement in writing need not be proved. If he denies and it is intended to contradict him, the relevant portions of the record contrary to his statement in Court must be read to him and witness should be given the opportunity to reconcile the same. It is only after this is done that the record of previous statement becomes admissible in evidence and then be proved according to law. 11 L. 460=1930 L. 491=31 Cr. L. J. 1071=31 P. L. R. 797

B. Omission if— See—C. (below)**C. What can be contradicted— Omission**

1. Where accused is not allowed to cross-examine a witness with reference to certain omissions in his statement to Police and statement in Court, it must be left to the Court to decide, whether in a particular case omission amounts to contradiction. 9 L. 389=1928 L. 257=108 I. C. 167=29 Cr. L. J. 348. See 53 C. 980, 1932 L. 103=135 I. C. 209.

2. If the contradiction consists in this that a statement made at the trial was not made in any part of the statement to the Police, it can be proved. 5 P. 346=1926 P. 362=95 I. C. 396=27 Cr. L. J. 796.

Statement to Police—(contd.)

3. Statements attested by the Sub-Inspector concerned, although recorded in his diary are recorded under S. 162 and can be used for the purpose of contradicting witnesses in cross-examination. 1927 O. 321=104 I. C. 242=28 Cr. L. J. 802.
4. A statement which has been admitted in evidence under S. 32, Evidence Act, may be contradicted by another statement of the same person made to Police during investigation. 1926 L. 122=89 I. C. 897=26 Cr. L. J. 1425.
5. A written statement which has been admitted in evidence under S. 32, Evidence Act, may be contradicted by another statement of the same person made to Police during investigation. 1926 L. 122=26 Cr. L. J. 1425=89 I. C. 897.
6. It is not permissible to ask investigating officer whether witness stated or did not state to him a particular matter for a witness can be discredited only by proving what is or what is not contained in the duly proved record of his statement. 1931 C. 622, 56 M. 475, 1928 R. 150, 1928 A. 230, 1923 L. 507, 8 L. 605, 7 L. 264, 6 L. 24 *Contra* 1931 P. 152=10 P. 107. But see 1933 P. 580 and 1924 B. 510.
7. A statement under S. 162 cannot be used during an inquiry or trial in order to show that a witness is making statements in the witness box which he did not make to the Police. 1933 M. 372 (2=56 M. 475. 1932 L. 103 and 1926 P. 20 Rel. on. 1926 P. 362 Expl. 16 A. 207 Ref.
8. A witness cannot be confronted with the unwritten record of an unmade statement. All omissions are not necessarily contradictions. 1932 L. 103 (110). 1928 L. 257=9 L. 389 Ref.
9. Silence may be full of significance but it is not 'diction' and therefore it cannot be 'contradiction'. 1933 M. 372 (2) at page 373=56 M. 475.
10. Disallowing cross-examination as to the statements which witnesses never made to Police, was to draw the attention of the witness to the omission and seek their explanation, is erroneous 1933 N. 136 (144)=34 Cr. L. J. 505, 1931 P. 152=32 Cr. L. J. 797, 10 P. 107.
11. Omission of some detail does not mean that it was not stated, because the diaries are notoriously condensed 1933 P. 440, 1933 P. 589=147 I. C. 142.

D. What portions to form part of Judicial Record.

1. Only those portions of statement to Police are parts of judicial record, as have been actually used under S. 162 for contradicting the witnesses in the manner provided by S. 145, Evidence Act. The other parts cannot be relied upon by prosecution or defence. 1930 L. 449=121 I. C. 66=31 Cr. L. J. 199.
2. Entries in Police diaries can be used for a limited purpose of contradicting the prosecution witnesses. Reference by a Magistrate to Police proceedings cannot be justified even under S. 172. 1928 L. 820=109 I. C. 821=29 Cr. L. J. 493.

E. Who can be contradicted. See—15

1. Only a witness called by the prosecution can be contradicted by a Police statement. 8 L. 605=1928 L. 17=28 Cr. L. J. 983=105 I. C. 807.
2. A statement to Police cannot be used to contradict a defence witness. 1924 B. 510=21 Cr. L. J. 223, 4 R. 72, 31 Cr. L. J. 689=1930 O. 60, 124 I. C. 444.
3. A Court witness cannot be contradicted by Police statement. 1927 L. 713=104 I. C. 444=28 Cr. L. J. 828.

9. Copies of— See—20-21.

1. The effect of amendment of S. 162 is to make it obligatory on the Court to give the accused copies of the statements subject only to the exclusion of irrelevant matters which in the public interest should not be disclosed. 54 C. 307, 6 R. 672=115 I. C. 899=1929 R. 87, 7 P. 205=1928 P. 215=107 I. C. 817.
2. The application for copies should not be refused on the mere ground that it might not help the defence or that possibly there was no contradiction. 1927 P. 325=102 I. C. 773=28 Cr. L. J. 597
3. There is nothing in S. 162 to authorise the Court to look into the statement in the Police diary for the purpose of finding out whether it is contradictory to the

Statement to Policy—(contd.)

statement made in Court or not before granting the application for copy. That is the function of the lawyer for the accused. 8 P. 279=1929 P. 268=118 I. C. 130=30 Cr. L. J. 858, 56 C. 840, 1928 P. 215, 1930 S. 153=123 I. C. 689.

4. A copy of J's statement was applied for. The Court referred to the diary and found that his statement was recorded jointly with another prosecution witness who was tendered for cross examination but was not cross-examined. Held, that Court could refuse to supply the copy under these circumstances. 1930 L. 457=122 I. C. 491=31 Cr. L. J. 444.
5. Accused is entitled to get a copy of the statement of an approver made to the Police before he was tendered pardon. The statement can be used to contradict or corroborate him 9 L. 389=1928 L. 257=108 I. C. 167=29 Cr. L. J. 348.
6. Where a witness was tendered by the prosecution but was discharged without being examined or cross examined, the accused is not entitled to a copy of his statement. 7 P. 153=1929 P. 34=114 I. C. 220=30 Cr. L. J. 273.
7. Where the Lower Court wrongly refuses to furnish a copy of prior statement of a witness, the proper course in appeal is to furnish the counsel with a copy and any contradiction between that statement and those made by the witness should be taken as left unexplained by him. Each case must be decided on its own facts whether the trial is vitiated or can be remedied as indicated above. 9 L. 389=1928 L. 257=108 I. C. 167=29 Cr. L. J. 348.
8. Accused must be supplied with copies of statements when he applies after charge for the purpose of further cross examination. If the copies are not supplied, the appellate Court will remand the case and allow the copies to the accused. 1929 N. 240=119 I. C. 675=30 Cr. L. J. 1097, 1935 N. 23.
9. Where the accused was furnished with materially inaccurate copies of the statements of witnesses and on discovering the mistake he applied to have the witness recalled for the purpose of re-cross-examination in order to impeach his credit. Held, that he is entitled to recall the witness. 21 Cr. L. J. 289.
10. Accused can apply even at a late stage to be furnished with copies. 33 C. 1023.
11. Superintendent of Police held a preliminary investigation, in the course of which he recorded the statements of several persons and proceedings were started under S. 107, Cr. P. C. Held, that S. 162 did not apply to S. 51 (1) (b) of the Bombay District Police Act. 1932 B. 196=34 Bom. L. R. 258.
12. The trial was vitiated when accused was not given copies. 53 A. 458.
13. There is no justification for imposing on the defence a condition for obtaining copies under S. 162 that he should by cross-examination lay foundation for the suggestion that the evidence given in Court is contradicted by his statement made to the Police. 53 A. 94.
14. S. 162 is imperative and Magistrate has no discretion to decide whether there is any contradiction or not and then to grant a copy if contradiction exists. 12C I. C. 267=1931 A. 273=32 Cr. L. J. 370.
15. A copy of joint statement of witness can be refused. 1932 C. 375.

10. Delay in making— See Delay—2 -12.

If witnesses are not examined for two months, although approver disclosed their names, their testimony stands discredited. 1934 L. 346

10-A. Delay in recording— See Delay—22.

11. Departmental Inquiry.

Statements made by witnesses in the course of a departmental inquiry into the conduct of Police Officers are not excluded under Ss. 123-125, Evidence Act and Ss. 162, 172, Cr. P. C. The accused is entitled to see statement. 1935 S. 13=154 I. C. 762=36 Cr. L. J. 581, 1933 M. 65=56 M. 154=141 I. C. 276=34 Cr. L. J. 137 and 15 I. C. 77=13 Cr. L. J. 445. Rel' on, 40 C. 898, 1 L. 410, 1930 O. 505, 1927 B. 501.

12. Examination of witnesses by Police. See Examination of witness—4.

*Statement to Police—(contd.)***12-A. During investigation.**

1. A statement made during investigation cannot be used. If it is made before or after the investigation it can be used. 1926 R. 116=4 R. 72, *e.g.*, F. I. R. etc. 1933 L. 987, 57 B. 400, 1928 P. 634, 1935 Pesh. 165, 2 P. 517, 58 C. 1312, 1930 C. 130.
2. Statement made to a Police officer while acting under S. 174 Cr. P. C. is one made during investigation. 16 L. 345, 1927 M. 512.
3. In a case of murder arising as a result of suspicion in the mind of Police Officer, the investigation starts when he forms opinion to proceed. 1936 R. 455.

12-B. During investigation of different offence.

1. Statement to Police during investigation of offence different from one under trial can be used by accused for cross-examination. S. 162 or its proviso does not apply. 1933 M. 65 (1)=56 M. 154=34 Cr. L. J. 137.
2. A girl abducted from Moradabad was found at Delhi by a constable who reported the matter to Police. Sub-Inspector Delhi recorded her statement. Held it fell under S. 162 Cr. P. C. as Delhi Sub-Inspector had jurisdiction to investigate the case by virtue of S. 156 (1) and S. 181 (4) Cr. P. C. 1933 A. 665=1933 Cr. C. 1145.
3. Oral statement to Police during investigation can be used at a trial for an offence not under investigation when they were made. 1936 L. 359, 56 M. 154=1933 M. 65 Ref
4. S. 172, Cr. P. C., does not forbid a recorded statement to be used at a trial for an offence not under investigation when it was made. 1936 L. 359, 17 P. R. 1894 Foll. 1933 L. 498=34 Cr. L. J. 454 Ref.

12-C. Dying declaration.

Dying declaration is exempt from the operation of S. 162. 1923 C. 463, 1930 L. 60, 1932 L. 14, 1931 M. 430, 1922 P. 40.

13. False. See False information—13-A.**14. Inquest report. See Inquest.**

Inquest report mentioned that none of the people examined could give any clue to the murder, later they deposed to alleged confession of accused. Held, accused was entitled to copy of inquest report and cross-examine those witnesses, and that inquest report did not fall under S. 161 Cr. P. C. 1933 C. 861=147 I. C. 1007.

15. Investigating officer.

1. S. 162 does not prevent a investigating officer from explaining his conduct by making a statement, "that at that time I did so and so I had received no information to such and such effect." 1931 L. 177=131 I. C. 276 (2)=32 Cr. L. J. 682.
2. If it is desired to show that witnesses for prosecution made divergent statements before Police and the Judge, the defence must prove it through the investigating officer the record of the statement. 1931 C. 622=134 I. C. 763=32 Cr. L. J. 1245.

16. Joint statement.

1. The counsel for defence asked to be allowed to use certain statements made by the witnesses to Police. The Judge called for diaries and found that a joint statement of witnesses and others was recorded there. Held, that Judge could refuse an application under S. 162 it being a joint statement. 1932 C. 375=33 Cr. L. J. 725, 1930 L. 457.
2. If a Police Officer when examining B who repeats what A had stated writes that "B corroborates A", accused is entitled to get copies of statements of A and B and can contradict B by the statement of A. 1927 P. 325, 1933 C. 861.

17. List of stolen property if—

1. List of stolen property handed over to Police during investigation is inadmissible. Its admission causes misdirection to jury and so the conviction should be quashed. 1929 C. 448, 1932 L. 488, 1925 C. 959. But see 1933 L. 987, 1931 C. 74.
2. List of stolen property prepared in the presence of a Police Officer before the actual investigation begins, is admissible and is not excluded under S. 162, Cr. P. C. 1931 O. 33=131 I. C. 72=32 Cr. L. J. 630.

Statement to Police—(contd.)

3. List of stolen things given to supplement F. I. R. is admissible. 1933 L. 987.
 4. Failure to observe provisions of S. 162 amounts to irregularity curable under S. 537. Generally refusal to supply copies of statement of material prosecution witness occasions substantial failure of justice. 1935 S. 145 (178)=1935 Cr. C. 753. 45 A. 124=1923 A. 81=24 Cr. L. J. 67, 54 B. 934=1930 B. 595 and 1927 P. C. 44=100 I. C. 227, 35 C. 61 Ref. See 20 C. 642.
 5. For non-compliance of the provisions of S. 162, a retrial should be ordered. 1935 S. 145.
 6. Consent of parties will not render the evidence admissible. 1923 L. 630, 1931 P. 345, 1926 P. 211.
 7. Mere infringement of the mandatory provisions of S. 162 is not sufficient to hold that Court has failed to administer justice. It must go to the root of trial and must in effect vitiate proceedings. 1935 R. 98=13 R. 1=155 I. C. 66, 1927 P. C. 44=5 R. 53, 53 M. 937=1930 M. 857, 1932 A. 681=54 A. 1002, 54 B. 934=1930 B. 595, 10 L. 794=1930 L. 318=31 Cr. L. J. 343, 25 M. 61 and 45 A. 124=1923 A. 81 Ref.
- 18. No Police statement—effect of—**
1. Statement made at the trial only and not before Police in the investigation should not be believed. 54 P. L. R. 1916=34 I. C. 1004.
 2. A Police Officer can say that he got no information to such and such effect. 1931 L. 177=32 Cr. L. J. 682.
- 19. Non-compliance with S. 162, Cr. P. C.—Failure to supply copies.**
1. Non-compliance with the provisions of S. 162, Cr. P. C., does not vitiate trial, unless it has caused prejudice to the accused. 1932 L. 103=135 I. C. 209, 1930 B. 595, 1927 B. 531, 55 B. 435, 16 C. 610, 7 L. 254, 10 L. 794, 1926 P. 20=211.
 2. The power of the Judge under S. 165, Evidence Act, cannot be exercised for the purpose of introducing evidence in contravention of S. 162, Cr. P. C., where the Judge put some statements to a witness for contradicting him, although they were not proved, the procedure vitiated the trial. 58 C. 1009=1931 C. 189=32 Cr. L. J. 841.
 3. The trial was vitiated when Judge refused to give copies. 53 A. 455.
- 20. Object and scope of S. 162.**
1. The provisions of S. 27, Evidence Act, are quite independent of those of S. 162, Cr. P. C., and the amended section 162 does not in any way affect S. 27. 1927 N. 17=114 I. C. 273=30 Cr. L. J. 258, 7 L. 84=1925 L. 68, 1925 R. 112=94 I. C. 705, 1925 M. 574=85 I. C. 664, 1925 N. 103, 51 M. 967, 1927 C. 17, 55 M. 903=1932 M. 391, 1933 A. 440.
 2. S. 1(2) of Cr. P. C. lays down that nothing contained in the Act shall apply to Bombay Police. Therefore S. 162 does not exclude a statement before a Bombay Police Officer from being proved, except in so far as it is inadmissible under the Bombay City Police Act, 1902. 54 B. 525=1930 B. 155=31 Cr. L. J. 1003.
 3. Ss. 162 and 172 do not apply to Calcutta Police. 1929 C. 257=116 I. C. 160.
 4. S. 162 applies to witnesses and not the accused. 115 I. C. 355=30 Cr. L. J. 916, 7 L. 84, 1927 C. 17, 51 M. 967, 1925 N. 103=105 I. C. 442.
 5. S. 162 applies to a case started on complaint. 1927 N. 24=99 I. C. 46=23 Cr. L. J. 14.
 6. S. 162 applies to persons called by prosecution and not to Court witnesses. 1927 L. 713=104 I. C. 444=25 Cr. L. J. 525.
 7. The first information report is not a statement within the contemplation of S. 162 because it is not made in the course of investigation. 54 C. 237=1927 C. 17=25 Cr. L. J. 99.
 8. For the application of S. 162 there must be a statement which is capable of being recorded. If a witness says "I did not make any statement to the Police" it cannot be a statement under S. 162. 53 C. 656=100 I. C. 353=1927 C. 257=25 Cr. L. J. 273.

*Statement to Police—(contd.)***12-A. During investigation.**

1. A statement made during investigation cannot be used. If it is made before or after the investigation it can be used. 1926 R. 116=4 R. 72, *e.g.*, F. I. R. etc. 1933 L. 987, 57 B. 400, 1928 P. 634, 1935 Pesh. 165, 2 P. 517, 58 C. 1312, 1930 C. 130.
2. Statement made to a Police officer while acting under S. 174 Cr. P. C. is one made during investigation. 16 L. 345, 1927 M. 512.
3. In a case of murder arising as a result of suspicion in the mind of Police Officer, the investigation starts when he forms opinion to proceed. 1936 R. 455.

12-B. During investigation of different offence.

1. Statement to Police during investigation of offence different from one under trial can be used by accused for cross-examination. S. 162 or its proviso does not apply. 1933 M. 65 (1)=56 M. 15+=34 Cr. L. J. 137.
2. A girl abducted from Moradabad was found at Delhi by a constable who reported the matter to Police. Sub-Inspector Delhi recorded her statement. Held it fell under S. 162 Cr. P. C. as Delhi Sub-Inspector had jurisdiction to investigate the case by virtue of S. 156 (1) and S. 181 (4) Cr. P. C. 1933 A. 665=1933 Cr. C. 1145.
3. Oral statement to Police during investigation can be used at a trial for an offence not under investigation when they were made. 1936 L. 359, 56 M. 154=1933 M. 65 Ref
4. S. 172, Cr. P. C., does not forbid a recorded statement to be used at a trial for an offence not under investigation when it was made. 1936 L. 359, 17 P. R. 1894 Foll. 1933 L. 498=34 Cr. L. J. 454 Ref.

12-C. Dying declaration.

Dying declaration is exempt from the operation of S. 162. 1923 C. 463, 1930 L. 60, 1932 L. 14, 1531 M. 430, 1922 P. 40.

13. False. See False information—13-A.**14. Inquest report. See Inquest.**

Inquest report mentioned that none of the people examined could give any clue to the murder, later they deposed to alleged confession of accused. Held, accused was entitled to copy of inquest report and cross-examine those witnesses, and that inquest report did not fall under S. 161 Cr. P. C. 1933 C. 861=147 I. C. 1007.

15. Investigating officer.

1. S. 162 does not prevent an investigating officer from explaining his conduct by making a statement, "that at that time I did so and so I had received no information to such and such effect." 1931 L. 177=131 I. C. 276 (2)=32 Cr. L. J. 682.
2. If it is desired to show that witnesses for prosecution made divergent statements before Police and the Judge, the defence must prove it through the investigating officer the record of the statement. 1931 C. 622=134 I. C. 763=32 Cr. L. J. 1245.

16. Joint statement.

1. The counsel for defence asked to be allowed to use certain statements made by the witnesses to Police. The Judge called for diaries and found that a joint statement of witnesses and others was recorded there. Held, that Judge could refuse an application under S. 162 it being a joint statement. 1932 C. 375=33 Cr. L. J. 725, 1930 L. 457.
2. If a Police Officer when examining B who repeats what A had stated writes that "B corroborates A", accused is entitled to get copies of statements of A and B and can contradict B by the statement of A. 1927 P. 325, 1933 C. 861.

17. List of stolen property if—

1. List of stolen property handed over to Police during investigation is inadmissible. Its admission causes misdirection to jury and so the conviction should be quashed. 1929 C. 448, 1932 L. 488, 1925 C. 959. But see 1933 L. 987, 1931 O. 74.
2. List of stolen property prepared in the presence of a Police Officer before the actual investigation begins, is admissible and is not excluded under S. 162, Cr. P. C. 1931 O. 33=131 I. C. 72=32 Cr. L. J. 630.

Statement to Police—(contd.)

3. List of stolen things given to supplement F. I. R. is admissible. 1933 L. 987.
4. Failure to observe provisions of S. 162 amounts to irregularity curable under S. 537. Generally refusal to supply copies of statement of material prosecution witness occasions substantial failure of justice. 1935 S. 145 (178)=1935 Cr. C. 753. 45 A. 124=1923 A. 81=24 Cr. L. J. 67, 54 B. 934=1930 B. 595 and 1927 P. C. 44=100 I. C. 227, 35 C. 61 Ref. See 20 C. 642.
5. For non-compliance of the provisions of S. 162, a retrial should be ordered. 1935 S. 145.
6. Consent of parties will not render the evidence admissible. 1923 L. 630, 1931 P. 343, 1926 P. 211.
7. Mere infringement of the mandatory provisions of S. 162 is not sufficient to hold that Court has failed to administer justice. It must go to the root of trial and must in effect vitiate proceedings. 1935 R. 98=13 R. 1=155 I. C. 66, 1927 P. C. 44=5 R. 53, 53 M. 937=1930 M. 857, 1932 A. 681=54 A. 1002, 54 B. 934=1930 B. 595, 10 L. 794=1930 L. 318=31 Cr. L. J. 343, 25 M. 61 and 45 A. 124=1923 A. 81 Ref.

18. No Police statement—effect of—

1. Statement made at the trial only and not before Police in the investigation should not be believed. 54 P. L. R. 1916=34 I. C. 1004.
2. A Police Officer can say that he got no information to such and such effect. 1931 L. 177=32 Cr. L. J. 682.

19. Non-compliance with S. 162, Cr. P. C.—Failure to supply copies.

1. Non-compliance with the provisions of S. 162, Cr. P. C., does not vitiate trial, unless it has caused prejudice to the accused. 1932 L. 103=135 I. C. 209, 1930 B. 595, 1927 B. 531, 55 B. 435, 16 C. 610, 7 L. 264, 10 L. 794, 1926 P. 20=211.
2. The power of the Judge under S. 165, Evidence Act, cannot be exercised for the purpose of introducing evidence in contravention of S. 162, Cr. P. C., where the Judge put some statements to a witness for contradicting him, although they were not proved, the procedure vitiated the trial. 58 C. 1009=1931 C. 189=32 Cr. L. J. 841.
3. The trial was vitiated when Judge refused to give copies. 53 A. 458.

20. Object and scope of S. 162.

1. The provisions of S. 27, Evidence Act, are quite independent of those of S. 162, Cr. P. C., and the amended section 162 does not in any way affect S. 27. 1927 N. 17=114 I. C. 273=30 Cr. L. J. 258, 7 L. 84=1926 L. 85, 1926 R. 112=94 I. C. 705, 1925 M. 574=86 I. C. 664, 1928 N. 108, 51 M. 967, 1927 C. 17, 55 M. 903=1932 M. 391, 1933 A. 440.
2. S. 1 (2) of Cr. P. C. lays down that nothing contained in the Act shall apply to Bombay Police. Therefore S. 162 does not exclude a statement before a Bombay Police Officer from being proved, except in so far as it is inadmissible under the Bombay City Police Act, 1902. 54 B. 528=1930 B. 158=31 Cr. L. J. 1003.
3. Ss. 162 and 172 do not apply to Calcutta Police. 1929 C. 257=116 I. C. 160.
4. S. 162 applies to witnesses and not the accused. 118 I. C. 368=30 Cr. L. J. 916, 7 L. 84, 1927 C. 17, 51 M. 967, 1923 N. 108=108 I. C. 442.
5. S. 162 applies to a case started on complaint. 1927 N. 24=99 I. C. 46=28 Cr. L. J. 14.
6. S. 162 applies to persons called by prosecution and not to Court witnesses. 1927 L. 713=104 I. C. 444=28 Cr. L. J. 828.
7. The first information report is not a statement within the contemplation of S. 162 because it is not made in the course of investigation. 54 C. 237=1927 C. 17=28 Cr. L. J. 99.
8. For the application of S. 162 there must be a statement which is capable of being recorded. If a witness says "I did not make any statement to the Police" it cannot be a statement under S. 162. 53 C. 980=100 I. C. 353=1927 C. 257=28 Cr. L. J. 273.

Statement to Police—(contd.)

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2. A girl abducted from Moradabad was found at Delhi by a constable who reported the matter to Police. Sub-Inspector Delhi recorded her statement. Held it fell under S. 162 Cr. P. C. as Delhi Sub-Inspector had jurisdiction to investigate the case by virtue of S. 156 (1) and S. 181 (4) Cr. P. C. 1933 A. 665=1933 Cr. C. 1145.
3. Oral statement to Police during investigation can be used at a trial for an offence not under investigation when they were made. 1936 L. 359, 56 M. 154=1933 M. 65 Ref.
4. S. 172, Cr. P. C., does not forbid a recorded statement to be used at a trial for an offence not under investigation when it was made. 1936 L. 359, 17 P. W. 1894 Coll. 1933 L. 498=34 Cr. L. J. 454 Ref.

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Dying declaration is exempt from the operation of S. 162. 1923 C. 463, 1930 L. 60, 1932 L. 14, 1931 M. 430, 1922 P. 40.

13. False. See False information—13-A.

14. Inquest report. See Inquest.

Inquest report mentioned that none of the people examined could give any clue to the murder, later they deposed to alleged confession of accused. Held, accused was entitled to copy of inquest report and cross-examine those witnesses, and that inquest report did not fall under S. 161 Cr. P. C. 1933 C. 861=147 I. C. 1007.

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1. S. 162 does not prevent a investigating officer from explaining his conduct by making a statement, "that at that time I did so and so I had received no information to such and such effect." 1931 L. 177=131 I. C. 276 (2)=32 Cr. L. J. 642.
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 5. For non-compliance of the provisions of S. 162, a retrial should be ordered. 1935 S. 145.
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 2. The power of the Judge under S. 165, Evidence Act, cannot be exercised for the purpose of introducing evidence in contravention of S. 162, Cr. P. C., where the Judge put some statements to a witness for contradicting him, although they were not proved, the procedure vitiated the trial. 58 C. 1009=1931 C. 189=32 Cr. L. J. 841.
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 5. S. 162 applies to a case started on complaint. 1927 N. 24=99 I. C. 46=25 Cr. L. J. 14.
 6. S. 162 applies to persons called by prosecution and not to Court witnesses. 1927 L. 713=104 I. C. 444=25 Cr. L. J. 828.
 7. The first information report is not a statement within the contemplation of S. 162 because it is not made in the course of investigation. 54 C. 237=1927 C. 17=25 Cr. L. J. 99.
 8. For the application of S. 162 there must be a statement which is capable of being recorded. If a witness says "I did not make any statement to the Police" it cannot be a statement under S. 162. 53 C. 640=100 I. C. 353=1927 C. 257=25 Cr. L. J. 273.

Statement to Police—(contd).

at the trial unhampered by any thing which they have said to Police. Where the Police Officer, during investigation obtained the signatures of witnesses to the statements made by them and reduced into writing under S. 162, the evidence of such witnesses must be rejected. It is not an irregularity which can be cured by S. 537. 1931 O. 172=132 I. C. 234=32 Cr. L. J. 840. See 11 B. 659.

2. Taking of signature affects the value of witness's evidence. 1934 S. 78 (2).
3. Signature on statement does not make it F. I. R. 1925 M. 106.
4. Where witness denies signature on his Police statement he should not be prosecuted under S. 193, as it contravenes Ss. 161-162. 14 Cr. L. J. 302, 6 S. L. R. 277.

27. Stage for applying for copies of—.

1. An accused person is not entitled to a copy of a statement made by a prosecution witness under S. 162 until the witness is sought to be cross-examined. But as a matter of practice there is no harm if a copy is given at an earlier stage. 1929 L. 429=117 I. C. 377=30 Cr. L. J. 7, 760, 1923 P. 593=110 I. C. 459.
2. Accused has a right to apply for copies as soon as a witness is called for prosecution either in an enquiry or a trial. 1929 N. 172=117 I. C. 213=30 Cr. L. J. 723.
3. When the witness enters the witness box the accused is entitled to apply for a copy. 52 B. 195=1923 B. 23, 1935 R. 98=13 R. 1, 54 C. 307, 53 A. 458, 7 P. 205, 8 P. 279, 1927 P. 325, 1931 A. 2-3, 1927 P. 243, 1923 R. 150, 56 C. 840=199 C. 182 and 53 A. 94=1931 A. 34 (Ref.)
4. Copies of statements to the Police should not be granted until the stage of cross-examination is reached. If that stage is allowed to go by without application being made the accused must wait until the witness is again to be cross-examined. 1930 M. 185=122 I. C. 463=31 Cr. L. J. 414.
5. If the accused did not apply for copies in the Court of Committing Magistrate, he can do so at the time of trial before the Sessions Judge. 56 C. 840=1929 C. 182=116 I. C. 167=30 Cr. L. J. 580.
6. That the copies can be demanded only after cross-examination of a witness is begun would lead to inconvenience and delay in the trial. 1927 N. 21=99 I. C. 46=23 Cr. L. J. 14.
7. Accused can apply even at a late stage to be furnished with copies. 33 C. 1023.
8. Accused is entitled to a copy before witness is called. 1934 N. 138.

28. Statement—what is.

1. Statement may be oral or by signs. 1935 S. 145, 1928 M. 1028, 1926 B. 112 5 L. 305.
2. Statements attested by the Sub-Inspector concerned, although recorded in his diary, are recorded under S. 162 and can be used for contradicting the witnesses in cross-examination. 1927 O. 321=104 I. C. 242=28 Cr. L. J. 802.
3. For the application of S. 162, there must be statement which is capable of being recorded, and therefore, if a witness says, "I did not make any statement to the Police," it cannot be a statement under S. 162. 1927 C. 257=53 C. 980.
4. First information report is not a statement to Police under S. 162, as it is not made during the investigation. 54 C. 237=1927 C. 17=28 Cr. L. J. 99.
5. Statement recorded in a special diary in any form is a statement recorded under S. 161, Cr. P. C., and the defence is entitled to a copy. 1923 C. 260=29 Cr. L. J. 531.
6. Statement though not full and only a memorandum is a statement recorded. 53 A. 458, 1935 R. 98, 1935 S. 145, 1933 L. 498, 1932 L. 103, 1933 P. 589, 1933 N. 4, 1929 R. 87, 1932 C. 375.
7. Statement does not include the record of search made by Police. 1925 M. 574, or signature on blank paper for purposes of comparison. 56 B. 304.
8. Identification of course. 1921 A. to statement and is inadmissible in the usual C. 311 *Contra* 1929 N. 36, 1920 P. 334.
9. Noting of gist of to "reduced into writing." 1933 P. 589.

Statement to Police—(contd.)

10. Statement may be contained in inquest report. 1933 C. 861.
 11. Memoranda or verbatim report of statement of witnesses are covered by S. 162. 1933 N. 4=34 Cr. L. J. 127, 53 A. 458, 1927 C. 644.
 12. Memoranda or verbatim report of statements of witnesses do not become privileged under S. 172, Cr. P. C. 1933 N. 4=34 Cr. L. J. 1-7, 53 A. 458, 1927 C. 644.
 13. A statement will not include a mere summary of it in charge sheet. 1 Cr. L. J. 1027.
- 29. Statement in security proceedings.**

Inquiry under chapter 8 is not an inquiry into an offence and therefore statement given to Police cannot be shut out by the provisions of S. 162. 1933 M. 688 (2)=56 M. 987.

30. Statement to Excise officer.

An Excise Officer is not to be regarded as Police Officer for the purpose of S. 162. 1934 C. 616=35 Cr. L. J. 1178.

31. Value, use of—

1. Standing by themselves, the Police proceedings are not substantive evidence in the case and cannot be used in order to test the correctness of the statements made by witness on oath before the Court. 1928 L. 820=109 I. C. 221=29 Cr. L. J. 493.
2. A Magistrate is not justified in referring to the statements made in the Police diaries unless and until the witnesses have been confronted by those statements. 1926 L. 365=27 Cr. L. J. 607, 1926 P. 20=27 Cr. L. J. 362, 1927 R. 74.
3. A Police statement can only be used for contradicting prosecution witnesses. 1924 B. 510=83 I. C. 1007, 9 O. W. N. 437, 1926 L. 54=89 I. C. 252, 7 L. 264, 1933 P. C. 124, 56 M. 231, 8 L. 605, 33 Cr. L. J. 637, 54 C. 237, 1926 R. 116, 1926 L. 54, 1930 434=491.
4. It is improper to use Police diaries against the accused, though can be used in his favour. 1925 L. 295=84 I. C. 436, 1923 L. 516=25 Cr. L. J. 409, 1932 O. 247, 1926 C. 320, 1926 L. 363, 17 A. 57, 22 B. 596.
5. Consent or desire of accused cannot legalize the procedure of using Police diaries as evidence in the case either for or against the accused. 1925 O. 1=75 I. C. 753=25 Cr. L. J. 49.
6. Statements to Police cannot be used for corroborating prosecution witnesses. 8 P. 279=1929 P. 268=30 Cr. L. J. 853, 1925 L. 337=6 L. 24.
7. Statements to Police cannot be used by the prosecution. 1931 C. 622
8. Statements by witnesses before Police are not admissible for the purpose of corroborating their depositions before the Committing Magistrate. 6 L. 171=1925 L. 295.
9. To believe the evidence of a witness because a perusal of Police diary showed that he was examined at the earliest opportunity and had made the same statement before the Police, is an improper use of Police diaries. 1926 L. 363=27 Cr. L. J. 614.
10. The question before Jury is whether the consistency in the statements before Police and the Court, did not make the evidence in Court unreliable. 7 P. 50=1928 P. 31=104 I. C. 459=28 Cr. L. J. 843, 1930 P. 513=9 P. 606
11. Statements to Police cannot be used to convict an accused. 1932 O. 247.
12. A Sub-Inspector entered in a Police diary a statement of person who was afterwards murdered. The Sub-Inspector also died. Held, that statement is admissible under S. 32 (2), Evidence Act. 1932 A. 442.
13. Accused in appeal cannot complain that trial Court refused to refer to statement and at the same time to say that appellate Court is not entitled to refer to them because he has not requested it so to refer. 1935 R. 98=13 R. 1=155 I. C. 66.
14. Purpose for which Judge refers to the statement to Police is not to see whether there is material for cross-examination but whether there is any portion to be excluded under the second proviso. 1935 R. 98=13 R. 1=155 I. C. 66.
15. Statements recorded in a special diary under S. 172 cannot be used except as provided in S. 162, Cr. P. C. 1935 R. 370. (*Case law discussed*).

Statement to Police—(contd.).

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7. Statement does not include the record of search made by Police. 1925 M. 574, or signature on blank paper for purposes of comparison. 56 B. 304.
8. Identification of a person amounts to statement and is inadmissible in the usual course. 1921 A. 215, 1935 C. 311 *Contra* 1929 N. 36, 1920 P. 334.
9. Noting of gist of statement amounts to "reduced into writing." 1933 P. 589.

Strangulation—(contd.)

Too much importance must not be attached to this supposed correspondence when the ligature is not forthcoming. In manual strangulation the marks of bruising and ecchymosis will be in the front of the neck, chiefly about the larynx and below it. Greater importance is to be attached to the lividity, ecchymosis, and abrasion of the skin in the course of the ligature than to the circularity of the depression produced by it. *Taylor's Med. Jur.*, 1928, P. 657.

2. In the strangling of a living person by a cord, it is scarcely possible that a murderer can avoid producing on the neck marks of severe injury, and in the existence of those we have evidence of the violent manner in which death has taken place. Fracture of the hyoid bone is extremely rare except in cases of manual strangulation, in which it is relatively common. *Ibid*, P. 658.

4. Was death due to—

1. In the absence of ecchymosis from the neck, it will be difficult to form an opinion, unless from circumstantial evidence. There may not always be an accchymosed circle for a person may be strangled by the application of pressure to the neck through the medium of the finger-nails or of any hard or resisting substance. *Taylor's Med. Jur.*, 1928, P. 659. *Lyon's Med. Jur.*, 1935, P. 305.
2. In the absence of all marks of violence round the neck, we should be cautious in giving an opinion which may affect the life of an accused party, for it is not probable that homicidal strangulation could be accomplished without the production of some appearances of violence on the skin over the larynx or windpipe. It is doubtful whether strangulation can ever take place without some mark being found on the neck indicative of the means used. There is nothing to justify a witness in stating that death has proceeded from strangulation if there should be no appearance of lividity, ecchymosis, or other violence about the neck or face of the deceased. When there are signs of mechanical violence to the neck, such as fracture of the larynx or windpipe or hyoid bone, with laceration of the muscles, and a visible depression, such as a cord, a ligature, or manual pressure would produce, a medical opinion may be fairly given in spite of putrefaction. *Taylor's Med. Jur.*, 1928 Ed., P. 660.

5. Was it accident, suicide or homicide.

1. Before a charge of murder by strangulation is raised against any person from marks or appearances found on a dead body care should be taken that they admit of no other probable explanation than the direct application of violence. *Taylor's Med. Jur.*, 1928, Vol. I, P. 665.
2. Even if marks indicative of strangulation are discovered, the question arises whether they may not have been produced by the deceased upon himself in an attempt at suicide which may have failed. If the body of a person is allowed to cool with a handkerchief, band, or tightly fitting collar round the neck, a mark resembling that of strangulation may be produced. Supposing the marks of fingers or finger-nails exist, the presumption is in favour of homicide. In cases in which strangulation has resulted from a compression of the windpipe by the fingers (throttling), and where there are ecchymosed marks indicative of direct violence, we have the strongest presumptive evidence of murder for neither accident nor suicide could be urged as affording a satisfactory explanation of their presence. If, besides these marks of fingers, we find a circular mark with a ligature still around the neck, the presumption of murder becomes very strong. In homicidal strangulation, from the unnecessary violence used, we may expect to find the skin much ecchymosed lacerated, or excoriated, and the deep-seated parts, such as the muscles and vessels, more or less bruised or lacerated. The hyoid bone, larynx or trachea may show signs of pressure. Such a degree of violence is not to be expected in suicidal strangulation. *Ibid*, pp 666 667. *Lyon's Med Jur*, 1935, pp. 305 306.

6. Nature of ligature—marks on the neck.

1. The condition of the mark on the neck, the course and direction of the cord, the mode in which it was secured or fixed in order to produce effective pressure on the windpipe, the amount of injury to the muscles and parts beneath, are circumstances from which, if observed at the time, a correct medical opinion may generally be formed. If the means of constriction are removed, or the cord or ligature is loosely applied, these facts unless explained, are presumptive of homicide. *Taylor's*

Stolen Property—(concl'd.)

7. Melting ornaments. *See* Assisting in concealment of—.
8. Pointing out—. *See* Discovery—14.
9. Receiving—. *See* Receiving stolen property.
10. Recovery list of—. *See* Recovery list.
11. Restoration of—. *See* Theft—27. Disposal of property.
12. Transfer of—.

Transfer of stolen goods passes no title. 1924 C. 816.
13. Types of—. *See* Theft—30.
14. What is—. *See* Receiving stolen property.

1. Stolen property into or for which stolen property has been converted or exchanged is not stolen property. 39 P. R. 1881 Cr.
2. Money obtained by cashing forged cheque is not property. 24 W. R. 33 (35).

STONE THROWING. *See* Rash and negligent act. Culpable homicide, grievous hurt—33. Mischief—8.

STOPPING PROCEEDINGS. S. 249, Cr. P. C.

1. S. 249 applies to cases instituted otherwise than on complaint. 9 P. R. 1913, 23 M. 626, 21 Cr. L. J. 184.
2. Stopping proceedings does not bar retrial. 9 P. R. 1913, 29 M. 126.
3. An order under S. 249 does not amount to dismissal of complaint, therefore no further inquiry under S. 436, Cr. P. C., can be directed. 1934 A. 17=35 Cr. L. J. 564, 9 P. R. 1913.
4. S. 249 applies only to summons case. 1926 P. 292=5 P. 243.

STRANGULATION. *See* Murder—43, Culpable homicide—30, Suicide, hanging—14.

1. Definition.

Strangulation may be defined as an act of violence whereby constriction is applied to the neck (air-passages and blood vessels) by some means other than the weight of the victim's body. *Taylor's Med. Jur.*, 1928, Vol. I, P. 655.

2. Distinction between hanging and—.

1. In hanging the phenomenon of asphyxia takes place in consequence of the suspension of the body, while in strangulation asphyxia may be induced not only by the constriction produced by ligature round the neck independently of suspension, but by the simple application of pressure (throttling), through the fingers or otherwise on the windpipe. While the proof of death from hanging leads to a strong presumption of suicide, the proof of death from strangulation is *prima facie* evidence of murder. *Taylor's Med. Jur.*, 1928, P. 654. It differs from strangulation in that in the latter some external force other than the weight of the body is the means by which the neck is constricted. *Ibid.*, P. 682.
2. Marks on the neck from strangulation differ from hanging marks in being truly transverse in direction, low on the neck and continuous. Saliva running in straight lines down the chin and chest, a common appearance in death from hanging, is not present in strangulation. In strangulation, less often than in hanging, rapid death may take place from inhibition of the heart. *Lyon's Med. Jur.*, 1935 pp. 302—304.

3. Post mortem appearance in—.

1. The face may be livid and swollen, the eyes wide open, prominent, and congested, the pupils are dilated, the tongue swollen, dark coloured and protruded; it is sometimes bitten by the teeth and a bloody froth escapes from the mouth and nostrils. If much force has been used in producing the constriction, the windpipe, with the muscles and vessels in the forepart of the neck, may be found cut or lacerated, the hyoid bone is sometimes fractured, and even the vertebrae of the neck may be damaged. The mark on the neck when a ligature has been used is commonly described as a depression, wide but not deep, and corresponding in its characters to the form and thickness of the ligature and the mode in which it has been secured.

Strangulation—(contd.)

Too much importance must not be attached to this supposed correspondence when the ligature is not forthcoming. In manual strangulation the marks of bruising and ecchymosis will be in the front of the neck, chiefly about the larynx and below it. Greater importance is to be attached to the lividity, ecchymosis, and abrasion of the skin in the course of the ligature than to the circularity of the depression produced by it. *Taylor's Med. Jur., 1928, P. 657.*

2. In the strangling of a living person by a cord, it is scarcely possible that a murderer can avoid producing on the neck marks of severe injury, and in the existence of those we have evidence of the violent manner in which death has taken place. Fracture of the hyoid bone is extremely rare except in cases of manual strangulation, in which it is relatively common. *Ibid, P. 658.*

4. Was death due to—

1. In the absence of ecchymosis from the neck, it will be difficult to form an opinion, unless from circumstantial evidence. There may not always be an accchymosed circle for a person may be strangled by the application of pressure to the neck through the medium of the finger-nails or of any hard or resisting substance. *Taylor's Med. Jur., 1928, P. 659. Lyon's Med. Jur., 1935, P. 305.*
2. In the absence of all marks of violence round the neck, we should be cautious in giving an opinion which may affect the life of an accused party, for it is not probable that homicidal strangulation could be accomplished without the production of some appearances of violence on the skin over the larynx or windpipe. It is doubtful whether strangulation can ever take place without some mark being found on the neck indicative of the means used. There is nothing to justify a witness in stating that death has proceeded from strangulation if there should be no appearance of lividity, ecchymosis, or other violence about the neck or face of the deceased. When there are signs of mechanical violence to the neck, such as fracture of the larynx or windpipe or hyoid bone, with laceration of the muscles, and a visible depression, such as a cord, a ligature, or manual pressure would produce, a medical opinion may be fairly given in spite of putrefaction. *Taylor's Med. Jur. 1928 Ed., P. 660.*

5. Was it accident, suicide or homicide.

1. Before a charge of murder by strangulation is raised against any person from marks or appearances found on a dead body care should be taken that they admit of no other probable explanation than the direct application of violence. *Taylor's Med. Jur., 1928, Vol. I, P. 665.*
2. Even if marks indicative of strangulation are discovered, the question arises whether they may not have been produced by the deceased upon himself in an attempt at suicide which may have failed. If the body of a person is allowed to cool with a handkerchief, band, or tightly fitting collar round the neck, a mark resembling that of strangulation may be produced. Supposing the marks of fingers or finger-nails exist, the presumption is in favour of homicide. In cases in which strangulation has resulted from a compression of the windpipe by the fingers (throttling), and where there are ecchymosed marks indicative of direct violence, we have the strongest presumptive evidence of murder for neither accident nor suicide could be urged as affording a satisfactory explanation of their presence. If, besides these marks of fingers, we find a circular mark with a ligature still around the neck, the presumption of murder becomes very strong. In homicidal strangulation, from the unnecessary violence used, we may expect to find the skin much ecchymosed lacerated, or excoriated, and the deep-seated parts, such as the muscles and vessels, more or less bruised or lacerated. The hyoid bone, larynx or trachea may show signs of pressure. Such a degree of violence is not to be expected in suicidal strangulation. *Ibid, pp. 666-667. Lyon's Med. Jur., 1935, pp. 305-306.*

6. Nature of ligature—marks on the neck.

1. The condition of the mark on the neck, the course and direction of the cord, the mode in which it was secured or fixed in order to produce effective pressure on the windpipe, the amount of injury to the muscles and parts beneath, are circumstances from which, if observed at the time, a correct medical opinion may generally be formed. If the means of constriction are removed, or the cord or ligature is loosely applied, these facts unless explained, are presumptive of homicide. *Taylor's*

Strangulation—(concl'd.)*Med. Jur.*, 1928, Vol. I, P. 671.

2. Thus, if the cord or ligature should be found loose or detached, if the ecchymosis or mark in the neck should not accurately correspond to the points of greatest pressure if, moreover, the means of constriction were not evident when the body was first discovered and before it had been removed from its situation, there would be fair grounds for presuming that the act was homicidal. If the ligature be still around the neck, the position of the knot may throw some light upon the case, if tied in two or three knots at the back of the neck, the presumption is in favour of homicide. In all cases the cord or ligature, if forthcoming, should be examined in order to determine whether it bears upon it marks of blood, or whether hair or other substances are adhering to it. Sometimes strangulation had been suicidally effected by a rough cord passed repeatedly round the neck, and tightened by being pulled with each hand. No hard and fast rule can be laid down on the subject it is necessary to judge each case on its own merits. *Ibid.*, pp. 672—674.
3. If a ligature has been used, a mark, save in exceptional case, would be found on the neck. This differs from hanging mark, in being transverse in direction, low on the neck and continuous, i. e., completely encircling the neck. The marks left on the throat in throttling are dark in colour and correspond to the shape of fingers. If one hand has been used, severe bruises may be found on one side of the neck. Frequently nails may cause cuscentic abrasions on the throat. *Lyon's Med. Jur.*, 1935, pp. 302-303.
4. Strangulation by compression of the neck with a stick or other hard substance is often met with in India. This causes abrasions and bruises on the front of the neck, and usually severe local injury such as fracture of the cartilages on hyoid. *Lyon's Med. Jur.*, 1935, Ed., P. 304.

7. Circumstantial evidence—

1. Without circumstantial evidence, the best medical opinion in these cases will often amount to nothing. It is a mistake to suppose that we must in all cases look to medical circumstances alone for clearing up intricate questions. It is scarcely to be imagined that any person who did not contemplate suicide would retire to rest with a handkerchief tied in a double knot so tightly around the neck as to render it very difficult to remove. It requires but little ingenuity to see that circumstantial evidence may be almost the only support of a theory either of suicide or homicide; time, place, locked doors, fastened windows, motives, etc., etc., may all play their part. *Taylor's Med. Jur.* 1928, pp. 674—676.
2. Blue nails will confirm the suspicion of asphyxia aroused by other appearances. *Lyon's Med. Jur.*, 1935, P. 715.

STRAYING OF CATTLE. See Criminal misappropriation 20. Mischief—9.
STRIKING OFF CASE.

The Magistrate's order striking off case reported to him under S. 173, Cr. P. C., is not judicial order. He can re-open the case by calling for charge sheet under S. 190 (1) (c). 1933 P. 242=12 P. 234. 1928 P. 585 Diss. from.

STUFFING CLOTH IN THE MOUTH. See Culpable homicide—30.

STRYCHNIA—POISONING BY. See Poison—17.

SUDDEN QUARREL. See Murder—80.

SUFFOCATION. See Hanging.

1. Death caused in.—See Culpable homicide—31. Attempt to murder—6.

Death by suffocation is caused by means other than direct pressure on the windpipe, as for example:—(1) by the closing of the mouth and nostrils; (2) by pressure on the chest; (3) by the blocking of the lumen of the glottis or air tubes; and (4) by an atmosphere deficient in oxygen. *Lyon's Med. Jur.*, 1935, P. 306.

2. Definition.

By "suffocation" we are to understand that condition in which air is prevented from penetrating into the lungs, not by constriction of the windpipe, but by some mechanical cause operating (a) externally by pressure on the chest, or by blocking the mouth and nostrils; or (b) internally by closing the lumen of the throat, windpipe.

Location—(concl'd.)

and air-passages. The term "suffocation" is applied to various conditions in which the symptoms and effects differ. Smothering is a variety of suffocation, and is caused by covering the mouth and nostrils in any way so as to prevent the free ingress and egress of air. *Taylor's Med. Jur.*, 1928, Vol. I, P. 610.

Symptoms. Same as in hanging.

Post-mortem appearance.

There are rarely any considerable marks of violence externally. When the body has become perfectly cold, there may be patches of lividity diffused over the skin; but these are not always present. The lips are livid; the skin of the face and neck may be pale, or present a dusky-violet tint; the eyes are congested; and there is a mucous froth about the lips and mouth. None of these signs are at all characteristic, and the absence of all of them is no proof that death did not occur from suffocation; if they are present they certainly offer grounds for preliminary suspicion. The stomach and intestines have been observed to present patches of lividity. The kidneys may be more strongly congested with blood than the liver, spleen and other organs. The vessels of the brain are sometimes congested, but at other times they do not appear to be more than ordinarily full. *Taylor's Med. Jur.*, 1928, Vol. I, pp. 611-612.

Was it accident, suicide or homicide.

1. Homicide by suffocation is not likely to be attempted on a healthy adult person, unless he is rendered defenceless by intoxication. As an accident, smothering may conceivably take place when a person falls, in a state of intoxication and debility, so that his mouth is in any way covered, or the access of air to the mouth or nostrils is interrupted. *Taylor's Med. Jur.*, 1928, P. 618.
2. If the person has been able to struggle, it is probable that marks of violence, in the shape of scratches or bruises, may be found about the mouth and nostrils, with bruises or marks of pressure on the chest, legs or arms, and a bloody mucous froth in the air-passages. It is certain that most individuals would have it in their power, unless greatly incapacitated by disease or intoxication, to offer such a degree of resistance as would leave upon their bodies indubitable evidence of murderous violence. Death by suffocation may be considered as presumptive of homicide, unless the facts are clearly referable to accident. *Ibid*, P. 619.
3. Accidental suffocation is, however, so palpable from the position of the body and other circumstances, that when death is clearly traced to this case it is not easy to conceive a case in which it would be difficult to distinguish it from one of murder. Infants often lose their lives by accidental suffocation in consequence of the reprehensible habit followed by nurses of stuffing into the mouth a little bag filled with sugar or other sweet material, in order to quiet the child. *Ibid*, pp. 619-622.
4. If the deceased is an adult the presumption is always in favour of accidental suffocation. *Lyon's Med. Jur.*, 1935 Ed., P. 309.

SUGGESTION BY ACCUSED. See Evidence—36

SUMMARY DISMISSAL—OF APPEAL See Appeal—47.

SUICIDE. See strangulation, suffocation

Abetment of— S. 306, I. P. C.

1. One R died and his widow declared her intention to be a suttee. The accused sent for Police but before their arrival, they took the body to the cremating ground and they were so much overpowered by a miracle that they supplied her ghee to pour over her and the pyre and did not use any force to prevent her. Held, they were guilty under S 306. 36 A 25.
2. In a case of suttee, A ordered the pile to be lighted. B did not then assist but afterwards when woman fled from the pile induced her to return. A was guilty of abetment of culpable homicide but B, of abetment of suicide only. 1 R. J. P. J. 174.
3. Accused accompanied a woman to the pyre and one of them told her to say "Ram Ram" and she would become suttee. Held, that they were engaged with her in a conspiracy for the commission of suttee. 3 N. W. P. 316.

Suicide—(contd.)

4. It is no defence that abettors of the woman committing suttee were expecting a miracle and did not anticipate that the pyre would be ignited by human agency. 8 P. 74=1928 P. 497.

2. Attempt to commit— S. 309, I. P. C.

1. Where a woman in order to commit suicide by throwing herself in the well, ran to the well and was arrested. Held, not guilty, for she might have changed her mind before jumping in. 8 M. 5.
2. Where a woman being driven mad by prolonged labour threw herself into a well and a child was born dead, she is guilty under S. 309 and Ss. 312—511, I. P. C. 50 I. C. 1003=20 Cr. L. J. 395.
3. Accused jumped into the well to avoid Police custody and came out of his own accord is not guilty under S. 319. 14 I. C. 598=14 B. L. R. 146=13 Cr. L. J. 246.
4. Deaf and dumb person, able to understand by signs, attempted to commit suicide is guilty under S. 309, 25 B. L. R. 43.
5. A person who emasculated himself is not guilty under S. 309. 22 P. R. 1878 Cr.
6. A substantive sentence should not be passed against the accused, where he suffers from bodily affection which is likely to cause him acute mental depression. 2 L. B. R. 209.
7. A person found guilty must be sentenced to some imprisonment and not merely to payment of fine 1 B. H. C. R. 4.
8. Statements made by a person about his own ill-treatment, before he committed suicide, are admissible under S. 32 (1), Ev. Act. 20 P. R. 1916 Cr.

3. Causes of—

- (a) *Grief or shame.* Numerous instances are recorded by wives after quarrel with their husbands or with their husband's relatives. Pregnancy following illicit intercourse has also led to suicide. In the case of males it is due to mental distress on account of domestic quarrels or pecuniary losses. Instances are also met with of suicide from distress of mind arising from arrest on criminal charges. (b) *Physical suffering.* Severe physical pain is a frequent more or less direct cause of suicide, particularly among females. (c) *Revenge.* One form of suicide is the practice known as sitting "Dharna" or starving himself at the door of an enemy or debtor. Chevers mentions a case of a man at Singapur who cut his throat at his neighbour's door in order to get him hanged. (d) *Domestic troubles and worries.* The mental distress arising out of quarrel with husband or husband's relations is a common cause of suicide. (e) *Veneral Disease* is sometimes the cause. *Ibid.* (f) *Fanatic, religious and imitative* e.g. Satti. *Lyon's Med. Jur.* 1904 *l.c.* pp 109-110, 1935 Ed. P. 226 The human frailties and passions are to be found in all nations, and hence we observe, that the hope to serve a country, parent or friend, respect for the religion, for the laws, the belief in a certain religion or dogma, philosophical principles, prejudices, usages, pain, moral or physical, chagrin, weariness of life, impotence, delirium of passion, acute disease and mania, are the motives and causes of suicide. *Ryan's Med. Jur.* 1836, P 341.

4. Disappearance of evidence of.

Since suicide is no offence, the removal or concealment of body is no offence under S. 201. 17 P. W. R. 1911 Cr., 1934 S. 139.

5. Threat to commit— See Criminal intimidation—13.

6. Whether wound is homicidal or suicidal ?

The question whether a wound is due to homicide or suicide can be answered by—
(a) *The nature or appearance of the wound* (b) *The Position of the wound.* (c) *Detection of wound.* (d) *Number of wounds* —

1. Extensive *anti mortem abrasions* on a body are always suggestive of accidental death. Abrasions are not usually found on the bodies of suicides, nor on those of murdered. *Lyon's Med. Jur.*, 1935, P. 227.

Suicide—(contd.)

2. Severe contusions tell against suicide, except in the rare cases of persons falling from heights. An individual contemplating suicide will not choose a blunt weapon *Ibid*, P. 228.
3. *Incised wounds* inflicted with a sword, axe or other heavy weapon, point to homicide. The position on the throat, the severity and the direction will determine whether a wound is homicidal or suicidal. *Ibid*, P. 228.
4. The *typical* homicidal throat wound is situated below the Pomum Adami, that of suicide above it. The plane of the homicidal wound is generally horizontal, that of suicidal one is upwards. If more than one severe wound is present the case is one of murder. The homicidal wound is generally more severe than the suicidal one. It is scarcely possible that one of two persons equally matched as regards strength could cut the throat of the other if he was awake. He might stab him on the throat, but could not inflict the typical throat wound unless assisted by another. *Ibid*, pp 228-229.
5. *Blood stains* on the back of the hand, thumb, and first finger point to self-destruction. *Ibid*, P. 232.
6. A cut in the clothing corresponding in position to that on the body is almost proof of murder. The suicidal wound is generally high on the throat. *Ibid*.
7. The presence of the weapon used near the body points to suicide, though sometimes it is put aside. *Ibid*.
8. The weapon tightly grasped in the hand forms an absolute proof of suicide. *Ibid*.
9. Incised wound over the wrist or bend of the elbow are sometimes suicidal. *Punctured* wounds are seldom suicidal. Occasionally a person stabs himself on the abdomen or throat. A number of stabs scattered over various parts of the body mean murder. P. 233.
10. *Blood stains* on the inner side of the hand and little finger suggest suicide. A person who is murderously assaulted will naturally attempt to ward off the blows or to seize the weapon and in so doing is liable to receive very characteristic injuries. *Ibid*.
11. *Lacerated* wounds are seldom suicidal. *Ibid*.
12. The most convenient site for a self-inflicted *gunshot* wound is temple or the heart. In case of suicidal wounds the weapon must of necessity be discharged close to the body. The firearm firmly grasped in the hand proves suicide. *Ibid*, P. 234.
13. If a fatal, an incised or punctured wound, exists on the back of the head or chest, if the hand or hands of the deceased are also wounded, it is evident that resistance had been made, and murder generally proved. A suicide inflicts wound on the anterior surfaces of the face, chest, and abdomen, and almost always in an oblique direction from right to left, those made by an assassin are from left to right. *Ryan's Med Jur.* 1836, P. 340.
14. *Position and surrounding of the wounded person* Position of the body indicates self destruction or accident, as, for example, when the body is found at the foot of some high object, from the top of which it may have fallen. Sometimes to conceal the murder the body is put in such a condition, as at the foot of a high tree or on a Railway line. Peculiarities of the clothes are likely to have modified the injuries received or to affect the condition of the weapon used, e.g., a thick turban may cause a severe blow to produce simple instead of compound fracture of skull, or the fibre of cloth may stick to weapon to be identified later on. Marks of bloody hands on the body of an injured person or stains of seminal fluid on clothes or body of a female corpse may indicate homicidal violence. Want of correspondence in situation between cut on the clothes and wounds points to self infliction to support a false charge or avert suspicion. Nature, position and condition of objects on or near the spot are important, e.g., weapon, clothes, blood-stained clothes, bullet marks, foot prints of persons other than the deceased or marks indicating struggle. Bullet marks or shot holes by their situation may indicate the position of the assailant at the time the weapon was discharged. *Lyon's Med. Jur.*, 1935 pp. 234, 235.

Sulphuric Acid.

SULPHURIC ACID. See Poison—18.

SUMMARY TRIAL. Ss. 260 to 275, Cr. P. C.

1. **Appealable cases—record in—** S. 264, Cr. P. C.

1. Where in an appealable case, the procedure laid down in Ss. 262—264 was carried out except the framing of a charge, the omission is not fatal. 53 C. 738, 1924 C. 63 Dist. See 27 C. W. N. 923.
2. In appealable cases notes of evidence and charge are not necessary. 89 I. C. 310= 1925 O. 722=26 Cr. L. J. 1334.
3. It is incumbent on the Magistrate to put on record sufficient evidence to justify his order. 27 C. 450, 10 C. W. N. 79.
4. The record should be written by the Magistrate himself. There is no provision for delegating this power to a clerk. 6 M. 356.
5. The record should be made at the time of trial and not afterwards. 15 M. 83.
6. The facts found by the Magistrate must show what offence has been committed by accused. 3 C. W. N. 281, 7 P. R. 1887, 5 P. R. 1889 Cr., 1924 O. 297.
7. Judgment with certain particulars shall be the only record and therefore appellate Court is not justified in looking outside the record in hearing an appeal in a summary trial. 1928 M. 597=109 I. C. 897=26 Cr. L. J. 625, 23 C. 738.
8. If the evidence is recorded in an imperfect manner, the appellate Court can order the retrial and re-examination of witnesses. 1 A. 680.
9. There should be clear finding on questions of fact. 1922 O. 297=75 I. C. 292.
10. In a summary trial if there is no complete record, the benefit of doubt must go to the accused 1931 L. 33=130 I. C. 425.
11. There is no obligation on the Magistrate to record the testimony of witnesses. 1935 R. 106, (1905) 3 L. B. R. 3.
12. Mere writing "5 I. M. V. Act" under the column of description of offence is not enough. 15 L. 277.
13. "I believe the prosecution story" is not enough. Reasons must be recorded. 15 L. 277=1934 L. 596. 7 P. R. 1887, 5 P. R. 1889 and 1929 L. 378 Ref.

2. **Charge in—**

In a summary trial no formal charge need be framed whether the case is appealable or not. 7 L. 303, 53 C. 738, 1925 O. 722=89 I. C. 310.

3. **Compensation in—**

Compensation may be awarded under S. 250 to the accused in a trial held summarily. 11 M. 142.

4. **Examination of accused in—** See Examination of accused—25.

5. **Further cross-examination in—**

1. Accused is entitled to have process issued for compelling the attendance of prosecution witnesses for cross-examination. 60 I. C. 671=22 Cr. L. J. 271.
 2. In summary trial when no charge is framed, the accused has no right to recall prosecution witnesses 1926 B. 226=83 I. C. 159, 1932 O. 242. *Contra* 50 M. 740, 1920 C. 769, 1930 S. 146, 1920 P. 492.
6. **Judgment.**
1. If the judgment is signed only by the chairman of the Bench and others have only signed the register it is merely an irregularity. 53 M. 165=1930 M. 187.
 2. Judgment must be written by the Magistrate himself. 6 M. 356.
 3. If one of the three Magistrates of a Bench merely initials instead of signing his name, the irregularity cannot be cured by S. 537, Cr. P. C. 1930 M. 867=59 M. L. J. 674, 25 C. 911, 23 C. 896, 1926 M. 827, 32 I. C. 393.
 4. If the record is prepared by a member of the Bench and not by presiding officer, it shall have to be signed by each member. But if a judgment is prepared by the presiding officer it is sufficient if he alone signs it. 1928 M. 1172=29 Cr. L. J. 973.

Summary Trial—(contd.)

5. Judgment in a single line is no judgment. 20 Cr. L. J. 431.
6. In appealable cases the Magistrate must write a judgment embodying the substance of evidence. Merely saying that prosecution witnesses support the prosecution and defence witnesses are conflicting is not sufficient. 1924 O. 167=72 L. C. 948.
7. Joint trial of summary and non-summary offence.
 1. If the accused is charged with offences not triable summarily along with offences triable summarily, the Magistrate cannot try the case summarily. 11 C. 236, 5 P. R. 1889. *Contra* 10 A. 55.
 2. If the offence is not triable summarily and it is so tried, the conviction is illegal. 27 C. W. N. 148, 5 C. W. N. 252, 46 A. 446.
8. Offences triable summarily.
 1. The facts stated in the complaint along with sworn statement of the complainant determines whether offence is triable summarily or not. 36 C. 67, 16 C. 715.
 2. Where a person is charged with a graver offence, the Magistrate must not reduce it to a minor offence to try him summarily. 27 C. 983, 29 C. 409, 11 C. 236, 5 P. R. 1889, 21 P. L. R. 1907. *See* 25 B. 90.
 3. Magistrate cannot split up an offence into its component parts for the purpose of giving himself the summary jurisdiction. 4 C. 18.
 4. Where the value of the property stolen is more than fifty rupees, the Magistrate cannot reduce it to less than Rs. 50 to try the offence summarily. 22 W. R. 65.
 5. Offence under S. 121, Railway Act, is triable summarily. 1902 A. W. N. 24.
 6. Offence under the Companies Act for not filing the balance sheet with the Registrar, Joint Stock Companies, is triable summarily. 35 A. 173.
 7. Offence under S. 49, Bengal Abkari Act, is triable summarily. 5 C. 366.
 8. The fact found by the Magistrate, must show that an offence triable summarily is committed. 10 L. 231.
 9. A Magistrate can summarily dispose of case of theft of articles of the value of less than fifty rupees in each case. 53 A. 218, 1934 S 185.
 10. Offences under other Acts can be tried summarily provided they are not punishable with imprisonment exceeding six months. 50 A. 718, 1934 A. 331.
 11. If several offences charged against the accused are triable summarily he will be so tried. 10 C. 408. *See* 52 B. 254=1928 B. 142.
9. Offences which are not triable summarily.
 1. Maintenance proceedings under S. 488. 20 C. 351, 24 W. R. 61.
 2. Offences under S. 9, Opium Act. 4 Bur. L. T. 271.
 3. Offences under S. 224, I. P. C. 1894 A. W. N. 176.
 4. Offences under S. 452, I. P. C. 6 Bur. L. T. 137.
 5. Offences under the Press Act. 9 P. R. 1889 Cr.
 6. Theft of property valued more than fifty rupees. 22 W. R. 65.
 7. Summary offences combined with a charge of previous conviction. 2 Weir 1 Bur. S. R. 386.
 8. Offences under S. 151, I. P. C. 1934 L. 243=15 L. 610, 5 P. R. 1884.
 9. Inquiry under S. 488, Cr. P. C. 20 C. 351.
10. Offences of which—is improper.
 1. A summary trial is improper in a case where the conviction may entail further serious consequences, e. g., dismissal from service. 6 M. 396.
 2. A summary trial is improper when charge is serious, the number of witnesses is large and local inquiry has to be made. 23 Bom. L. R. 984, 3 L. L. J. 346.
 3. A summary trial is improper if the case is hotly contested. 131 I. C. 174 (1).

Summary Trial—(contd.)

4. A summary procedure is improper where accused is deaf and dumb 8 Bom. L. R. 849.
5. A summary trial is improper when a Magistrate takes cognizance of the offence from his own knowledge or suspicion and holds the trial on inadequate material. 31 P. L. R. 1905, 25 W. R. 69.
6. A summary trial is undesirable in a case where there is large number of correspondence and documentary evidence. 35 A. 173, 1 P. L. T. 121, 3 P. L. T. 347.
7. A summary trial is improper, when an adequate sentence cannot be passed. 4 L. B. R. 338.
8. A summary trial of a public servant is inappropriate. 1932 L. 188=135 I. C. 220.
9. A complicated case extending over one month should not be tried summarily. 1934 L. 243=15 L. 610.

11. Procedure.

1. The scanty procedure laid down should be strictly followed. 22 W. R. 28, 15 M. 83.
2. The record should not be more summary than what the law had laid down. 21 A. 189, 3 P. L. T. 499.
3. Where the Magistrate without issuing process or making a record of proceedings and without dismounting from the horse, convicted a man summarily for causing obstruction in a public way, the procedure is illegal. 15 M. 23.
4. Provisions of S. 342, Cr. P. C., apply to summary trials. 1936 O. 16, 1935 A. 217, 1926 S. 1 and 1926 N. 300 Rel on. 1934 O. 457 Expl. 49 C. 1075, 54 C. 286, 1922 P. 5.
5. Although S. 364 does not apply to summary trials, some notes of examination of accused must be made. 1936 O. 16=36 Cr. L. J. 1303.
6. S. 250, Cr. P. C., applies to summary trials 1930 M. 929.
7. S. 256, Cr. P. C., applies to summary trial although no formal charge is framed. 1920 C. 769, 50 M. 740, 1920 P. 492, 1930 S. 146. *Contra* 1925 B. 226 and 1932 O. 242.

12. Public servant—trial of—

Summary trial though legal is inappropriate in a case when the accused is a public servant. 1932 L. 188=135 I. C. 220=33 Cr. L. J. 108.

13. Reasons for conviction in—

1. Failure to record a brief statement of reasons is fatal and the whole proceedings are illegal. 6 C. W. N. 40, 6 C. 579 45 M. 253, 18 B. 97, 67 I. C. 587, 101 I. C. 671=1927 N. 250.
2. The defect cannot be cured by the Magistrate subsequently submitting the reasons to the High Court, when the record was called for under S. 441, although the irregularity can be condoned. 46 M. 253.
3. Reasons should be brief but brevity should not be such as to tend to obscurity. 21 A. 189.
4. The Magistrate in recording the reasons for conviction should state them in such a manner that the High Court may judge whether there was sufficient material before the Magistrate to justify conviction 6 C. 579, 1889 A. W. N. 81, 3 C. W. N. 281, 19 Cr. L. J. 719, 127 I. C. 849.
5. Merely saying in a judgment that prosecution witnesses support the complainant and defence witnesses are conflicting is no reason for conviction. 1924 O. 167.
6. Honorary Presidency Magistrate should record reasons for conviction. 1924 M. 799.
7. The statement of reasons for a conviction, which the Magistrate is bound to record under S. 263-H, should show that all the ingredients of the offence have been considered and proved. 1935 S. 144=1935 Cr. C. 752, 30 I. C. 1001=16 Cr. L. J. 713 Rel. on.

14. Sentence.

1. A Magistrate is competent to take security bond under S. 106 on conviction in a summary trial. 1846 A. W. N. 121, 1 Cr. L. J. 1054.

Summary Trial—(concl'd.)

2. There is no limit to fine awardable in a summary trial. 35 A. 173.
 3. Solitary imprisonment cannot be awarded in a summary trial. 6 A. 83.
 4. Magistrate is competent to award a sentence of imprisonment in default of fine, in addition to the three months' imprisonment. 6 A. 61. *See* 1921 L. 236.
 5. If accused is convicted of more than one offence, separate sentences should be passed. 1934 S. 185. But sentences of three months must run concurrently. 1934 R. 116.
- 15. Substance and notes of evidence in—**
1. It is the duty of the Court to make a precis of the evidence adduced before it. 1928 M. 928=109 I. C. 600.
 2. Short notes made by a Magistrate form part of the record. He cannot destroy them. If he destroys them the conviction is bad. 1925 N. 79=89 I. C. 974=26 Cr. L. J. 1454, 48 C. 280, 27 C. 450, 49 A. 131. *See* 49 A. 261.
 3. Where the judgment convicting the accused did not embody the evidence but the Magistrate merely recorded that prosecution witnesses support the complainant and the defence witnesses are conflicting, the judgment is defective. 24 Cr. L. J. 484=72 I. C. 948.
 4. Magistrate made rough notes of the evidence and subsequently copied and placed them on record and destroyed the original notes, the procedure is illegal. 1 P. L. T. 63.
 5. Magistrate may or may not take any note of evidence at all. If he takes down any notes, they do not form part of the record. They are his private property. 49 A. 261=99 I. C. 225=1927 A. 124.
 6. The evidence should be recorded in such a way as to enable the Appellate Court to form an opinion whether the evidence is sufficient to support conviction. 1 A. 680, 4 L. B. R. 338.
 7. Notes or memoranda prepared by Magistrate are not to be included in main file or in process file of record. 1935 R. 106=1935 Cr. C. 315, 58 B. 298=1934 B. 157=35 Cr. L. J. 541, 49 A. 261=1927 A. 124=28 Cr. L. J. 97 and 49 A. 562=1927 A. 480 Foll. 48 C. 280 Not foll.

SUMMONS CASE. Ss. 241—246, Cr. P. C.

1. Absence of complainant— *See* Absence of Complainant.
2. Evidence in— S. 244, Cr. P. C. *See* Examination of witness—12.
 1. Parties have right to examine their witnesses. 1921 P. 308.
 2. Magistrate cannot refuse to examine a deaf witness. 1924 C. 541.
 3. Court should leave the witnesses to the Pleaders to be examined as provided in S. 138, Ev. Act. 1924 O. 371.
 4. Magistrate cannot admit a document after the close of case without giving opportunity to accused to explain. 16 Cr. L. J. 458.
 5. A statement by a party that he closes the case must bear his signature, otherwise there is no presumption of being correct. 1925 L. 656.
 6. Magistrate has discretion to issue summons to witnesses of the parties. 1920 A. 209=21 Cr. L. J. 385, 30 C. 508.
3. Plea of guilty in— *See* Plea of guilty—5.
4. Trial of Ss. 241-242, Cr. P. C.
 1. If a Magistrate trying a summons case discharges the accused it amounts to acquittal. 11 Cr. L. J. 353.
 2. In case of joint trial of summons or warrant case, the Magistrate should follow the procedure of warrant case. 41 M. 727, 33 M. 503, 11 C. 91, 29 C. 481, 1 B. 15, 1929 C. 401. Provisions of joint trial apply. 41 C. 694.
 3. Particulars of offence must be stated to accused. 23 B. 129, though record need not show. 1934 N. 258, 1932 N. 127, and omission to do so is an illegality. 54 C. 359, 1928 C. 339 *Contra*, 42 M. 787, 1932 N. 127.

Summons Case—(conold.)

4. Magistrate must record the plea of accused at the commencement of trial. 46 C. 71, 1930 S. 64=30 Cr. L. J. 1077.

SUMMONS TO PRODUCE DOCUMENTS OR THINGS. Ss. 94-95, Cr. P. C.**1. "Document or thing"—necessary in trial—.**

1. The word document or thing will include not only documents or things forming subject matter of offence but those to be used as evidence. 5 Bom L. R. 980, 1934 B. 74=58 B. 152.
2. The words include things having connection with the offence or throwing some light on the proceeding or supplying some link in the chain of evidence. 19 C. 52, 36 P. R. 1914.
3. The things or documents must have some important bearing on the case. 13 M. 18.
4. The question whether they are necessary or desirable is to be decided by Court. 15 C. 109, 5 Bom. L. R. 980, 47 C. 647.
5. The document or thing may turn out to be wholly *irrelevant* but the power of Court is there. 19 C. 52.

2. Effect of converting the subject matter of offence into cash.

Accused cashed 5 notes of 1,000 rupees each to a third party out of 17 which he misappropriated. Court can order production of this amount. 19 C. 52 (62).

3. Inspection and putting in evidence of documents. S. 163, Ev. Act.

1. Court can allow parties to inspect documents or things produced. 15 C. 109, 1914 L. 587, 1935 S. 13.
2. Inspection ought to be made in the presence of parties and in Court. 1920 C. 349, 5 Bom. L. R. 978.
3. S. 163, Evidence Act, does not apply to criminal proceedings. Prosecution is not bound to put in evidence documents of the opposite party. 15 C. 109, 1933 B. 65=60 C. 341.

4. Power of Court to seize documents and things.

1. On a complaint, Magistrate can issue summons for the production of account books, but he cannot direct Police to take possession of the same. 11 Cr. L. J. 525, 38 C. 68.
2. Magistrate making inquiry can make order. He cannot act on the telegram of another Magistrate to seize certain books of account of a person. (1897) Rat. 880. See 13 Cr. L. J. 693 (P. C.).
3. The summons should not be in general terms but must specify the document or thing. 15 C. 109
4. The order of production must be made on sufficient material. 47 C. 647.
5. Court cannot demand security for the production of thing. 7 C. W. N. 522.

5. Refusal to produce—non-compliance.

1. If summons are not complied with search warrant will be issued under S. 96. 5 Bom. L. R. 978, 15 C. 109, 37 M. 112, 36 P. R. 1914.
2. Failure to attend and produce is punishable under S. 175, I. P. C. But where summons is issued without the Court considering it necessary or desirable for the purpose of trial or inquiry, it is illegal and disobedience is not punishable under S. 175. 1918 P. 590.

6. Revision.

High Court has ample power to interfere with the order of Magistrate ordering or refusing to make an order for Production of document or thing. 19 C. 52.

7. Telegrams and letters. S. 95, Cr. P. C.

It is only the District Magistrate or presidency Magistrate that can make an order against Postal Department. Ss. 95-96 (2), Cr. P. C.

Summons to Produce Documents or Things—(concl'd.)**8. Who can be ordered to produce—.**

1. Any person who has got document or thing may be required to produce it. He may not be a party to proceedings. 15 C. 109, 19 C. 52.
2. A person accused or suspected of an offence. 37 M. 112 (*Contra* 38 C. 304) 1919 L. 207; or a solicitor 19 C. 52, may be ordered to produce documents or things.
3. Police can be ordered to produce inquest report to grant copies to accused. 1925 M. 424.
4. Person having lien on a thing can be ordered to produce it. 36 P. R. 1914, 1927 C. 93.

SUPPRESSING EVIDENCE. See Abetment—16—Evidence—37.**SURETY—FITNESS OF—.** S. 122, Cr. P. C. See Security for good behaviour—18.

Criminal Courts should not accept certificate of pleader as to solvency or sufficiency of surety. 1934 S 142

SUSPICION.**1. Evidence of—.** See Security for good behaviour from habitual offenders—17.

1. Gravest suspicion against the accused will not suffice to convict him, unless evidence establishes the guilt beyond doubt 1930 O. 321=31 Cr. L. J. 1078, 137 I. C. 290, 26 I. C. 329=16 Cr. L. J. 25, 137 I. C. 63, 1935 C. 304.
 2. If a *prima facie* case is made out, accused cannot rely on the infirmity of prosecution evidence. The force of suspicious circumstances is augmented when accused offers no explanation. 1927 S. 85=27 Cr. L. J. 1265, 1925 S. 289, 51 I. C. 449.
 4. When the witnesses in a murder case implicate the accused only when they are faced with the necessity of exculpating themselves, their evidence is open to grave suspicion and no sufficient weight to be attached to such evidence 1930 P. 338=1930 Cr. C. 710.
 4. No conviction can be made on mere suspicion. 25 I. C. 843.
 5. A witness can state that he suspected the accused of having committed a certain offence, although he cannot state that others suspected him. 51 A. 275.
 6. Where there was grave suspicion of guilt but it did not raise that high degree of probability on which with due prudence a conviction for murder should be based, a conviction for murder was substituted for one under S. 201. 1931 L. 529=133 I. C. 446=32 Cr. L. J. 1032.
 7. Suspicion cannot take the place of Judicial proof. 1931 L. 406=32 Cr. L. J. 1049=133 I. C. 639.
 8. Any suspicion entertained by a Police Officer cannot be treated as evidence against the accused. 33 P. L. R. 182
 9. Probability or suspicion is not enough for convicting a person of murder. 128 I. C. 211, though it is ground for scrutiny 1936 O. 413.
 10. No inference of complicity in crime can be drawn from the fact of friendship between accused who are co-villagers. 1922 P. 83.
- 2. False information on.** S. 182, I. P. C. See False information—13.
- 3. First information report on—.** See First information report—17.

SUTES. See Suicide.**SYPHILIS—COMMUNICATING OF—.** See Prostitute—4.**T****TAKING SPECIMEN OF HANDWRITING FROM A PERSON.** See Handwriting—5.**TAKING WATER BY FORCE.** See Unlawful assembly—21.**TATOO MARKS—.** See Identification—15.**TEACHER AND PUPIL.**

1. School master inflicting corporal punishment on a child under 12 years for school

Teacher and Pupil—(concl'd.)

discipline is protected under Ss. 79—89, I. P. C. 3 R. 659=94 I. C. 412.

2. The extent of school master's control over a pupil depends upon circumstances of each case. 94 I. C. 412.

TEARING UP PRONOTES, ETC. S. 477, I. P. C. See Document—4.

Tearing up pronotes, pattsas, etc., is an offence under S. 477, I. P. C. 12 M. 54. 3 W. R. 31.

TEETH. See Age, Identification—16.**TELEPHONE MESSAGE.** See First information report—19.**TELEGRAM.**

1. Abetment by—. See Abetment.

2. Admissibility under S. 9 Ev. Act.

1. A telegram received by a person even though not proved to have been sent by a particular person, may be admissible under S. 9, Ev. Act, to explain the conduct of the person who received it. 1933 P. 96=142 I. C. 809.
2. Accused was arrested by the Bombay Police on the strength of a telegram from Nyasaland Police. It was admissible in evidence as explanatory of the conduct of the Bombay Police. 49 B. 878=1926 B. 71.

3. False. See False information—1.

4. First Information Report by—. See First Information Report.

5. Presumption as to—. S. 88. Ev. Act.

1. If a telegraphic message is proved to have been delivered to the addressee from the office of destination, there is under S. 88 a presumption that it corresponds with message delivered for transmission at the office of origin. S. 83 allows the Court to treat telegraphic messages received as if they were the original sent. U. B. R. 1897-1901 Vol. II, 384.
2. Before presumption under S. 88 can be applied, delivery to the addressee from the office of the destination must be proved. 10 Cr. L. J. 520=4 I. C. 240.
3. There is a presumption about the date and hour mentioned in a telegraphic message. *Halsbury Vol. 13. Para 762*
4. If a telegram is handed in a Telegraph office, there is a presumption as to the delivery of a telegraphic message to the addressee, if it is not returned to the sender. *Roscoe, N. P. Ev. 43, Wharton, Ev. S. 76.*
5. Where the original of a telegram has not been proved to be in the handwriting of the sender, S. 88 is a bar to the presumption that alleged sender was the sender of message. But it can be considered under S. 9. 1933 P. 96=34 Cr. L. J. 421, 1926 B. 71.

6. Presumption as to identity of sender of—.

1. A telegraph office makes no inquiries and is in no way responsible for the identity of the sender of a message, much less the truth of its contents. 49 B. 878=1926 B. 71=27 Cr. L. J. 114.
2. S. 88 forbids the Court to make any presumption as to the person by whom a telegram is sent. 42 M. 885, 1933 P. 96.
4. Where the original of a telegram has been proved to be in the handwriting of the sender, S. 88 is a bar to its being presumed that the alleged sender was the sender of the message 1932 P. 96=13 P. L. T. 802.
4. Sanction of the Local Government to prosecute a person for an offence under S. 124-A., I. P. C., was communicated by telegram. Held, that it must be proved to have emanated from the Government. 42 M. 885. See 49 B. 878,

7. Proof of—.

1. Three months after sending a telegram, it can be proved by secondary evidence, as the original is destroyed after three months by the Telegraph Department. 1926 O. 161=90 I. C. 700=26 Cr. L. J. 1602.

Telegram—(concl'd.)

2. The original of a telegram is the one sent, not the one delivered. *Phipson, Ev. 7th Ed. 517.*
3. The original must be produced from the post office or else proof of its destruction given, when a copy will be admissible. 16 Cox 203, *Phipson Ev., 7th Ed. 517.*
4. A sanction to prosecute communicated by telegram must be proved to emanate from Government, as there is no presumption about the person by whom it is sent. 42 M. 885=1920 M. 928.

TEMPORARY ORDER IN CASES OF APPREHENDED DANGER. S. 144, Cr. P. C.**1. Condition precedent**

1. S. 144 is to be applied in case of urgency. 38 C. 876, 32 C. 935.
2. There should be apprehended danger or urgent cases of nuisance before passing an order. 1 C. L. R. 58.
3. Mere statement of the Magistrate that he considered the danger to be imminent is not sufficient. 23 C. W. N. 145.
4. Magistrate ought not to treat a case as one of emergency merely because some people threaten to commit a breach of the peace, unless he has not got sufficient Police to prevent it and is unable to find persons likely to commit breach of peace and bind them. 1917 M. W. N. 724.
5. Magistrate cannot pass an order merely on the complaint of a party. 20 C. W. N. 981 or on Police report. 13 W. R. 19, 11 W. R. 46 or on the instructions of District Magistrate. 38 M. 489.
6. Annoyance means mental as well as physical annoyance. 55 B. 322.

2. Contents and nature of—.

1. There must be a written order directed to the accused and duly promulgated. 36 P. R. 1905 Cr.
2. The order must contain material facts. 32 C. 935.
3. An order directing petitioner, not to go to a particular village nor allow any relatives or friends to go there is indefinite. 2 C. W. N. 422, 11 C. W. N. 121.
4. The order directing that all processions should stop when passing a certain place of worship at any time is illegal. 2 M. 140
5. The order must not be irrevocable in its nature, *e. g.*, an order to cut down trees. 32 C. 154, 13 W. R. 72
6. Magistrate passing an order under S. 144 is not a Court. 47 M. 56, 52 M. 69.
7. The order must show the thing prohibited and the persons who are prohibited. 55 B. 322.

3. Communication of—.

The burden is on the prosecution to prove that warning was communicated to the accused. 1931 C. 262=131 I. C. 271.

4. Dispute about land—.

1. Even in a *bona fide* dispute as to possession of land S. 144 may be legally utilized. 1929 P. 415=115 I. C. 683.
2. Where a special condition of S. 145 is fulfilled S. 144 is inapplicable. 2 P. 94.
3. Questions of title, fraud, etc., cannot be tried in proceedings under S. 145 or 144. 3 P. 809.
4. In a dispute for possession a decision under S. 145 is more appropriate than under S. 144. 65 I. C. 856, 11 C. W. N. 271.
5. S. 144 applies where possession is either undisputed or clear beyond any shadow of doubt. 1 P. L. T. 44, 2 P. 94, 2 P. L. T. 484.
6. Where proceedings are instituted under S. 144 and the possession is honestly disputed, the Magistrate can convert it under S. 145. 27 M. L. T. 234, 2 P. 94.

Temporary Order in cases of Apprehended Danger—(contd.)

7. The Magistrate without any enquiry as to who grew the crop, has no right to deliver possession to a person and arm him with Police force. 61 I. C. 794.
8. Order amounting to ejectment in a civil suit is improper. 63 I. C. 621.
9. Civil Court decree and delivery of possession cannot be opened under S. 144. 66 I. C. 817.
10. Where the dispute is with regard to possession of immovable property, proceedings should be under S. 145 rather than under S. 144, Cr. P. C. 1935 P. 224=155 I. C. 88=36 Cr. L. J. 655.

5. Duration of—

1. A temporary order under S. 144 remains in force for 2 months. An order for perpetual injunction is illegal. 10 A. 115, 8 C. 550.
2. An order prohibiting a landlord from ever holding *huts* on his land on certain days is illegal. 5 C. 7.
3. An order to abstain from taking part till another is evicted from management is illegal. 24 M. 45.
4. Magistrate can pass an order restraining a person from striking a bell continuously at night to annoy the applicant. 22 Bom. L. R. 157.
5. If time is not specified, it shall be presumed to be for 2 months. 34 C. 897, 1919 M. W. N. 872, 42 M. L. J. 352.
6. The period of 60 days begins to run from the date on which the notices are issued. 1935 P. 224=36 Cr. L. J. 655=155 I. C. 88.

6. Emergency.

It is *prima facie* for the Magistrate, who knows the local conditions, to say whether an emergency exists or not. The High Court will not interfere ordinarily. 55 B. 322.

7. Ex-parte order.

1. An *ex-parte* order can be made only in case of emergency. 27 C. 785.
2. In case of *ex-parte* order, the record must show that there was no time to serve notice. 1917 M. W. N. 724.
3. It is not proper for a Magistrate to postpone the hearing of the matter from time to time until the termination of order, when his order has been challenged. 71 I. C. 516.
4. When an *ex-parte* order is called in question under cl. (4), the normal procedure for recording evidence should be adopted. 1930 M. W. N. 811=1931 M. 236=32 Cr. L. J. 744=131 I. C. 449.
5. S. 144 provides speedy remedy in cases of emergency. A Magistrate passing an *ex-parte* order can alter or rescind it under sub-section 4. 77 I. C. 721=25 Cr. L. J. 433.
6. Ordinarily notice should be issued to the person against whom order is to be made. 19 M. 18, 2 C. W. N. 747.

8. Extension of—

1. A Magistrate cannot by passing successive orders extend the period of 2 months. 11 C. W. N. 79, 20 C. W. N. 758, 86 I. C. 810, 38 M. 489.
2. If there is a real danger, action under S. 107 can be taken. 3 P. L. J. 30.
3. Local Government can extend period without stating reasons 45 A. 526.
4. An order under S. 144 being operative for 2 months, need not be set aside after 2 months. 88 I. C. 845=1925 P. 514.
5. Extension of period for an indefinite time by Local Government is illegal. 45 A. 526.
6. Magistrate cannot by successive renewals prohibit persons by permanent injunctions. 38 M. 489, 27 M. L. J. 628, 7 C. W. N. 140.

9. Frequenting or visiting a place.

1. An order prohibiting people from giving caste dinners, during the prevalence of cholera is illegal. 14 B. 165.

Temporary Order in cases of Apprehended Danger—(contd.)

2. An order directing people of Surat city to abstain from interfering with the destruction of dogs is *ultra vires*. 15 Bom. L. R. 684.
3. An order can be issued when frequenting or visiting a place. Order directing public to abstain from attending *hat* is bad. 86 I. C. 810.
4. Order addressed to general public can be issued when frequenting or visiting a particular place. 134 I. C. 344, 134 I. C. 1237, 27 I. C. 146.
5. "Place" includes a Municipal ward. 1934 B. 375.

10. Improper orders.

The following are improper orders :—

1. An order directing division of crops between landlords. 32 C. 154.
2. An order that certain persons should live in a *Haveli* and Police to guard the entrance, allowing only specified persons. 33 P. R. 1878 Cr
3. An order regulating the boat traffic to avoid overcrowding. 25 C. 852.
4. An order for collection of market dues 23 W. R. 57.
5. An order that building should be re-erected. 17 A. 485.
6. An order for the removal of dam obstructing the flood. 9 C. 103.
7. An order that prostitutes who had built huts, should remove the huts, for people visiting them would endanger their lives by crossing a railway line. 2 C. W. N. 70.
8. An order prohibiting a person to excavate tank in his land. 38 C. 876.
9. Order amounting to ejectment in a civil suit. 63 I. C. 621.
10. Order restraining a right to take a procession obtained by a decree. 101 I. C. 893.
11. Order, when other means to avert danger were available 85 I. C. 656.
12. Order passed without preliminary notice or inquiry. 26 Cr. L. J. 260.
13. Order prohibiting a person from holding *hat* on his property. 71 I. C. 516.
14. Order the effect of which is to disallow prayers 24 Cr. L. J. 154=71 I. C. 506.
15. Order when there was no material before Magistrate to justify it. 1929 P. 714.
16. Order prohibiting use of Gandhi caps in a locality 1930 M. W. N. 841.
17. Order to *hat* holder, to hold his hat on a particular day. 31 C. 990.
18. An order addressed to "any person who may be concerned in this object" is too vague and bad in law. 55 B. 322.
19. When the order does not specify how long the prohibition was to continue, the order is vague and no prosecution for its disobedience should be lodged. 35 C. W. N. 242.
20. An order prohibiting people from putting up flags in private houses is illegal. 1931 M. 242=33 Cr. L. J. 763.
21. An order directing abstention from residing at particular place is illegal. 1934 R. 124=35 Cr. L. J. 1300, 1931 C. 263 Foll.

11. Judgment interpartes.

Judgment of Civil Court though interpartes is no evidence in Criminal proceedings. 59 C. 136.

12. Object and Scope

1. S. 144 should be exercised in defence of right rather than suppression of it 6 M. 203.
2. If the Magistrate finds that a man is doing that which he is legally entitled to do and his neighbour is threatening to create disturbance, he should restrain the second from illegally interfering with the right. 1924 P. 767=82 I. C. 42, 5 C. 132.
3. The order cannot be passed, unless the place is open to public. The public cannot be prohibited from putting up flags in private houses. 1930 M. W. N. 849.
4. S. 144 is not intended to restrict liberty of individual if there is no apprehension of the breach of peace from him. 82 I. C. 42.
5. S. 144 is not applicable to disputes about land. 75 I. C. 531, 32 C. 936.

Temporary Order in cases of Apprehended Danger—(contd.)

6. S. 144 is not applicable to disputes of civil nature of individuals. 50 A. 414.
7. Preservation of public peace is the function of the Government, and it may be necessary to override temporarily private rights. 51 M. 1006, 6 M. 203, 2 M. 140, 5 C. W. N. 329.

13. Order contrary to Civil Court decree.

1. A Magistrate has no jurisdiction to pass an order which interferes with the Civil Court decree. 17 A. 485, 32 C. 154, 23 Cr. L. J. 689.
2. Where Hindus in accordance with a decree obtained in their favour, applied for leave to take procession, the order of Magistrate forbidding the procession on the ground of likelihood of rioting and bloodshed is illegal. It amounts to confession of impotence on the part of authorities. 1927 M. 611=28 Cr. L. J. 509.
3. When possession of immovable property was actually given by Civil Court, an order under S. 144, on the ground that a party disputes the factum of delivery of possession, is illegal. 71 I. C. 785.
4. It is the duty of the executive to uphold the civil rights declared by Civil Court by all means before resorting to S. 144. 10 I. C. 709=1927 M. 368.
5. When the Civil Court has expressed opinion about a right by an order of temporary injunction, the Criminal Court must give effect to it. 69 I. C. 369.
6. Where an auction purchaser in execution of decree is put in possession of property, an order restraining him to enter upon the property is illegal. 2 C. W. N. 572, 6 C. W. N. 466.

14. Order to remove himself from the District.

- A Magistrate cannot give an order, when public tranquility is threatened, to a person to remove himself from the District and to do so by the next available train. 58 C. 1037.

15. 'Particular Place'—'vague'—. See - 9.

1. The word "Particular place" should not be confined to a restricted area; but should be construed as meaning a well-defined area regarding the boundaries of which the public can be in no doubt. 1935 L. 679=36 Cr. L. J. 951=156 I. C. 525, 14 B. 165, 27 I. C. 146, 27 I. C. 134, 1931 B. 325, 1934 B. 375 Ref.
2. Small Town, Revenue estate Qadian and revenue estate immediately contiguous thereto are too vague to be effective. 1935 L. 679=36 Cr. L. J. 951.
3. The place or locality to which the orders are applied, should be so clearly defined as to enable the public to know at once what the prohibited area is, and there should be no possibility of the people disobeying the order through ignorance of the place to which it is applied. 1934 B. 375=59 B. 27=36 Cr. L. J. 130, 14 B. 165, 27 I. C. 146, 1931 B. 325, 1931 B. 513 Ref.
4. Place includes a Municipal ward. 1934 B. 375=59 B. 27.
5. It is doubtful if place includes Small Town. 1935 L. 679.

16. Procedure.

1. Proceedings under S. 144 being judicial, the accused has a right to know what information was on which the Magistrate acted. 1930 M. W. N. 849.
2. The record must show the authority under which the Magistrate acts. 74 I. C. 65.
3. The order must state the material facts justifying issue of order. 82 I. C. 42.
4. When a Sub-Divisional Magistrate set aside an order under S. 144, District Magistrate cannot direct him to draw up proceeding under S. 145. 1929 C. 751=33 C. W. N. 723, 24 C. 391.
5. If there is no likelihood of the breach of peace, an order under S. 144 is not justified. 77 I. C. 807.
6. When an *ex-parte* order under S. 144 is challenged, the normal procedure for examination and cross-examination of witnesses in open Court must be followed. 1930 M. W. N. 841.
7. Magistrate can take action when immediate prevention or speedy remedy is necessary

Temporary Order in cases of Apprehended Danger—(contd.)

and he must state the material facts in his order. 134 I. C. 1237.

8. If part of order is bad, it does not make the whole order bad. 55 B. 322.

17. Proper orders.

1. An order prohibiting a procession on the ground that the Magistrate would not be able to prevent a breach of the peace with force at his disposal is legal. 15 Cr. L. J. 30.
2. An order prohibiting burials in a certain place is legal. 2 Weir 64.
3. An order that two rival sets of Muhammadans should enter and worship in a particular mosque only at particular hours. 24 M. 252.
4. An order to the priest of a temple to heighten and widen the doorway to prevent overcrowding of pilgrims. 6 B. H. C. R. 36.
5. An order restraining persons from interfering with the *pūja* (worship). 4 Bom. L. R. 582.
6. An order prohibiting the holding of the market on the same day as the old market with a view to prevent breach of the peace is legal. 67 I. C. 205.

18. Punishment for disobedience. See Disobedience to order duly promulgated. S. 188, I. P. C.

If an order under S. 144, Cr. P. C., is disobeyed, the conviction should not be based on general conclusions but on actual facts. 1932 C. 868=33 Cr. L. J. 829.

19. Religious procession. See Procession.

1. Prohibition of processions in all streets at all times is improper. 1932 M. 294.
2. Right to celebrate Ram Lila and to take out procession even though not exercised before should not be disallowed, merely because another section of people who have no manner of right or interest object to it. 1935 A. 575=156 I. C. 595, 1925 P. C. 36=47 A. 151.
3. S. 144 should not be directed against those who desire to do what the law permits them to do, but against those who attempt to prevent the exercise of legal rights. 1935 A. 575=156 I. C. 595.
4. An order directing people of a place and particularly some persons, not to take out procession is illegal. 1931 B. 513=33 Cr. L. J. 75=134 I. C. 1237.

20. Remedy against—

If a Magistrate abuses his power under S. 144, the remedy is to invoke the powers under S. 107, Government of India Act. 52 M. 69.

21. Rescinding of—

1. Rescission of the order is justified when the circumstances justifying the continuance of the order do not exist. 64 I. C. 507.
2. A Magistrate has power to rescind an order made by a subordinate Magistrate. 2 P. 94.
3. A District Magistrate cannot substitute his own order, while cancelling an order of the subordinate Magistrate. 3 P. L. J. 287, 64 I. C. 507.
4. District Magistrate cannot direct subordinate Magistrate to substitute proceedings under S. 145 for S. 144. 64 I. C. 507, 24 C. 391.
5. District Magistrate can rescind order under S. 144 passed by Sub-Divisional Magistrate. 1934 P. 313.

22. Revision of—

1. High Court can revise order under S. 144, provided it is moved within 2 months of the order. 53 M. 320, 109 I. C. 113 See 23 C. W. N. 145, 38 M. 489, 52 M. 69 overruled by 53 M. 320.
2. High Court can direct a party to redeliver goods to the proper person who was wrongly ordered to deliver. 50 A. 414.
3. High Court can revise under S. 439 an order under S. 144 when the order was *ultra vires*. 19 C. 127, 25 C. 852, 9 C. 103, 5 C. 7, 1934 R. 124

Theft—(contd.)

in heaps, in order to create evidence of their right. Held, that the defence of *bona fide* claim of right is untenable as the accused had acted dishonestly. 1929 P. 502=119 I. C. 887=30 Cr. L. J. 1100.

10. Not uncommonly the Criminal Court is used as a lever to harass an inconvenient adversary. If there is a *bona fide* dispute, the straight course is to approach a Civil Court. 1930 A. L. J. 457.
 11. If accused removes crops grown on the land in possession of another, he is guilty although he asserts a *bona fide* claim to the land. 27 C. 501, 9 B. 135, 35 I. C. 167, 1929 P. 86=30 Cr. L. J. 511, 1921 A. 158=67 I. C. 498.
 12. *Bona fide* claim is a question of fact and not of law to be determined the circumstances of each case. 71 I. C. 798.
 13. Merely asserting possession of land and pleading that crops were sown by him is not sufficient to make the claim *bona fide*. 15 C. 390, 4 C. W. N. 10, 6 C. W. N. 97, 10 C. W. N. 233, 39 I. C. 475, 44 C. 66, 38 I. C. 318, 38 I. C. 739, 40 I. C. 732, 30 I. C. 1003, 28 M. 304.
 14. In a suit, the complainant had been given possession of land with standing crops. Accused, who had sown the crops before delivery of possession cut them. Held, that he acted in the exercise of a *bona fide* claim of right. 14 I. C. 762, 40 I. C. 732, 48 I. C. 678=23 C. W. N. 385, 29 I. C. 90.
 15. A tenant cut the crops attached in execution of money decree and were subsequently distrained by the landlord for arrears of rent. It is not theft. 38 A. 40.
 16. Accused who had grown crops and against whom there is a decree for possession or an order under S. 145, is not guilty if he cuts the crop. 32 I. C. 667—673.
 17. It is no theft to cut down one's own crops which are ordered to be delivered to another on payment of compensation which the latter failed to pay. 11 A. L. J. 270=14 I. C. 752.
 18. Accused seized a boat belonging to the complainant who ran a rival ferry with the intention of increasing his brother's income. He is guilty of theft as he never alleged that complainant had no right to ply. 15 B. 344.
 19. Accused cut down crops sown by him. He is not guilty although an order under S. 145, Cr. P. C., is made in favour of complainant. 32 I. C. 667.
 20. If an owner allows another to cultivate the land and then takes forcible possession of crops when ripe, is guilty of theft. 1924 N. 311=25 Cr. L. J. 349.
 21. Complainant attached certain articles of the accused but in subsequent claim proceedings the same were adjudged to the accused. He took forcible possession by breaking open the lock of the shop, instead of getting them from the Court. He is not guilty. 1922 M. 405=72 I. C. 526.
7. **By clerk or servant** S. 381, Penal Code. See *Servant*,
1. A person working on commission is a servant. 51 I. C. 673.
 2. The allowance of a portion of profit does not destroy the relationship of master and servant. 9 W. R. 37.
 3. In the absence of evidence as to ownership of stolen property the conviction under S. 381 cannot stand. 30 I. C. 464=16 Cr. L. J. 640.
 4. Taking official papers out of officer's custody for showing to a party's Vakil is theft by servant. 1925 B. 122=94 I. C. 881=27 Cr. L. J. 689.
 5. The trial of an offender under S. 381 by a third class Magistrate is illegal. 1924 R. 12.
8. **By husband or wife.** See S. 27, I. P. C. *Receiving stolen property*.
1. S. 27 postulates that the wife is in possession on account of her husband. But where two are living apart her possession could not be deemed to be on his account. 12 I. C. 525=12 Cr. L. J. 549=10 M. L. T. 237.
 2. There is no bar to the conviction of the husband or the wife for committing theft of the property of the other. 17 M. 401.
 3. A Hindu wife is qualified to acquire or possess her own separate property called

Theft—(contd.).

stridhan and which she is at liberty to take with her without being condemned for theft. 8 B. H. C. R. 11.

4. The proposition that every thing acquired by the wife during coverture becomes the property of her husband, has no foundation in Hindu law. 3 M. H. C. R. 272.
5. A Mohammedan wife may be convicted of theft or abetment of theft in respect of the property of her husband. 6 B. H. C. R. 9.

9. By owner of his own property—attachment by Court.

1. If owner pawns his goods to another and he undertakes that pawnee shall have possession of the things till redeemed he is guilty of theft when he dishonestly removes them from his possession. It is no defence to say that the goods still in his possession are sufficient to cover the loan. 1923 C. 594=76 I. C. 654.
2. If a person's property is attached and taken possession of by the bailiff, his removal of it from his possession or from that of another to whom it has been entrusted for safe custody is theft. 1 Weir. 419, 1925 O. 464=86 I. C. 969, 1928 S. 68.
3. A person removing his own goods from the Railway station yard, retaining their receipt with intent to claim them or their value commits theft. 36 I. C. 148=14 A. L. J. 417.
4. Where accused's cattle were illegally distrained, he could not be convicted of theft for retaking them. 1 Weir. 422, 59 I. C. 411.
5. A distraint made by Revenue Court has the effect of divesting the owner of legal possession in his property, with the attachment and taking or removal by the owner is theft. 1 Weir. 426, 1 Weir. 423.
6. But this is certainly not the effect of an attachment by a Civil Court. 22 M. 151.
7. Court passed a possessory decree against A and gave symbolical possession to the decree holder. A's brother cut the crops which he had raised on the field. He is not guilty of theft. 1896 B. U. C. 866.
8. Complainant undertook to repair certain articles of the accused within a week but did not finish it in time. Accused forcibly removed it from his shop. He is not guilty. 53 C. 174=1926 C. 464=91 I. C. 289=29 C. W. N. 1011=26 Cr. L. J. 1505.
9. If property is attached by receiver, its removal by the owner is theft. 48 A. 368.
10. Removing cattle from the pound without paying fee is theft. 1930 M. W. N. 529.
11. If the attachment of movable crops is made merely by beat of drum and procedure prescribed under O. 21, R. 44, Cr. P. Code, is not followed, the judgment-debtor is not guilty if he removes the crop. 1931 A. 142=32 Cr. L. J. 437.
12. If owner gets actual possession of land under O. 21, R. 35, C. P. C., the dispossessed person cannot remove crops though grown by him. 1935 C. 124=37 Cr. L. J. 495.
13. If the process is signed by Amin and not by Court and does not bear the seal of the Court, the attachment is illegal under O. 21, Rules 24 and 44, C. P. C. Hence removal of attached property is not offence. 1935 A. 214=153 I. C. 428=36 Cr. L. J. 340=7 A. 506, 1919 P. 404=49 I. C. 171, 1926 P. 237=93 I. C. 146=27 Cr. L. J. 418=5 P. 216 Rel. on. 1931 A. 142=32 Cr. L. J. 437 Ref.

10. By Tenant.

1. The offence of theft is against possession and as tenant has a right to the possession of the tree, the cutting of tree is no theft under S. 23, Bengal Tenancy Act, an occupancy Rayat is entitled to cut trees. Even if there is dispute about the right, it should not be settled by Criminal Court. 1935 P. 472. 1925 C. 1020=27 Cr. L. J. 133 Rel. on.
2. Tenants removed trees uprooted by storm, belonging to Zamindar. They were guilty as they could not prove a custom with regard to fallen trees. 42 A. 53.

11. Complaint by landlord.

A landlord has no right to prosecute in respect of theft of trees in the possession of his tenant. 1931 M. 241=131 I. C. 493=32 Cr. L. J. 757.

12. Consent.

1. Consent of a person in possession suffices to negative criminality. A sought the

*Theft—(contd.)***15. Forcible removal to realize debt or dues.**

1. Removal of goods from debtor's possession by force to compel the debtor to discharge the debt, is theft. 1925 L. 131=25 Cr. L. J. 650, 1930 B. 167.
2. A forcible removal of property with a view to realize legal dues and not with a view to make any wrongful gain out of it or to cause any wrongful loss to the complainant is not theft. 1921 P. 390=22 Cr. L. J. 673, 14 C. W. N. 936.
3. Accused gave certain articles to the complainant to repair them within a week. Not having finished within the stipulated time, the accused went to his shop and took forcible possession of the article. Held, he is not guilty. 53 C. 174.
4. A forcible and illegal seizure of bullock of a widow in satisfaction of debt due to the accused by her deceased husband was held to be a wrongful loss and theft. (1875) 24 W. R. 7 Cr.
5. Where the inception of the struggle was only a quarrel and it was at the end that accused took *chaplis*, etc., in order to ensure the payment of money due to him, the offence was one under S. 378 and not 392. 1935 Pesh. 49.

16. Human body.

Accused stole a corpse lying in front of the house of the mother of deceased, to prevent its being sent for *post-mortem* and threw it into the river. He is not guilty of theft. 25 A. 129.

17. Husband and wife. See—8.**18. Identity of stolen property. See Receiving stolen property (8).****19. In a building. See Theft in building. S. 380, I. P. C.****20. Joint possession.**

1. Taking from joint possession is no theft, unless the possession becomes exclusive of the other. 10 M. 186, 1 Weir 79.
2. Accused held a cart jointly with his brother, which he sold off appropriating the sale proceeds to his own use. He is guilty of theft and not of Criminal misappropriation. 1 Weir 408, 10 M. 186.
3. A coparcener converting his coparcenary possession of his interest in the family property into separate possession would be guilty of theft. 12 P. R. 1889, 10 M. 185. *Contra* 10 A. L. J. 527.
4. If a tenant paying share of produce as rent takes away the whole produce reserving nothing for the landlord, he is guilty under S. 424 and not under S. 379. 26 M. 481.
5. There can be theft by a person who is in joint possession of the stolen property. 1926 B. 122=94 I. C. 881, 10 M. 186.
6. Forcible removal of crops by a joint owner is not an offence under S. 395, I. P. C. although a co-owner contributed to the cost of cultivation by advancing money to the agent in possession. 1935 S. 115.

21. Jurisdiction. S. 181, Cr. P. C.

1. In case of possession of stolen property, the accused can be tried at either place of theft or dishonest possession. 1926 A. 167=91 I. C. 53=7 L. L. J. 586, 1934 A. 455 (2)=35 Cr. L. J. 1092.
2. Where property stolen in one district is found in another district, the thief can be legally tried in the latter district. 4 P. R. 1871, 1924 C. 1034.

22. Master and servant. See—7.

1. A person plucking fruits in obedience to the orders of his employer, who wants to assert his right to share in the proceeds, is not guilty of theft. 38 I. C. 318=18 Cr. L. J. 286.
2. A servant acting under the orders of his master is not guilty of theft in the absence of proof of his knowledge of his master's dishonest intention. 15 C. W. N. 414=12 Cr. L. J. 7.

Theft—(contd.)

3. Where the crop was cut and dishonestly removed by the order of accused, he himself being present, the accused is guilty under S. 379, I. P. C. 43 I. C. 400=19 Cr. L. J. 116.
4. Accused was employed by the complainant on wages. His wages for several months were due and so he took away 15 Baras worth 15 Rupees belonging to the complainant and refused to give them back until his wages had been paid. Held, that technically the offence of theft was committed. 1927 A. 470=28 Cr. L. J. 531.
5. Servant knowing that his master had no right to complainant's goods assisted in removing, is guilty of theft. 1926 P. 36=26 Cr. L. J. 1559, 9 C. W. N. 974 Dist.
6. When servants were informed that they could not cut timber without complainant's permission and still they cut them obeying their employer's order, they are guilty. 1934 P. 491, 9 I. C. 46.

23. Record of a case.

1. A person removing a paper from judicial file is guilty of theft. 86 I. C. 671.
2. Taking official papers out of officer's custody for showing to a party's Vakil is theft. 1926 B. 122=94 I. C. 881.
3. Abstraction of a document from a judicial record is theft and mischief. 112 P. R. 1866 Cr.

24. Pointing out stolen property. See Pointing out—4, Discovery—15.**25. Possession—property.**

1. There can be no 'property' in a bull set at large at the performance of *Sharadha* ceremony. It is *res nullius* and is incapable of theft being committed in respect of it. 8 A. 51, 9 A 348, 17 C. 852 *Contra* 11 M. 145.
2. A bullock followed a cow and the owner gave him up for lost. The accused in whose possession it was found afterwards is not guilty of theft though under S. 403, I. P. C. 38 I. C. 332, 1 L. B. R. 123.
3. But if some time had elapsed between the loss and possession of the accused, he is not guilty even under S. 403, I. P. C. 62 P. L. R. 1916. 15 P. R. 1891.
4. The taking of property is not necessarily theft unless it was taken out of the possession of another 44 C. 66, 22 I. C. 762.
5. Where the owner turns out his cattle to graze in the open, they do not cease to be his property and the removal amounts to theft 4 Bom L. R. 626.
6. Possession must be recent and exclusive to raise the presumption of theft. 1929 S. 9=111 I. C. 732=29 Cr. L. J. 924, 26 M. 467.
7. If accused is not in actual possession of the stolen article, it must be proved that it was found either in the manual possession of the wife, clerk or servant or was found in a place and under circumstances, so as to justify an inference that the accused knew of its existence and that the same was under his effective control. 1929 S. 9.
8. Accused was in possession of two bullocks belonging to two owners. Two trials are not valid as offence is only one. 1936 R. 94=37 Cr. L. J. 530.
9. If the owner has given up property in the subject of theft, there is no theft, e.g., where accused dug up the carcas of bullock, which the owner, suspecting it to be poisoned, caused it to be buried. 4 M. H. C. R. App. 30.

26. Procedure.

1. Where property is found to be the subject of theft and accused is acquitted because of incomplete evidence, the property should not be made over to him. 1927 C. 61=99 I. C. 91.
2. The word 'dishonestly' must be explained to the Jury. 1926 M. 1121=97 I. C. 951=27 Cr. L. J. 1191.
3. Several accused were tried together and fined under Ss. 379—447 for stealing fish. They were all separately engaged in fishing without any common object. Held, that the joint trial is illegal. 50 M. 735=1927 M. 177=98 I. C. 527, 1926 A. 334 and 33 M. 502 Dist.

*Theft in Building—(concl'd.)***4. Dishonest intention.** *See* Theft—13.

Accused entered into an agreement with the complainant that the complainant should advance him money on the hypothecation of goods to be deposited by him as security. The accused was entitled to take advances up to 70 per cent. of the value of goods. Accused secured the key of godown and removed the goods. Held, he is guilty under S. 380. 1923 C. 594=76 I. C. 654=25 Cr. L. J. 222.

5. Essentials and evidence.

1. The accused removed a promissory note from the file of the Court. On being pursued he tore it into pieces. He is guilty under Ss. 380, 201-511, I. P. C. 31 I. C. 647=16 Cr. L. J. 791.
2. A person was charged under Ss. 457 and 380 but there was no evidence of house breaking and theft but after some days he surrendered the stolen goods. He is guilty under S. 411, I. P. C. 33 I. C. 819=17 Cr. L. J. 179.

6. Procedure.

Separate sentences cannot be passed under Ss. 457—388 for house breaking followed by theft 5 P. 464=1926 P. 367=96 I. C. 528.

THIRD PARTY.

1. Claim of—. *See* Disposal of property—14, S. 517, Cr. P. C.
2. Confession to—. *See* Confession by inducement.
3. Interference. *See* Right of private defence—30.

THREAT OF INJURY TO PUBLIC SERVANT. S. 189, I. P. C.

1. S. 189 deals with menaces which would have a tendency to induce a public servant to alter his action because of some possible injury to himself or to some one in whom the accused believes he has an interest. 14 C. W. N. 234, 28 M. L. J. 505.
2. Mere threat to bring a legal complaint either before a Court or before a constable's superior is not an injury. 6 L. 558.
3. Where the accused in a loud tone repeatedly said to the Magistrate that he and others would obstruct the carrying of a Hindu God along the road, even though a riot takes place, he was guilty under S. 189. 14 C. W. N. 234.
4. It is necessary to prove the exact words used by the accused. 8 A. 380.
5. Where a person arrested in execution of a decree refused to follow the peon and threatened to use violence, he was guilty under S. 189. 25 Cr. L. J. 1237=81 I. C. 165.
6. Where after the service of summons, the accused, the son of witness abused the process-server and asked him to go out of the house and witness signed his name to the summons, no offence was committed. 23 M. L. J. 505.
7. Threat of injury under bad temper is not necessarily offence under S. 189. 1936 A. 171=37 Cr. L. J. 212.

THREATENING ACCUSED OR HIS COUNSEL. *See* Duty of prosecution—5.**THROWING BRICKS OR STONES IN ANOTHER'S HOUSE.** S. 336, I. P. C.

See Rash and Negligent Act—12. Culpable homicide—34.

THREATENING LETTER.

1. To defendant to withdraw case—. *See* Contempt of Court—13.
2. To provoke breach of peace. *See* S. 504, I. P. C.

THUMB IMPRESSION. *See* Expert—3, Finger impression.

1. Evidence of thumb impression is valuable and great weight can be attached to it. 1929 L. 210=30 Cr. L. J. 52=113 I. C. 68.
2. Report of finger print bureau is not evidence if not tested by cross-examination, though parties agreed to abide by it. 79 I. C. 641.
3. The positive evidence of eye witnesses should not be lightly brushed aside, on the evidence of finger expert. 1923 C. 240=70 I. C. 194.

Thumb-impression—(concl'd.)

4. If the finger expert has not been cross-examined as to the grounds of his opinion, his evidence is yet valuable. 21 Cr. L. J. 257
5. The Court should be chary in accepting the evidence of finger expert as to the age of thumb impression opposed to the date on the document. 1926 P. 575.
6. Court can direct an accused person to give his thumb impression in Court. 6 P. 623=28 Cr. L. J. 1028=1928 P. 103, 1924 R. 115, 1926 C. 531.
7. Mere obtaining thumb impression on a blank paper is not attempt to cheat. 1926 P. 267=94 I. C. 353.
8. If the thumb impression of accused is taken in Court for comparison, conviction based on such comparison by expert is highly irregular. 23 Cr. L. J. 638. See 6 P. 623.
9. Conclusions from comparison of thumb impression can form the basis of conviction. 46 M. 715, 32 C. 759.
10. If the accused refuses to give his thumb impression, Court may draw an inference against him.

TIME.

In India where references to time are generally approximate, there is large margin of honest error. 15 Bom. L. R. 297=19 I. C. 328.

TIME-BARRED DEBT.

If complainant cannot recover a debt legally being time barred, proceeding under S. 409, I. P. C., should be quashed. 24 Cr. L. J. 591=1924 N. 47.

TIME OF DEATH.**1. From digestion of food.**

1. The state of digestion of the contents of the stomach is often used as a means of fixing the hour of death. *Taylor's Med. Jur.*, 1928, Vol. I, P. 294.
2. Most elaborate tables have been prepared of the time taken by the stomach to digest certain articles of diet, of which the following may be taken as an example:—

Article.	Time for digestion. H. M.	Article	Time for digestion. H. M.
Rice	.. 1 0	Eggs half boiled	.. 3 0
Apples, cooked	.. 1 30	Beef	. 3 0
Venison	... 1 30	Carrots, boiled	. 3 15
Sago	.. 1 45	Potatoes	... 3 30
Bread	... 2 0	Turnips	... 3 30
Milk	. . 2 0	Butter and cheese	... 3 30
Cabbage	. 2 0	Oysters, stewed	... 3 30
Oysters, raw	. 2 3	Eggs, stewed	... 3 30
Eggs, raw	.. 2 3	Pork boiled	... 3 30
Potatoes, roast	... 2 30	Fowls	... 4 0
Parsnips, cooked	... 2 30	Wild fowl	... 4 30
Turkey	... 2 30	Beef salt	... 5 30
Goose	.. 2 30	Pork roast	... 5 30
Custard, baked	... 2 45	Veal	... 5 30
Mutton	... 3 0		

Ibid.

3. The table must not be taken as of mathematical certainty, but may represent fair averages. The rate of digestion varies with different individuals and with the state of the gastric mucosa. Death does not at once cause the process of digestion to stop, as we know that the stomach can even digest itself after death. With all

Time of Death—(concl'd.)

this uncertainty, too much stress must not be placed on weighed along with all other items. *Ibid*, P. 295.

4. Periods given above do not refer to the digestion of India on which but few observations or experiments have been India use either rice, wheat, or other grains as their staple many use some of the pulses, and comparatively few eat experiments and observations seem to show that some pulses, etc., may be found undigested even six or seven food. *Taylor's Med. Jur.*, 1928, pp. 917-918.
5. Too much stress must not be placed on such evidence. with all other evidence. *Ibid*.
6. Too much stress should not be laid on the condition of food order to find out the time of occurrence, as the recent medical that sometimes the process of digestion is greatly delayed in the food is vegetable food. 31 Cr. L. J. 689=1930 O. 60=1

2. From warmth and condition of Muscles.

1. The changes which take place in dead body before commence may sometimes enable a medical witness to form an opinion the deceased died. The crime may have been so recently body still retains the warmth and pliancy observed in the recent found in a cold and rigid state. A person charged with a crime prove that he had not been in the house for many hours or days be adduced to show that he was there at a time which would condition of the body when found. *Taylor's Med. Jur.*, 1928, pp. .
2. A woman was found dead at 8 A. M. Her body was lying on a wool with a flannel petticoat and a chemise. The upper limbs were cold face, shoulders and chest were cold, the neck was rigidly fixed with thighs and legs were quite cold, but there was no rigidity in these warmth found in the body was in the lower part of abdomen. The was that the deceased had been dead above four hours, certainly and not less. *Ibid*, P. 291.
3. Unless we have due regard to all the circumstances of a case, grave committed. The circumstances are cold atmosphere, thinness of body covering, age of the deceased, loss of blood, etc. The retention of abdominal viscera may be met with after fifteen to twenty hours. Its temperature of the viscera of the abdomen, more than seventeen hours was found to be 76°F., although no care had been taken to preserve the body. *Taylor's Med. Jur.*, 1928, pp. 293-294.

3. From Putrefaction. See Putrefaction.

It is beyond the reach of science to determine with accuracy the period of the progress of putrefaction. When a body is inspected within twenty-four as a rule, the body is rigid, and no decomposition has taken place. If a three days much change should be present, it is generally to be attributed peculiarity in the cause of death. It is a common observation that moist atmosphere appears to favour decomposition much more than heat; thus is much more rapid on a moist winter's day than on a hot dry day in *Taylor's Med. Jur.*, 1928, pp. 295-296-306.

4. Rigor Mortis. See Rigor Mortis.

Rigor Mortis commonly appears in from ten hours to three days after a sudden deaths from violence it is only slowly developed. *Taylor's Med. Jur.*, 1928, P. 293.

5. Proof of—

It is essential for the Medical Department to give estimate of of deceased were found in a well and discovered by Police to give opinion about the probable time of death. 1925

TIME OF OCCURRENCE.

1. When there is no clear finding as to time of occurrence :

impression—see (concl.)

If the finger—see, the accused should be acquitted. 1922 P. 88.

if the family of deceased deliberately put the attack back some two hours before it actually occurred, the case becomes doubtful. 1930 O. 60=31 Cr. L. J. 689.

3. Too much stress should not be laid upon the condition of food in deceased's body in order to find out the time of occurrence, as the recent Medical researches have shown that sometimes the process of digestion is greatly delayed in the case of Indians when the food is vegetable food. 31 Cr. L. J. 689=1930 O. 60=124 I. C. 444.

TITLE See Civil dispute.

The proper place for determining title is Civil Court. 1932 P. 189=33 Cr. L. J. 509.

TOBACCO—POISONING BY— See Poison—19.

TORTURE. See Police Torture, Extorting confession.

Evidence obtained by torture has no value. 35 I. C. 527.

TOUR.

When officer is on tour appeal should not be dismissed in default. 11 P. R. 1905 Cr.

TOUT. See Legal Practitioners Act, S. 36.

TRACK. See Foot prints.

1. It is unsafe to rely completely on the evidence of trackers as to the correspondence of tracks. 65 P. L. R. 1917=18 Cr. L. J. 897, 71 P. L. R. 1910.
2. Track evidence of flimsy nature cannot be believed without sufficient corroboration. 91 P. L. R. 1915=10 P. W. R. 1915 Cr.=27 I. C. 346=16 Cr. L. J. 222.
3. Identification of footprints of accused with shoes is valueless, as there can be a large number of similar shoes. 73 I. C. 331=5 L. L. J. 87=24 Cr. L. J. 537.
4. A tracker found the tracks of accused near the dead body which was discovered at his instance. There was no motive for murder. Held, that the evidence is not sufficient for murder though ample for a conviction under S. 201, I. P. C. 1923 L. 476=112 I. C. 347=29 Cr. L. J. 109.
5. It is impossible to base a conviction merely on the track evidence when the main evidence is extremely discrepant and highly unsatisfactory. 96 I. C. 498=27 Cr. L. J. 946.
6. Tracks, measured three days and after the murder and tracker examined after twelve days are of no value, the peculiarities of foot prints would in all probability be obliterated by the physical forces of nature. 1932 L. 557=33 P. L. R. 691.
7. The mere fact that the track of accused were carried to their village and that accused were known bad characters, held not sufficient to support a charge of dacoity. 33 P. R. 1868 Cr.
8. Comparison of foot prints after two months with prints which the tracker saw at the spot, when the original foot prints were not preserved has no value. 1933 L. 299.

TRADE MARK (COUNTERFEITING) Ss 485-486, I. P. C.

1. Admissibility of prior judgment. S. 13, Evidence Act.

Judgments of a Civil Court relating to the exclusive right of the complainant to a trade mark was put in evidence. Held, that the judgment was relevant under S. 13, Evidence Act, as a particular instance when the right claimed was claimed and disputed. 134 I. C. 477=32 Cr. L. J. 1177.

2. Admissibility of subsequent judgment S. 13, Evidence Act.

Apart from Ss 40-42, it is doubtful if S. 13 covers previous judgments, but certainly will not cover judgment subsequent to the matter under investigation. 134 I. C. 625.

3. Burden of proof

The *onus* is on the complainant to prove that the accused acted dishonestly but on the accused to bring himself within the exception. 8 C. W. N. 421.

Trade Mark (Counterfeiting)—(concl'd)**4. By commission agent.**

S. 486 does not apply to persons who act as commission agents between the importers and manufacturers and who ordered out goods marked with counterfeit trade mark which is seized on the way. 32 P. R. 1902 Cr.

5. Essentials and Evidence.

1. A person selling books with counterfeit property mark is guilty. 26 C. 232.
2. A general resemblance constitutes infringement. 16 Bom. L. R. 78.
3. If the resemblance to a genuine one is intended to deceive and to lead a purchaser to imagine that the counterfeit is in reality genuine article, the accused is guilty. 35 P. R. 1902 Cr.
4. If the marks did not bear a resemblance close enough to deceive a person of ordinary observation comparing the two marks side by side, the accused is guilty under S. 482 and not S. 486. 8 S. L. R. 199.
5. If accused gets by mistake he is not guilty. 32 C. 969, 4 R. 16.
6. When empty soda water bottles of one firm are given to another for filling by customers, the latter firm commits no offence. 30 Cr. L. J. 332=1928 C. 873.
7. In a case under S. 486, the proper test is not whether a purchaser if literate would be deceived if he had the two articles side by side, but the matter should be considered from the point of view of the ordinary unwary purchaser. 1930 C. 728, 134 I. C. 477, 1934 L. 687, 15 Cr. L. J. 522, 1928 B. 227.
8. Accused counterfeited the trade mark of hair oil and moulded the bottles also. The onus was on him to prove that his intention was not fraudulent. 1931 C. 445=134 I. C. 446.

6. Forfeiture of—. See S. 9, Merchandise Marks Act.**7. Jurisdiction.**

Possession of certain tins of clarified butter at Howrah, bearing a counterfeit trade mark though intended for sale in Rangoon, is triable at Howrah. 25 C. 639.

8. Limitation.

Prosecution should be instituted either before the expiration of three years after the commission of offence or within one year from the first discovery of it by the prosecutor. 22 M. 488, 32 C. W. N. 699, 131 I. C. 848.

9. Making or possession of instrument of—. S. 485, I. P. C.

If the trade mark consists of unpression moulded on glass and label, a person found only with mould with the intention of counterfeiting trade mark is guilty under S. 485. 1930 C. 664=128 I. C. 332=32 Cr. L. J. 136.

10. Who can be prosecuted for—.

A limited company or corporation can be prosecuted under S. 486. 7. L. B. R. 306.

TRADE MARK (USING FALSE). S. 482, I. P. C.**1. Burden of proof.**

1. When it has been proved that a trade mark is a false trade mark, then it is to be presumed that the accused had the intent to defraud unless or until he rebuts the presumption. The burden of proving the absence of such intention is on the accused. 1929 R. 345=118 I. C. 113=7 R. 169. 1929 R. 322 Diss. from.
2. Even though there are no cases of purchasers having been deceived by the use of a false trade mark, this fact alone is insufficient to justify the contention that accused acted without intent to defraud. 1929 R. 322.

2. Civil and Criminal remedies.

1. Where a *bona fide* dispute exists between the parties as to the right to use a trade mark, action should be taken before a Civil and not a Criminal Court. 11 C. W. N. 88.
2. It is nowhere laid down that a Criminal Court should always refer a complainant to the Civil Court. The Criminal Court may in view of peculiar circumstances of

Trade Mark (Using False)—(contd.)

a particular case may do so. 9 L. 491, 31 Cr. L. J. 1176=127 I. C. 36=1930 O. 360.

3. Counterfeit trade mark. See Counterfeit trade mark.**4. Essentials of trade mark.**

1. A mark to be a trade mark must be a mark used for denoting that the goods are the manufacture or merchandise of a particular person. 27 C. 776, 40 C. 281.
 2. A mark which has been used by the complainant in the market for six years can become his trade mark. 25 Cr. L. J. 1098.
 3. Property in or right in respect of a mark may be acquired by user. 1929 R 322, 1930 O. 360
 4. If a photographer applied a trade mark to photographs which he sells, the provisions of S. 478 are applicable to it. 13 Bur. L. R. 336.
 5. A person may to some extent appropriate to his own use a name suggested by his trade, without infringing the law relating to trade marks. 31 C. 411.
 6. Where the article bearing the mark are manufactured both by the complainant and accused on a large scale, S. 478 does not apply as the goods are not reputed to be the complainants alone. 1928 C. 235.
 7. In India registration is not necessary in order to complete a trade mark. A letter or combination of letters can become a trade mark. 9 L. 491=1928 L. 186.
 8. A design or pattern, which covers the whole body of the goods and appears to be part and parcel of the goods is not a trade mark. 8 S. L. R. 39.
 9. It is doubtful if a bottle itself could be considered a trade mark. 1928 C. 873.
 10. A distinctive trade mark may be adopted by a person who is not the manufacturer but the importer of goods. Where importers had a special mark on the sugar bags their customers accepting the mark as a guarantee that sugar was hand made and the accused also used the same mark, he was guilty under S. 482. 39 A. 123.
 11. A general name cannot be the subject of trade mark. 31 C. 411.
 12. A mere ordinary addition to, or mis-spelling or variation of a word in use in the English language does not so form the word an invented word, but question in each case is one of the fact. 1932 S. 94.
- 5. Selling goods with counterfeit trade mark.** S. 486, I. P. C. See Counterfeit trade mark.
- 6. Using false trade mark.**
1. A trader even with some claim to the mark or name cannot adopt a trade mark which causes his goods to bear the same name in the market as those of a rival trader. 1929 R. 322.
 2. On a complaint that accused printed and sold an unauthorized edition of a book with the contents, outer cover and title page being the same, the question is whether the book is selling in a manner reasonably calculated to be believed that it was the manufacture or merchandise of a person to whom it did not belong. 31 M. 512.
 3. If the purchaser looking at the article offered to him would naturally be led from the mark on it, to suppose it to be production of the rival manufacture and would purchase it in that belief the Court considers the use of such mark to be fraudulent. 1929 R. 322, 9 Bom. L. R. 732.
 4. Mere differences in details do not prevent the two designs being essentially the same. (1896) 1 Ch. 142.
 5. Actual physical resemblance of the two marks is not the sole question for consideration. 32 C. 401, 34 C. 495.
 6. The proper test is whether the 'get up' of the accused's goods is likely to deceive a purchaser who is acquainted with the complainant's 'get up' but who trusts to his memory. 7 R. 169=1929 R. 345=118 I. C. 113=30 Cr. L. J. 652.
 7. If the mark is likely to deceive a customer, it is not necessary to bring evidence of any person who is actually deceived. 25 Cr. L. J. 1098=1925 C. 149.

Trade Mark (Using False)—(concl'd.)

8. The accused put the same title of a calendar "Shri Chandu Panchang" as the complainant, he was not guilty as it was not a trade mark. 25 B. 289, 3 Bom. L. R. 883.
 9. The complainant had a label "H. B. T. C 40000" with a design of a lion and a snake, the accused made label "H. P. F. C. 40000" with two lions and two snakes. The colour and size of the labels were the same. The accused were guilty under Ss. 482—486. 8 C. W. N. 421.
 10. The complainant sold coffee in a box with a signature on it and the accused also sold in a similar box with his own signature. Held, he was not guilty. 10 Bur. L. R. 84.
 11. Importing gold bars with a mark belonging to a bank which ceased to exist is no offence. 27 C. 776.
 12. Using the same receptacle for goods may amount to infringement of trade mark. 4 L. B. R. 192. See 16 A. L. J. 476.
 13. If accused is keeping goods of complainant's mark for sale, he is not guilty when he got them by mistake. 4 R. 16.
 14. A person using any packages or receptacles with any trade mark is said to use false trade mark. 1932 S. 94, 38 C. 110.
- 7. Who can prosecute or be prosecuted.**

A firm can prosecute and be prosecuted under Ss. 480—482. 1929 R. 322.

TRANSFER OF CASES. Ss. 526, 528, Cr. P. C.**1. Accused to move District Magistrate or not in the first instance.**

1. Ordinarily a High Court does not transfer a case unless the District Magistrate has been moved first. 1923 L. 685=72 I. C. 882=24 Cr. L. J. 466.
2. In view of the amended Sub-S. (8), S. 526 the accused has the right to go to High Court direct instead of first proceeding under S. 528. 1930 B. 480=32 Bom. L. R. 1128, 1926 S. 137=91 I. C. 72=27 Cr. L. J. 40.
3. The High Court will not ordinarily entertain an application for a relief which would equally be granted by a subordinate Court until recourse has first been had to that Court. 1925 A. 640=87 I. C. 112=26 Cr. L. J. 960.
4. Before an application is made to High Court, the District Magistrate must be moved first. 6 Bom. L. R. 483, 24 Cr. L. J. 466.

2. Adjournment for applying for— See Act XXI of 1932.

1. The Court is not bound to adjourn proceedings in order to enable the accused to apply to the District Magistrate for transfer. 1928 A. 753=111 I. C. 855=29 Cr. L. J. 935.
2. S. 526 (8) makes it imperative on the Magistrate to grant adjournment if the party proposes to apply to High Court. 9 L. 537, 1930 B. 480=32 Bom. L. R. 1128, 10 Cr. L. J. 570, 1925 L. 850=109 I. C. 360=29 Cr. L. J. 536, 1926 A. 533.
3. Once an adjournment is given, it will be presumed that the party has got it for moving the High Court and not the District Magistrate. If he has not moved the High Court, he is not entitled to second adjournment to appear before High Court when he neglected to take advantage of first opportunity. 1928 A. 753=111 I. C. 855=29 Cr. L. J. 935.
4. An adjournment for six days is not a reasonable time within which to move the High Court. 2 Weir 686.
5. A postponement should be for a reasonable time to allow the party to move the High Court. A postponement for too short a time is useless. 15 M. 375, 2 Weir 686.
6. A Court is not bound to adjourn proceedings under S. 145, Cr. P. C., under S. 526 (8). 57 C. 669, 6 P. 553=1927 P. 351=106 I. C. 219=28 Cr. L. J. 1035.
7. Order of the Court imposing condition while postponing a case under S. 526 (8) is illegal. 1929 L. 702=119 I. C. 327=30 P. L. R. 657=30 Cr. L. J. 1048.
8. Rejection of an application for an adjournment for the purpose of moving the High Court for transfer on the ground that it has been made after the trial vitiates the

Transfer of Cases—(contd.)

- trial. 53 M. 165=1930 M. 187=124 I. C. 501=31 Cr. L. J. 715.
9. Refusal to adjourn proceedings under S. 525 (8) is an irregularity curable under S. 537, Cr. P. C., when the transfer application was not *bona fide*. 1931 C. 626=134 I. C. 1057=35 C. W. N. 1112=33 Cr. L. J. 31, 59 C. 478. *Contra* 1931 B. 411=134 I. C. 361.
 10. Where the Magistrate does not grant adjournment all the subsequent proceedings are illegal except some emergent order that may be necessary in the ends of justice. 1931 B. 411=134 I. C. 361=32 Cr. L. J. 1161, 53 M. 165, 15 C. 455, 1930 A. 263, 1928 A. 268.
 11. Every one of the accused is not entitled to apply for adjournment in the absence of fresh ground or incident. 1931 L. 274=134 I. C. 779 (2)=32 Cr. L. J. 1229.
 12. S. 526 (8) does not mean that Magistrate loses seisin of the case by reason of his having granted adjournment. His order for refusing inspection or grant of copies of record is illegal. 1931 L. 59=129 I. C. 193=32 Cr. L. J. 253 (2).
 13. The *onus* lies on the complainant or accused to show that he notified his intention of applying for transfer to the Court. 1930 A. 835=129 I. C. 259.
 14. Asking an accused to appear after the accused applied for adjournment and the Court forfeiting his bond for non-appearance, the order was illegal. 1931 B. 411=134 I. C. 361=32 Cr. L. J. 1161.
 15. Application for adjournment can be made even after the arguments are heard. 59 C. 478. [The law is now amended.]
 16. Adjournment was granted on condition of cost. Order of cost is illegal. 1936 A. 851.
3. **Adjournment when not to be given.** See Act XXI of 1932.
1. A trial Court is not bound to adjourn a case to enable the accused person to apply to the District Magistrate for transfer. 1923 A. 753=111 I. C. 855=29 Cr. L. J. 935
 2. Where the intimation of the accused to apply for transfer and the application for adjournment under S. 526 (8) were made *mala fide* for the purpose of delay and to defeat the ends of justice and the accused had no real intention of applying to the High Court. Held, that Magistrate's refusal to adjourn was only an irregularity curable under S. 537, Cr. P. C. 59 C. 478.
4. **Affidavit by accused.** See Affidavit.
1. An application for transfer is not a part of the defence of an accused person and false statements made therein can be the basis of prosecution for perjury. 1926 L. 12=89 I. C. 457=26 Cr. L. J. 1369, 3 L. 46, 1922 L. 113 Foll. 28 A. 331 and 33 A. 163 Diss. 1927 S. 113=99 I. C. 341=28 Cr. L. J. 133.
 2. According to the practice approved by Allahabad High Court, an accused can be prosecuted in regard to any false statement made in affidavit in support of application for transfer. 1928 A. 182=108 I. C. 124=29 Cr. L. J. 336.
 3. An application for transfer of a case cannot be entertained if the affidavit is sworn before District Judge and not before High Court as required by S. 539, Cr. P. C. 1931 C. 710 (1)=33 Cr. L. J. 61, 1931 C. 626=59 C. 478.
 4. Every person whether accused or not, except the Advocate-General must file affidavit. 1933 N. 201=145 I. C. 455. 1922 L. 113=3 L. 46 Rel. on. 23 A. 331 Not foll.
 5. Application for transfer cannot be entertained without affidavit. 1936 L. 356=161 I. C. 921.
 6. Affidavit should be filed in support of application unless it is made by Advocate-General. 1933 N. 201=34 Cr. L. J. 1035, 1 C. 219.
 7. Magistrate should be given opportunity to deny allegations made in the affidavit. 3 Cr. L. J. 329.
 8. Where allegations are not repudiated by the Magistrate, they should be treated as correct unless inherently untrustworthy. 1932 R. 90=33 Cr. L. J. 550.
5. **Applicability of S. 526, Cr. P. C.**
1. Proceedings under S. 145, Cr. P. C., cannot be transferred under S. 526, 1925 L. 48

Transfer of Cases—(contd.)

= 25 Cr. L. J. 276. *Contra* 1923 O. 161 = 25 Cr. L. J. 194, 34 A. 533.

2. Future cases cannot be transferred. Rattan Lall 973.
3. An enquiry under the Workmen's Breach of Contract Act is an enquiry contemplated by S. 526 and can be transferred from one Court to another. 45 A. 700.
4. A case in a Court without jurisdiction can be transferred to another Court. 1929 S. 250 = 120 I.C. 81 = 30 Cr. L.J. 1121, 18 A. 350, 8 B. 312, 2 Bom. L.R. 394 Rel. on; 36 M. 387, 9 A. 191, 42 M. 751, 1925 O. 490 and 1925 P. 187 Ref. *Contra* 1923 M. 326 = 72 I. C. 351 = 24 Cr. L. J. 351.
5. Panchayat Courts established under the U. P. Act, VI of 1920, are not subordinate to High Court and the power under S. 526 cannot be exercised to transfer proceedings pending in a Panchayat Court. 46 A. 167.
6. Proceedings under Ss. 195 (3), 476-A, 476-B, Cr. P. C., can be transferred. 1925 N. 358 = 86 I. C. 428 = 26 Cr. L. J. 796.
7. The High Court has no jurisdiction under S. 526 to transfer extradition proceedings. 46 C. 31.
8. The High Court cannot transfer a case from the file of the village Magistrate under S. 526, though it can do so under Cl. 28 of the Letters Patent. 50 I. C. 491 = 20 Cr. L. J. 315 = 21 Bom. L. R. 274.

6. By appellate Court.

Where on an appeal from conviction, the Appellate Judge orders retrial and further directs that the case be retried by some other Court, the order is under S. 423 (b) and not under S. 526 (c) Cr. P. C. The order is proper and legal and S. 526 (c) has no application. 1935 P. C. 122 = 156 I. C. 3 = 36 Cr. L. J. 978.

7. By District Magistrate. S. 528, Cr. P. C.

A. Adjournment.

A trial Court is not bound to adjourn a case to enable the accused person to apply to the District Magistrate for transfer. 1928 A. 753 = 111 I. C. 855 = 29 Cr. L. J. 935.

B. De novo trial.

A Magistrate was transferred and his successor ordered *de novo* trial. The District Magistrate transferred the case to the previous Magistrate on the ground of convenience of parties. Held, that the order of the Magistrate is illegal. 1925 M. 174 = 26 Cr. L. J. 510.

C. Fresh transfer.

1. If the case is transferred by District Magistrate, the Sub-Divisional Magistrate cannot order fresh transfer and so nullify the order of the District Magistrate. 47 A. 288.
2. The Magistrate to whom a case is transferred cannot further transfer the case to some other Magistrate subordinate to him. 36 A. 166, 12 A. L. J. 277.
3. Where a competent Magistrate after hearing the parties has transferred a case, a superior officer should not cancel the order and retransfer it to the original Court. 60 I. C. 55.

D. Notice to parties.

1. Transfer of a case without notice to the other party is illegal. 1931 L. 29 = 130 I. C. 303 = 32 Cr. L. J. 492.
2. An order for transfer without notice, though not illegal, is undesirable. 1927 L. 80 = 99 I. C. 70, 6 L. 541, 102 I. C. 213, 5 L. L. J. 230, 1933 L. 385 = 34 Cr. L. J. 630.
3. A case should not be transferred without notice to the opposite party. 52 B. 151, 22 B. 549, 1 Bom. L. R. 347, 3 A. 749, 8 C. 393, 28 P. R. 1902, 14 C. P. L. R. 190.
4. When the District Magistrate transferred a case *suo motu* on administrative grounds, no notice is necessary. 3 P. R. 1910 Cr.
5. Where the case is transferred at the request of trying Magistrate, no notice is necessary. 24 M. 317.

transfer of Cases—(contd.)

6. Where by virtue of Government order, all cases against Police Officers are to be tried by District Magistrate, no notice is necessary. 28 A. 421.
7. It is desirable that notice to opposite party should be given. The omission to give notice is not sufficient ground for setting aside the order of transfer. 1935 A. 815=156 I. C. 163=36 Cr. L. J. 918, 1923 P. 228=83 I. C. 345=25 Cr. L. J. 1385=2 P. 333 and 1926 L. 156=6 L. 541=27 Cr. L. J. 401 Foll., 3 A. 749 and 1929 A. 932=31 Cr. L. J. 30 Dist.
8. If absence of notice causes miscarriage of justice, the order of transfer should be set aside. 1934 L. 194 (2), 1923 L. 380, 1931 L. 29, 193 L. 168 Rel. on.

Reasons for transfer.

1. An order for transfer of a case without reasons required by Cl 5, S. 528 is bad and should be set aside. 1924 M. 873=83 I. C. 1005=25 Cr. L. J. 221, 5 L. L. J. 230, 16 Cr. L. J. 626, 1923 L. 380, 1931 L. 29, 1930 L. 168, 1936 N. 181 *Contra* 1933 L. 385=34 Cr. L. J. 630, 28 A. 421, 34 C. 918.
2. Magistrate should record the reasons to bring out the fact that it was not an arbitrary order. 1929 A. 932=31 Cr. L. J. 30, 5 P. 229, 5 L. L. J. 230.
3. Transfer should not be lightly made. 1936 S. 237, 1933 S. 17.
4. Failure to record reasons will not vitiate proceedings, unless the accused is prejudiced. 34 C. 918, 28 A. 421, 1933 L. 385.
5. Where by virtue of a Government order, District Magistrate had been directed to withdraw all cases in which complaints had been made against a Police Officer, the omission to record reasons is mere irregularity. 28 A. 421.

8. By Magistrate. S. 192, Cr. P. C. See Cognizance of offence—14,—15.

9. Costs. See Act XXI of 1932. S. 526 (6) (a)

1. Where an application for transfer is thrown out by High Court as vexatious or frivolous, the Local Government opposing the application is entitled to costs from the applicant. 52 A. 63, 1933 N. 201, 1931 B 206, 1933 S 361, 1935 P. 120.
2. If the transfer application contains serious allegations against the Magistrate who denies them and the accused cannot support them, maximum compensation under S 526 (6) (a) should be allowed 1935 P. 120=150 I. C. 79=35 Cr. L. J. 1056.

10. Counter affidavit.

When an application for transfer is made on the ground of partiality of the Magistrate before whom the case is pending, it is highly improper for the District Magistrate to make an affidavit swearing as to the impartiality of the Magistrate. 25 B. 179.

11. Duty of Counsel—

1. The insufficiency of grounds for transfer would not lead to a necessary inference that there was misconduct on the part of the Legal Practitioners, who were responsible for such an application. 1928 A. 396=29 Cr. L. J. 750, 1924 A 253 Dist.
2. In applications for transfer, statements imputing prejudice or unfairness or corruption to the Magistrate should not be made unless statements of clients as tested by legal aiders are guilty of professional misconduct. 2
3. If a counsel, in order to impede the course of justice, makes an application under S. 526 (8), but knows that applicant never intended to move the High Court, the practitioner is guilty of misconduct. 54 M. 520=1931 M. 422, 1928 A. 396.

12. Effect on Magistrate (Slur).

1. No slur is cast on a Magistrate from whose file a case is transferred. 1924 C. 981=23 Cr. L. J. 944=81 I. C. 560=39 C. L. J. 330, *Contra* 6 Bom. H. C. R. 69.
2. When sufficient grounds are made out for a transfer, the High Court is precluded from considering the possible effect which the transfer may have on the reputation or authority of the Magistrate concerned 10 C. W. N. 441.

13. From District. See Transfer (Grounds)—4.

14. From Jury District to non-Jury District.

1. High Court can transfer a Sessions case from Jury District to a non-Jury District

Transfer of Cases—(contd.)

but the trial in the latter District will be with the aid of assessors. 18 Cr. L. J. 51 = 10 S. L. R. 154 = 37 I. C. 35, 1935 S. 145 (180).

2. High Court can transfer a case from a non-Jury District to a Jury District on the ground of convenience, although the accused may get the benefit of Jury. 8 Cr. L. J. 59.

15. Grounds for— See Transfer (grounds of).

15-A. Notice. See—8-D.

Notice to public prosecutor is essential. But failure to give notice does not render the order of transfer illegal. 11 Cr. L. J. 533 = 7 I. C. 856.

16. Powers of High Court. See—15.

1. High Court can transfer a case in spite of the fact that the Government issued a notification fixing the place of trial and the Judge. 55 B. 576.
2. High Court under Cl. 29, Letters Patent can transfer a criminal case. 26 M. 394, 1932 C. 229 = 33 Cr. L. J. 322, 1 R. 632, 6 M. 32.

17. Report of Subordinate Court.

It is desirable that the applicant should be furnished with the copy of report of the Subordinate Court. 131 I. C. 891 = 1931 B. 206 = 32 Cr. L. J. 805.

18. Review of order of—

Order of transfer of a case is not in the nature of judgment and hence it can be altered after it is signed on review. 1935 A. 815 = 156 I. C. 163 = 36 Cr. L. J. 918.

19. Revision.

Sessions Judge or High Court cannot revise an order passed by District Magistrate under S. 528. 1935 R. 446, 1924 R. 100 Rel. on.

20. Stage for applying for—

Accused is entitled to apply for adjournment under S. 526 (8) to move the High Court, even after the arguments are over and the case is ready for judgment. 59 C. 478.

21. Stay of Proceedings. See—2—3. S. 526 (8).

When an application under S. 526 (8) is made the Court is bound to stay the proceedings. Subsequent proceedings are illegal. It is not for the trial Court to determine whether there is any good ground for transfer or not. 1935 S. 27 = 1935 Cr. C. 121, 1927 P. C. 44 = 100 I. C. 227 = 28 Cr. L. J. 259 = 5 R. 53, 1931 B. 411 = 32 Cr. L. J. 1161, 53 M. 165 = 1930 M. 187 = 31 Cr. L. J. 715, 15 C. 455, 1928 A. 268 = 29 Cr. L. J. 448, 1930 A. 263 = 31 Cr. L. J. 590, 1926 S. 137 = 27 Cr. L. J. 40 Foll. 1926 S. 288 = 96 I. C. 391 = 27 Cr. L. J. 935 Dist.

22. Which Proceedings can be transferred.

1. Proceedings under S. 107 or S. 110, Cr. P. C. 32 A. 642, 24 P. R. 1904, 9 C. W. N. 229, 11 C. W. N. 231; Proceedings under S. 145. 1923 O. 161 = 25 Cr. L. J. 194; or under S. 476 or S. 476-A. 1925 N. 358, 34 M. 186 or inquiry under S. 14, Legal Practitioners' Act. 1926 L. 199, 49 C. 850 can be transferred.
2. Proceedings under Extradition Act 46 C. 31, 38 C. 547, 38 C. 550, or before village Magistrate 12 Cr. L. J. 407, or before a village Patel 20 Cr. L. J. 315 cannot be transferred.

22-A. Who can apply.

1. "A party interested" in S. 526 (3) does not necessarily mean a complainant but may include a Police informant. In case of conflict between the public prosecutor and the party interested, the right of the former must prevail. 30 Cr. L. J. 1163 = 120 I. C. 80 = 1929 M. 844, 6 L. 541, 1934 L. 612, 1925 P. 818, 1926 A. 307.
2. If the public prosecutor or the person who is conducting prosecution on behalf of the crown is unwilling to have the case transferred, the person at whose instance the case was started has no right to get the case transferred. 1925 P. 818 = 88 I. C. 993 = 26 Cr. L. J. 1249, 6 L. 541 = 1925 L. 156, 20 Cr. L. J. 648.
3. A person moving the Court to take action under S. 476, Cr. P. C., has *no locus*

Transfer of Cases—(concl'd.)

standi to apply for transfer of a case, as the Court is the complainant. 1930 L. 873=127 I. C. 152=31 Cr. L. J. 1174=31 P. L. R. 840.

4. When charge is instituted by Police, right of private complainant exists under certain circumstances to apply for transfer. 1934 L. 612=1934 Cr. C. 942, 1926 A. 307, 6 L. 541=1926 L. 156, 1920 P. 836 Foll.

TRANSFER—(GROUNDS OF). S. 526, Cr. P. C. See Disqualification of Magistrate.**1. Absence of Legal Advice.**

1. Where no legal practitioner in a District ordinarily employed in criminal case is willing to act for the accused, it is good ground for transfer of the case to another District. 1925 O. 67=88 I. C. 1048=26 Cr. L. J. 1272, 1927 L. 709=104 I. C. 227=28 Cr. L. J. 787.
2. Where proceedings under S. 107, Cr. P. C. assumed an importance of their own in the locality and it appeared that the accused could not get legal assistance because their lawyers were systematically worried by the authorities, the case should be transferred where a quiet atmosphere prevailed. 1930 L. 954=31 P. L. R. 694=129 I. C. 684.
3. Where the accused by reason of the order of his superior officers was practically detained in the Police lines and was not allowed to go out to see legal practitioners, the High Court condemned the action of the authorities. 49 I. C. 854=23 C. W. N. 479=20 Cr. L. J. 230.

2. Accused appointed special constable.

Where persons proceeded against under S. 107, Cr. P. C., were appointed special constables, a good ground for transfer is made out. 11 C. W. N. 121, 10 C. W. N. 82.

3. Acquaintance with the Magistrate

1. The fact that the complainant and the accused are both acquainted with the Magistrate who sometimes gets medical help from each is no ground for transfer. 13 P. W. R. 1917 Cr
2. The fact that the accused is an acquaintance of the Magistrate is no ground for transfer. 16 A. L. J. 490

4. Accused's movement restricted by Police Superintendent

Where the Superintendent of Police ordered that the petitioner should be allowed facilities for instructing legal adviser only on application to him, and it causes a reasonable apprehension in the mind of the petitioner that his movements were unduly restricted, it is good ground. 52 I. C. 595=29 Cr. L. J. 383, 20 Cr. L. J. 230=675.

5. Adjournment. See Transfer—2—3.

1. Where adjournments are repeatedly made by a trying Court to bring pressure on the accused to produce his absconding co accused persons, the accused must have had reasonable apprehension that he would not have a fair and impartial trial. 1930 L. 953=129 I. C. 485=32 Cr. L. J. 344.
2. That the case has been unnecessarily adjourned on several occasions in order to enable the complainant to appear is not sufficient ground for transfer. 1926 L. 628=27 Cr. L. J. 1022=96 I. C. 878
3. Refusal to adjourn a case, when a party has noticed his intention to the Magistrate, to move the High Court for transfer, is a good ground for transfer. 1925 S. 228=96 I. C. 391=27 Cr. L. J. 935, 1933 L. 914=34 Cr. L. J. 600.
4. The fact that Court awards costs of adjournment and makes local inspection is no ground. 19 Cr. L. J. 6, 19 A. 302

6. Altercation between Judge and Counsel.

A quarrel or unpleasantness between the Judge and the counsel is no ground for transfer. 40 I. C. 318=18 Cr. L. J. 670

7. Apprehension of impartiality in the mind of the accused. See Transfer—**7-A. Apprehension of not having a fair trial.**

1. If the Magistrate though not actually biased still conducts his self in such a manner

Transfer (Grounds of)—(contd.)

and utters such words as to impair the confidence of any of the parties, then there is good ground for transfer of the case. 25 C. 727, 28 C. 709, 3 L. 443.

2. If Magistrates allow their executive zeal to appear to outrun their judicial discretion their action is certain to induce the party to make an application for transfer. 9 Cr. L. J. 251, 1928 L. 125=29 Cr. L. J. 212.
3. In transferring a case High Court ought not to be guided by the impressions produced in its own mind as to the impartiality of the Magistrate but must look to the effect likely to be produced in the minds of the parties and their witnesses by the selection of a Magistrate whose personal antecedents or circumstances have however unavoidably connected him with either one party or the other. 25 B. 179.
4. When there are circumstances existing to create a reasonable apprehension in the mind of the accused, that he will not receive a fair trial, a transfer should be directed though there is really no bias in the mind of the Court and though the circumstances are capable of explanation. 3 L. 443, 28 C. 297, 23 C. 495, 33 C. 1183, 25 B. 179, 18 C. 247, 19 A. 64, 20 Cr. L. J. 556, 25 Cr. L. J. 638, 81 I. C. 78, 1933 R. 89, 1922 A. 528, 36 A. 239, 1924 C. 981, 28 C. 709, 1933 P. 597.
5. When sufficient grounds are made out for a transfer, the High Court is precluded from considering the possible effect which the transfer may have on the reputation or authority of the Magistrate concerned. 10 C. W. N. 441.
6. Magistrates should not fail to remember that it is their duty no less to preserve an outward appearance of impartiality than to maintain the internal freedom from bias. 1 S. L. R. 8=9 Cr. L. J. 251.
7. What is reasonable apprehension must be decided according to the special circumstances of a particular case. 33 C. 1183, 36 C. 924.
8. Mere allegations that accused will not have fair and impartial trial is not sufficient. He should place before Court facts and circumstances from which he is led to entertain such a belief. 13 P. W. R. 1917, 10 O. C. 195, 6 L. 396, 1935 S. 237, 18 Cr. L. J. 670, 1933 S. 17, 18 Cr. L. J. 644, 1928 L. 276, 6 C. 491.
9. What is reasonable apprehension must of course depend upon the degree of intelligence of the accused. 81 I. C. 126=1925 C. 101, 104 I. C. 227=1927 L. 709, 1925 L. 361, 3 L. 443=1923 L. 264.
10. The law of transfer of cases is based not so much upon the motives which might be supposed to bias the Judge as upon the susceptibilities of the litigant parties. The object is to clear away everything which might engender suspicion and distrust of the tribunal and so to promote the feeling of confidence in the administration of justice. 2 P. L. T. 193, 7 N. L. J. 155, 6 L. 396, 1929 C. 809, 1932 R. 90, 1933 S. 361, 1924 N. 243.
11. It is not necessary for a petitioner to establish that the Magistrate is *actually* prejudiced against him but to prove that the conduct of the trial had been such as to cause a reasonable apprehension in the mind of the accused that he will not receive a fair trial. 109 I. C. 812=29 Cr. L. J. 620, 1930 A. 737=31 Cr. L. J. 555, 1928 A. 396, 10 L. 223=1929 L. 382, 1930 L. 877, 35 Cr. L. J. 1380, 1933 N. 269, 1934 O. 452=35 Cr. L. J. 1483, 23 C. 297, 6 L. 396, 1929 L. 429, 1927 L. 709, 9 L. 537=1923 L. 1, 23 C. 495, 19 A. 64, 1921 P. 413, 35 A. 5.
12. In transferring a case the question is not whether the belief that the applicant would not get justice is reasonable or not, though the only way deciding whether it exists or not, is to see whether it might reasonably be expected to exist in a person of the standard intelligence and honesty common in the class to which the accused belongs. 1927 N. 384=99 I. C. 860=23 Cr. L. J. 188, 1926 N. 448, 1927 N. 48.
13. If there are grounds, which a reasonable person placed in the position of an accused person considers it sufficient for entertaining apprehension that accused will not have a fair trial, the case should be transferred. 1923 L. 460=29 Cr. L. J. 295.
14. It is fundamental principle of justice that Magistrate should not only be fair and impartial but should appear to be so. 10 R. 180, 23 C. 709, 3 L. 443, 1925 L. 101, 1933 S. 351, 1923 L. 757, 1934 L. 541.

8. Atmosphere engendering suspicion.

1. The trial of a case should be in an atmosphere which does not create even a suspicion

Transfer (Grounds of)—(contd.)

that there has been or is likely to be an improper interference with the course of justice. 1923 L. 757=111 I. C. 451=29 P. L. R. 667=29 Cr. L. J. 867.

2. Where accused suspected that the whole atmosphere in the place of trial was against him and was afraid that local authorities would influence the Magistrate in prejudicing his mind against him, the case should be transferred. 1924 N. 243=83 I. C. 723=26 Cr. L. J. 163, 1931 L. 540=134 I. C. 519=32 Cr. L. J. 118.

9. Attempt to compromise the case by Magistrate.

1. If the Magistrate makes an attempt to compromise the case, it is a good ground for transfer 1925 O. 179=81 I. C. 58=25 Cr. L. J. 570, 105 I. C. 812, 35 A. 5, 1931 L. 32=130 I. C. 430, 1925 A. 289=26 Cr. L. J. 869, 1922 O. 124, 1934 L. 541, 14 Cr. L. J. 602, 1930 L. 877, 1927 N. 384.
2. It is highly improper for a Magistrate to send for a party in a case to his house and press him to compromise. 1931 L. 32=130 I. C. 430=32 Cr. L. J. 537.

10. Attitude of Magistrate.

1. When the supposed displeasure for a Magistrate is inferred from his attitude, it is not a good ground for transfer. 58 I. C. 681.
2. If the Magistrate became angry with the accused in another case, if he is an ignorant villager, he would believe that for that reason the Magistrate would be prejudiced against him. 125 I. C. 32=1930 A. 495=31 Cr. L. J. 764.

11. Awarding costs for adjournment.

Awarding costs for adjournment is no valid ground. 19 Cr. L. J. 6, 19 A. 302.

12. Bad opinion of accused.

Where Magistrate disallowed certain relevant questions in the cross-examination and recorded an opinion unfavourable to the accused, the High Court transferred the case. 52 I. C. 54=20 Cr. L. J. 556.

12-A. Bail—Refusal of. See 47—15, 56.

1. In a case under S. 110 sureties were offered and the Magistrate ignored provisions of S. 122, Cr. P. C., transfer was ordered. 1935 A. 517=36 Cr. L. J. 1285.
2. Accused had been ordered to be released on bail, but the Magistrate erroneously refused to accept bail for 3 weeks, the case was transferred. 1932 L. 440=34 Cr. L. J. 89

13. Bias on the part of the Magistrate.

1. Refusal to grant an application for a gun license put in after the expiration of the usual season for the granting of licenses is no evidence of bias. 1925 P. 339=84 I. C. 441=26 Cr. L. J. 297.
2. The exercise by the Magistrate of the discretion vested in him by law in granting bail is no proof of bias on his part. 1925 S. 257=95 I. C. 939=27 Cr. L. J. 859.
3. Where the District Magistrate refuses to produce the papers called for by the defence on the ground that some are missing and others are confidential, it cannot be said that the trial Court entertains any bias against the accused. 20 Cr. L. J. 609.
4. It is rarely possible for the accused to prove actual bias. It is sufficient to show circumstances which may raise a reasonable apprehension in the mind of the accused that he will not have fair and impartial trial, although the circumstances may have happened without any real bias in the mind of the Magistrate 35 A. 5, 2 Weir 678, 18 C. 247, 23 C. 495, 25 C. 727, 28 C. 700, 33 C. 1183, 19 A. 64, 25 B. 179, 1928 A. 396=110 I. C. 686.
5. For a transfer of a case on the ground of bias, the applicant must show the very clearest grounds for believing that the Magistrate is likely to be prejudiced or influenced by an improper motive in the decision of a case. 6 B. H. C. R. 69, 1817 A. W. N. 139.
6. Magistrate acting as the mouthpiece of prosecution is a good ground. 1930 L. 173=31 Cr. L. J. 736, 1930 L. 166=31 Cr. L. J. 560.
7. Magistrate should not only be fair and impartial but should appear to be so. 1934 R. 105=151 I. C. 615.

Transfer (Grounds of)—(contd.)

8. Where a Magistrate took more than formal part in Police investigation and expressed his opinion, it showed bias. 1925 R. 219=26 Cr. L. J. 1317, 14 Cr. L. J. 425, 5 C. W. N. 864.
9. Magistrate took seat in complainant's car after the case, the case was transferred. 27 Cr. L. J. 498=93 I. C. 962.

14. Cancellation of license for arms.

A District Magistrate cancelled a license for arms and refused to grant interview to the licensee. These are sufficient grounds for transfer. 35 A. 5.

15. Cancellation of bail bond after application under S. 526.

1. Cancellation of bail bond after the Magistrate came to know that the party has moved the High Court for transfer is a drastic step and causes a reasonable apprehension in the mind of the accused about impartial trial. 1930 L. 958=130 I. C. 501, 1933 L. 91=34 Cr. L. J. 900, 1933 O. 480, 1920 P. 492, 5 C. W. N. 110.
2. Where after the application for adjournment of the case to enable the accused to apply to High Court for transfer, the Magistrate raised the amount of bail of some and cancelled the bail of the other accused. Held, it was a sufficient ground for transfer. 1 P. L. T. 652, 57 I. C. 454.
3. When a Magistrate cancels a bail bond and his order is set aside, he demands execution of new bond, the case should be transferred. 1933 O. 480.
4. If the Magistrate on hearing that accused had applied for transfer, issues warrant of arrest, case should be transferred. 1926 L. 151.

16. Co-accused found guilty.

The fact that certain persons jointly tried with the accused were subsequently separately tried and found guilty, is no ground for a transfer. 23 I. C. 205=15 Cr. L. J. 253.

16.A. Compromise by Magistrate. See—9.**17. Convenience of parties.**

1. Convenience of accused has to be considered rather than that of the complainant for transferring a case. 1926 L. 493=94 I. C. 131=27 Cr. L. J. 563, 1924 P. 708=25 Cr. L. J. 81, 55 B. 576=1931 B. 313, 2 Bom. L. R. 394.
2. When all the acts constituting the offence took place in Bombay, but the complainant lodged complaint at Ratnagiri and the accused also wished to be tried there, the High Court ordered the trial to proceed there. 2 Bom. L. R. 394.
3. A transfer will be allowed from one Court to another, where the accused and witnesses belong to the latter place. 45 A. 700, 24 P. R. 1917, 1883 A. W. N. 88.
4. In transferring a case no consideration should be had to the fact that by the transfer to a particular District, the accused will have the benefit of a trial by Jury, where previously he had none. The real question is the convenience of the parties. 8 C. L. J. 59.
5. The fact that it would be inconvenient for the person proceeded against under S. 110, Cr. P. C., to summon witnesses from the place of his residence, is no ground for transferring the case to the Court in whose jurisdiction he resides. 1927 S. 59=98 I. C. 109=27 Cr. L. J. 1261.
6. The convenience of defence witnesses when they are numerous will outweigh that of the prosecution witnesses when they are few. (1897) Ratan Lal 927.
7. The fact that accused and his witnesses reside at a distance is ordinarily no ground but if it is risky and inconvenient for accused to appear at a certain place, it is a good ground for transfer. 1935 S. 68=1935 Cr. C. 273.
8. When proceedings were started in another District to harass the accused, case was transferred. 1927 L. 271.
9. Where accused was tried for offences committed in several places, the case was transferred to the District where bulk of the prosecution witnesses resided. 8 Cr. L. J. 121.

*Transfer (Grounds of)—(contd.)***18. Consultation with superior officers.**

Where a Magistrate before disposing of a bail application, consulted the District Magistrate and refused the application as advised by the latter, the case should be transferred. 9 L. 537=1928 L. 1, 1932 R. 90, 1934 N. 39.

19. Cross-complaints or counter cases. See—36.

1. It is desirable that cross complaints should be disposed of by the same Magistrate. The mere fact that the complaint of one body is dismissed and that he is apprehensive of a conviction is by itself no ground for a transfer. 1929 L. 48=111 I. C. 854=29 Cr. L. J. 934, 1923 C. 644, 56 M. 159=1933 M. 367, 1930 M. 190, 31 C. 715, 1924 O. 247, 22 Cr. L. J. 416, 1933 N. 201=34 Cr. L. J. 1035.
2. The fact that a Magistrate has discharged a cross case between the same parties is not *per se* a sufficient ground for transfer. 15 I. C. 804=13 Cr. L. J. 532. See 33 C. 904.
3. That a Magistrate in a counter case has clearly formed an opinion strongly against a party is a sufficient ground for transfer. 8 I. C. 721=11 Cr. L. J. 702, 9 Cr. L. J. 275.
4. Where in two counter complaints the parties are same, dismissal of one complaint is no ground for transfer of the other. 1935 S. 72=1935 Cr. C. 277. 1 S. L. R. 37=9 Cr. L. J. 275, 5 S. L. R. 264=13 Cr. L. J. 532 and 1929 L. 48=111 I. C. 854=29 Cr. L. J. 934 Rel. on.
5. Court should dispose of counter cases together. Expression of opinion in one case is a good ground for transfer of the other case. 1934 L. 458

20. Cross-examination of accused.

Where the Magistrate refused to give facilities to the accused to prosecute his civil case, connected with the same fact, and while examining him under S. 342, Cr. P. C., put questions by way of cross-examination and did not allow him to add to his statement. Held, the case should be transferred. 10 L. 223=1929 L. 382=110 I. C. 801=30 P. L. R. 385.

21. Cross-examination of witnesses by Court or its refusal.

1. It is not proper for a Magistrate to frequently cross-examine prosecution witnesses or disallow questions which the complainant may desire to put to the defence witnesses for the purpose of showing their partiality. It does not give rise to apprehension about the impartiality of the Magistrate. 1925 O. 52=25 Cr. L. J. 1185.
2. Where the trying Magistrate stopped the cross-examination of the complainant because he had been fully cross-examined for one hour, his action is indiscreet and the case should be transferred. 51 I. C. 847=20 Cr. L. J. 559=1919 P. 515.
3. The mere refusal by the Magistrate to allow the accused to cross-examine the complainant is no ground for transfer when the case has reached a very advanced stage. 40 I. C. 690=29 P. W. R. 1917 Cr., 1 Cr. L. J. 832.
4. In a case under S. 380, I. P. C., the Magistrate must give the opportunity to cross-examine the witnesses at once, even though the charge may not be framed, but a refusal to give such opportunity, when Magistrate acts *bona fide* under a mistaken view of law, is no ground for transfer. 8 C. W. N. 838.
5. When cross examination by Magistrate on question suggested by public prosecutor after defence cross-examination arouses suspicion in mind of accused, the case should be transferred. 1930 L. 173=124 I. C. 688=31 Cr. L. J. 736.
6. Refusal by a Magistrate to permit the cross-examination of the prosecution witnesses after all of them have been examined in chief, the refusal to give copies of Police statement and cancelling bail bond after application under S. 525(8) are good grounds for transfer. 57 I. C. 454.
7. Magistrate put questions to witness which were prejudicial to accused, the case was transferred. 15 Cr. L. J. 234=1914 A. 49.
8. Refusal to grant adjournment for cross-examination of prosecution witnesses is good ground. 1921 P. 322=22 Cr. L. J. 703.

Transfer (Grounds of)—(contd.)

9. Refusal to summon prosecution witnesses for cross-examination is no ground for transfer. 1923 P. 116, 18 Cr. L. J. 690.

22. Cumulative effect.

In transferring a case, it is the cumulative effect likely to be produced on the mind of an ordinary reasonable accused person that has to be seen. 1928 A. 396=110 I. C. 686=26 A. L. J. 1250=29 Cr. L. J. 750.

23. Copies of Police statement not given to accused.

1. Copies of statements recorded under S. 164 were not given to the accused and copies of statements recorded under S. 162 were not immediately supplied and the Magistrate asked the counsel to start cross-examination of the witness at 4.15 P.M., whose examination-in-chief lasted for a whole day. Held, that the case should be transferred. 1929 L. 429=117 I. C. 377=30 Cr. L. J. 760; 1925 L. 361 Foll.
2. A Magistrate cannot insist upon a written application for copies of statements to Police, an oral request being sufficient. Therefore insistence on a written application and refusal to grant copies on misapprehension of law or on other flimsy pretext are good grounds for transfer. 1930 A. 737=123 I. C. 685=31 Cr. L. J. 555.
3. Where the Magistrate improperly refused to furnish copies of statement under S. 162 and forwarded the record to Police to deprive him of his right under S. 191, Cr. P. C. the case should be transferred. 1931 A. 273=129 I. C. 267=32 Cr. L. J. 370, or when he refused a copy of a statement under S. 164. 1931 L. 59=32 Cr. L. J. 253.

24. Complaint dismissed for default—fresh complaint.

Where a complaint is dismissed for default by a Magistrate, a fresh complaint based on the same facts but filed in another Court should be sent to the former for trial. 1926 L. 445=94 I. C. 911=27 Cr. L. J. 719.

25. Complaint sent to a Magistrate at the request of complainant.

Where at the request of complainant his case is sent to a particular Magistrate for trial, the accused will be justified in asking for a transfer from that Court. 25 Cr. L. J. 989=1925 L. 121=81 I. C. 637.

26. Communal Feelings.

1. It is not a sufficient ground for transfer of a case that the presiding Judge belongs to Hindu or Moslem faith and cannot be expected to deal impartially with a communal dispute. 22 A. L. J. 1103, 1930 L. 163=121 I. C. 374=31 Cr. L. J. 257.
2. Where a complaint was made by Mussalmans, accusing a Hindu of doing acts in a Mussalman graveyard, with intent to injure their feelings. Held, that the complaint should, if possible, be tried by a European Magistrate. 1927 L. 520=28 Cr. L. J. 588.
3. Where there is a certain amount of communal feeling over a case to such an extent that accused is unable to persuade the defence witnesses to appear before the Court and give evidence, as they are afraid of their safety, the case should be transferred to some other Court. 1927 P. 86=98 I. C. 607=27 Cr. L. J. 1391.
4. In a case of communal question, it is desirable that European Magistrate should enquire into and determine it. 1925 L. 626=87 I. C. 976=26 Cr. L. J. 1056, 1927 L. 520=28 Cr. L. J. 588, 16 Cr. L. J. 213, *Contra* 1934 L. 73.
5. Where communal questions are involved, a transfer should be granted with considerable hesitation. In such a case the matter is not to be decided in the abstract, whether a certain Magistrate would deal with a matter impartially or not; the question always would be whether through some error or unfortunate accident the Magistrate has behaved in a way to give legitimate ground for fear to one party or the other. Where a Hindu Magistrate without waiting for the report of the Police inquiry, conducted the local inquiry himself and delayed giving copies of statements to Police; held, that it was a proper case for transfer. 1930 A. 737=31 Cr. L. J. 555.
6. Where the case was relating to a dispute between Hindus and Mohammadans in respect of a mosque, it is desirable that it should be tried by the District Magistrate or some European Magistrate. 1 P. W. R. 1915 Cr.

Transfer (Grounds of)—(contd.)

7. A Mohammadan Magistrate whose order for closing Jhatka shop was disobeyed, should not try the complaint lodged by Mohammadans, when the dispute became one of religious nature. 26 P. W. R. 1912 Cr.
8. The mere fact that a dispute is of communal nature is not sufficient to, is no ground for transfer. Reasonable apprehension that accused will not get fair trial is necessary. 1934 L. 73=15 L. 132=152 I. C. 171, 1928 N. 21 Foll. 27 I. C. 837, 1929 L. 626 and 1927 L. 520 Ref.

27. Contempt proceedings instituted by Magistrate.

Where the Magistrate institutes proceedings under S. 228, I. P. C., against the accused but sends the contempt case to some other Magistrate, the original case should be transferred from his file. 1931 L. 30=130 I. C. 330=32 Cr. L. J. 491.

27-A. Dias—seat on. *See* Dias.**28. Delay in disposal of a case.**

1. Unnecessary delay in the disposal of a petty case is a good ground for transfer. (1902) 2 Weir 679, 12 A. L. J. 262, 2 Weir 692, 8 M. L. T. 222, 15 Cr. L. J. 363, 19 Cr. L. J. 611.
2. Where the Magistrate ordered that he would examine only one witness a day and thus prolonged the trial of the case. Held, this is a sufficient ground for transfer. 1926 L. 78=89 I. C. 451=26 Cr. L. J. 1363.
3. Where the proceedings of the Magistrate were dilatory and he issued warrants against accused's wife who was *pardanashin* lady, the transfer was desirable. 1927 L. 16=99 I. C. 1025=27 P. L. R. 604=28 Cr. L. J. 225.
4. Where the Magistrate makes inordinate delay in examining the complainant and awaits the consideration of evidence in another case, it is a good ground for transfer. 1 P. L. T. 494=56 I. C. 664=21 Cr. L. J. 504.
5. The fact that a trial extended for a long time, viz., 3 months, is no ground for transfer. 19 Cr. L. J. 119.
6. Where the Magistrate sent the record after inexplicable delay and charged the father of accused, case was transferred. 1923 L. 282.

29. Discussion outside at the club.

Discussion of a case at the club by the officers who are likely to be concerned in the disposal of it is an extremely improper proceeding and is by itself sufficient to justify an order for transfer. 1921 A. 55=23 Cr. L. J. 126, 19 A. L. J. 946.

30. Disallowing relevant questions

1. Where the Magistrate disallowed relevant questions in the cross-examination of the witnesses for the prosecution and recorded an opinion unfavourable to accused, the High Court transferred the case. 52 I. C. 54=20 Cr. L. J. 566.
2. Error of judgment in admitting evidence by Court is no ground for transferring a case. 20 Cr. L. J. 609, 3 P. L. T. 32

31. Disqualification of Magistrate. *See* Disqualification of Magistrate.**31-A. Difficult question of Law.** *See* Difficult cases.

1. If difficult question of law is likely to arise case may be transferred to Court of Sessions although offence is triable by a first class Magistrate. 1934 O. 349.
2. The possibility of difficult question of law arising in a case is a good ground for transfer. 7 Bom. L. R. 637, 1929 M. 403, 1923 N. 21, 1931 M. W. N. 407.
3. The fact that Magistrate does not understand Sanskrit in order to understand the Book, is no ground. 12 Cr. L. J. 451. *See* 16 Cr. L. J. 73.

32. Doubt about impartiality.

Where any doubt can be shown as regards the personal impartiality of the presiding Judge of the Court, a transfer should immediately be granted. 1929 N. 172=117 I. C. 213=30 Cr. L. J. 728.

33. Erroneous view of law.

1. An erroneous view of law is not sufficient ground for transfer. 1924 P. 595=77

Transfer (Grounds of)—(contd.)

1. C. 810=25 Cr. L. J. 438, 1926 A. 317, 15 Cr. L. J. 367.

2. *Bona fide* mistaken view of law is no ground. 8 C. W. N. 838.

3. Erroneous refusal to grant bail justifies transfer. 1932 L. 440.

34. Exemption from personal appearance—*Parda nashin*.

1. Complainant was exempted from personal appearance on certain dates, while accused was ordered to furnish bail for coming late on account of missing of train, is not a sufficient ground for transfer. 1928 L. 757=111 I. C. 451=29 P. L. R. 667=29 Cr. L. J. 867.

2. Where the Magistrate refused to dispense with the personal appearance of *parda nashin* ladies belonging to respectable families and repeatedly insisted on their appearance in Court, the case was transferred. 17 C. W. N. 1248.

35. Exercise of Judicial discretion.

1. Exercise of Judicial discretion *per se* is no ground for transfer. 1933 S. 17=33 Cr. L. J. 908.

2. Arresting accused without complaint is a good ground for transfer. 1920 P. 516=21 Cr. L. J. 795, 1933 R. 165=34 Cr. L. J. 1195.

36. Expression of opinion in a connected or counter case.

1. Where in a proceeding it appeared that the Magistrate had expressed his opinion in a very strong language in a connected case, a transfer should be directed. 78 P. L. R. 1916, 11 O. L. J. 556.

2. Interest or bias on the part of the Magistrate is not to be inferred from opinion formed on evidence judicially recorded, otherwise a Magistrate would, after disposing of one of two counter cases, be disqualified from trying the other. 6 Bom. L. R. 1092, 1 S. L. R. 37, 43 I. C. 409=19 Cr. L. J. 121.

3. When the Magistrate in discharging the accused in the counter case expressed a strong opinion about the guilt of the accused in the other case, a transfer of the case pending will be directed. 30 M. 233.

4. A Judge is not disqualified from trying a case of rioting merely because he has decided a counter case of rioting and expressed an opinion. 33 A. 583, 1 C. W. N. 426. See 36 C. 904.

5. The observations alleged to be made by the Magistrate in another case, which are derogatory to the complainant, cannot be held to indicate that the complainant will not have a fair trial. 54 B. 553.

6. The mere fact that the Magistrate has in a cross-case expressed an opinion adverse to the accused is not necessarily a sufficient ground for transfer. 1923 N. 217=109 I. C. 605=29 Cr. L. J. 589, 37 I. C. 159, 33 A. 583, 54 B. 553, 8 Cr. L. J. 159, 36 C. 904, 1930 P. 337, 18 Cr. L. J. 95, 1935 S. 72.

7. Where Magistrate passed certain remarks regarding accused's guilt in another case before him while convicting him in one case, the other case should be transferred from his file. 1924 O. 433=83 I. C. 718=26 Cr. L. J. 158.

8. Expression of opinion in a miscellaneous proceedings does not justify transfer of the main case. 1924 O. 338=77 I. C. 721=25 Cr. L. J. 433.

9. Where a Magistrate expressed a distinct opinion in a previous case that the applicant was guilty of abetting the accused who were servants, the case should be transferred. 1926 N. 98=92 I. C. 162=27 Cr. L. J. 210.

10. The fact that Sessions Judge has heard the appeals of some of several persons convicted of dacoity, is no bar to his hearing the appeals of others arrested and convicted subsequently. It is not a good ground for transfer. 22 Cr. L. J. 416.

11. The fact that Magistrate came to a particular conclusion in another case is no ground for transfer. 1930 P. 337=124 I. C. 846, 31 C. 715, 36 C. 904.

12. Accused in a particular case appeared as defence witness in another case before the same Magistrate. He made some remarks in the judgment against the accused. This is sufficient cause for transfer. 1935 R. 446.

13. Expression of opinion in a counter case is a good ground for transfer. 1934 L. 458, 1933 O. 21.

Transfer (Grounds of)—(contd.)

14. Trial of another case by the same Magistrate of the same accused is no reason for transfer. 1933 N. 201.

37. Expression of opinion on the case or regarding witness.

1. A Magistrate who has already formed a decided opinion about the case *before him* and has expressed a strong opinion as to the guilt of the accused, is precluded from trying the case and transfer should be directed. 32 A. 642, 10 Bom. L. R. 201, 20 C. 857, 18 C. 247, 20 M. 388, 8 R. 654, 1921 P. 322=63 I. C. 868=22 Cr. L. J. 708, 11 Cr. L. J. 51, 7 Cr. L. J. 194, 1 Cr. L. J. 630, 3 C. W. N. 278, 1925 P. 818. (Magistrate making observations not favourable to prosecution). 1931 R. 87, 1934 L. 458=36 Cr. L. J. 238, 1924 O. 433, 1933 O. 21, 30 M. 233, 1933 R. 164=34 Cr. L. J. 950, 1924 L. 257, 23 Cr. L. J. 168, 1927 S. 98, 30 M. 233, 1925 O. 690. *But see* 14 Cr. L. J. 555.
2. Where the Court has already formed very strong opinion of the conduct of accused whose prosecution was ordered by the Court under S. 166, I. P. C., transfer should be ordered. 1924 A. 533=83 I. C. 699=26 Cr. L. J. 139.
3. Superior officer expressing to the trial Court his belief in the innocence of the accused, justifies transfer. 1925 O. 90=82 I. C. 756=25 Cr. L. J. 1374.
4. A Magistrate made a note that witness faltered and from his demeanour it appeared that he had not told the truth, the case should be transferred 1925 C. 480=88 I. C. 708=29 C. W. N. 316=26 C. L. J. 852
5. Where a Magistrate in framing charges against the accused observed that the offence had been proved, the case should be transferred to another Magistrate. 65 I. C. 632, 23 Cr. L. J. 168.
6. A Magistrate expressing opinion on the case after the arguments of the parties were finished and when only judgment was to be delivered, the case should not be transferred. 108 I. C. 608=29 Cr. L. J. 429 (Lah.).
7. If the Magistrate uses words indicating that charge is established, before he heard the defence, it is good ground for transfer. 1935 S. 223.
8. Magistrate making a note under S. 363, Cr. P. C., that witness had not spoken the truth, is a good ground for transfer. 1925 C. 480=26 Cr. L. J. 852.
9. Method of attempting to provoke Magistrate into some unguarded expression and then applying for transfer is not proper 1933 A. 949=35 Cr. L. J. 548.
10. If a Magistrate makes a report to superior officer that accused might have committed the theft, which he was investigating, it is a good ground for transfer. 10 Cr. L. J. 149.
11. The position of accused must always be one of great anxiety and suspense. It should not be enhanced by anything which could suggest to him that his guilt is a foregone conclusion in the mind of trying Magistrate. 1 Cr. L. J. 934.
12. Where High Court sets aside conviction and orders retrial, it usually transfers the case to another Magistrate. 1921 A. 151, 1922 A. 345=23 Cr. L. J. 456, 53 B. 578=1929 C. 309, 1926 C. 1173, 1926 C. 139=53 C. 372, 15 Cr. L. J. 147, 22 C. 596, 1930 L. 153, 21 M. 83, 30 M. 388, 1922 P. 60. *But see* 1927 L. 546=28 Cr. L. J. 647

37-A. Extraneous knowledge about the case See—75.

- If the Magistrate has extraneous knowledge about the case, it should be transferred. 1934 M. W. N. 97, 29 C. 392, 11 C. W. N. 262.

38. Favour.—

1. It is a good ground for transfer if a party in a case to his house and press naturally conclude that Magistrate is biased. 32=130 I. C. 340=32 Cr. L. J. 537.
2. An accused is entitled to transfer of the case, which is sent to a particular Magistrate at the request of the complainant. 1925 L. 121=81 I. C. 637=25 Cr. L. J. 989.
3. That the case has been unnecessarily adjourned on several occasions to enable the complainant to appear is not sufficient ground for transfer. 1926 L. 623=96 I. C. 878=27 Cr. L. J. 1022.

Transfer (Grounds of) — (contd.)

4. If the Court is found assisting or guiding the prosecution it is a good ground for transfer. 1929 N. 172=117 I. C. 213.
5. If the Magistrate acts as the mouthpiece of the public prosecutor in conducting the examination of accused under S. 342, Cr. P. C., the case should be transferred. 1930 L. 166=123 I. C. 570=31 Cr. L. J. 560.
6. If the Magistrate receives a private communication from a defence witness, calculated to create an apprehension in the mind of the petitioner that he was friend of the Magistrate and that the witness for the petitioner was treated in a different manner from that of the other party, the case should be transferred. 1929 L. 702=119 I. C. 327.

39. Friendship.

1. The fact that a Magistrate, fifteen years before had been a class fellow of somebody who was either a complainant, respondent or an advocate in the case is no ground for transfer. 1930 A. 262=115 I. C. 641=30 Cr. L. J. 522=1929 A. L. J. 616.
2. Accused was an election agent of rival candidate with the Magistrate before whom he was to be tried and chief witness in the case was a friend of the Magistrate, the case should be transferred. 1925 L. 615=89 I. C. 912=25 Cr. L. J. 1440.
3. Where one of the prosecution witnesses is a friend of the Magistrate, the case should be transferred. 1926 L. 410=95 I. C. 318=27 P. L. R. 843=27 Cr. L. J. 782=8 L. L. J. 257.
4. The fact that the Magistrate is a friend or remote relation of the complainant is no ground for transfer 4 P. W. R. 1912 Cr.
5. The fact that accused was a friend of one of the Magistrates forming a Bench is no ground for transferring the case from the Bench. 46 I. C. 153=19 Cr. L. J. 702.
6. The fact that complainant is a personal friend of Magistrate is no ground for transfer. 131 I. C. 891=32 Cr. L. J. 805=1931 B. 206.

40. Financial hold over the Magistrate.

Where a party has a financial hold or other association with the Magistrate, the case should be transferred. 58 I. C. 923=1920 A. 195=21 Cr. L. J. 843

41 From District.

1. Where a case was sent to a Magistrate with the remark by the District Magistrate that it was a quite clear case and the defence was ridiculous, the case should be transferred from the District. 1925 O. 690=90 I. C. 309=25 Cr. L. J. 1525.
2. A complaint of murder was made to the Sub-Divisional Magistrate. The District Magistrate made a speech in the presence of all the Magistrates including the trying Magistrate about the guilt of the accused, a transfer is justified. 25 Cr. L. J. 1374.
3. The mere fact that a District Magistrate has come to the conclusion that there is a *prima facie* case against the accused is no ground for transfer of the case from the District, unless it can be shown that he is influencing its result directly. 1927 L. 164=99 I. C. 862=28 Cr. L. J. 190.
4. Where proceedings under S. 107, Cr. P. C., assumed an importance of their own in a locality and it appeared that accused could not get legal assistance as the lawyers were worried by authorities, the cases should be transferred to a place where a more calm and quiet atmosphere prevailed. 1930 L. 954=31 P. L. R. 694, 1923 L. 254=3 L. 443, 1925 L. 351, 1928 L. 1.
5. Where no practitioner in a district ordinarily employed in criminal cases is willing to act for the accused, the case should be transferred to another District. 1925 O. 672=88 I. C. 1048=26 Cr. L. J. 1272.
6. Where the accused had reasonable belief that they had incurred the displeasure of the District Magistrate and the local authorities and that the Superintendent of Police conferred with the District Magistrate before launching prosecution and the legal practitioners evaded taking up the cases of the accused, the case should be transferred to another District. 1927 L. 709=104 I. C. 227=28 Cr. L. J. 787.
7. Where the District Magistrate took keen personal interest and was more or less convinced of accused's guilt, the case should be transferred to another District. 32 A. 642, 7 A. L. J. 813.

Transfer (Grounds of)—(contd.)

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*Transfer (Grounds of)—(contd.)***46. Hurry or Hasty trial.**

1. The fact that Magistrate refused to give copies and proceeds hurriedly recording the accused's statement before the prosecution evidence is over is a good ground for transfer. 18 A. L. J. 1145=59 I. C. 376=22 Cr. L. J. 88.
2. Where beyond the mere fact that proceedings against the petitioners were hurried, there is nothing to indicate that the enquiry had not been fair and impartial and the petitioners remain unrepresented through no fault of the Magistrate the case should not be transferred. 1930 L. 529=31 Cr. L. J. 812, 1936 A. 695.
3. Where from the number of witnesses on both sides the case could not be finished in one day but the Judge insisted on finishing the case in one day and refused adjournment, the case should be transferred. 17 A. L. J. 48.

47. Heavy bail—demand of—.

1. The Magistrate demanded heavy bail and disallowed request to see papers seized by Police, the case should be transferred. 1929 L. 860=123 I. C. 534=31 Cr. L. J. 532, 1930 L. 668=125 I. C. 615.
2. When in a petty theft case, the Magistrate issued non-bailable warrants against the accused and exacted heavy bail from them, it is sufficient ground for transfer. 8 C. W. N. 589.
3. Where Magistrate without sufficient cause raised the security demanded, the case should be transferred. 1923 L. 410, 1925 L. 101=25 Cr. L. J. 638.

48. Holiday—trial on—.

1. Magistrate conducting trial on a gazetted holiday in compliance with the request of a Police Officer constitutes sufficient ground for transfer. 1923 L. 334=107 I. C. 779=29 Cr. L. J. 294.
2. Where the complaint under S. 107, Cr. P. C., was made on Sunday and the Magistrate on the same day issued warrants for amount beyond accused's means and rejected sureties after sureties, the case should be transferred. 1930 L. 665=125 I. C. 615=31 Cr. L. J. 980.
3. Holding Court on Sunday is no ground for transfer. 1933 S. 17.

49. Hospitality of complainant's son.

Although a Magistrate receives hospitality in ignorance of the fact that his host is the son of the complainant, it would naturally raise an apprehension in the mind of the accused and the case should be transferred. 1926 L. 347=27 Cr. L. J. 565.

50. Improper procedure.

1. Magistrate without discharging the accused passed an order under S. 250, Cr. P. C., calling upon the complainant to show cause why he should not give compensation to the accused is clearly wrong order and it would be a farce to allow the complaint to be tried by the same Magistrate. 1929 L. 623=30 Cr. L. J. 854.
2. During the trial of a case, the Magistrate ordered the prosecution of a witness for perjury, it is a sufficient ground to entertain apprehension. 1928 L. 380=106 I. C. 456=29 Cr. L. J. 40.
3. Where an application is made to postpone the case in order to enable the petitioner to move the High Court for transfer it is highly improper for the Magistrate to make a preliminary enquiry into the grounds for transfer and decide himself the merits of the ground. This circumstance is sufficient to order a transfer of the case. 1926 L. 236=92 I. C. 894=27 Cr. L. J. 382=27 P. L. R. 67.
4. If the Magistrate does not adjourn a case on notification of intention of the accused to make an application for transfer, the accused is entitled to obtain a transfer of the case on this ground. 1928 A. 660=29 Cr. L. J. 671, 22 Cr. L. J. 717.
5. Where adjournments are repeatedly made to bring pressure on the accused to produce his absconding co-accused, the case should be transferred. 1930 L. 953, 129 I. C. 485.
6. After a Magistrate came to know of the fact that an application for transfer was made to the High Court he cancelled the bail bonds of the accused, holding that

Transfer (Grounds of)—(contd.)

there was *prima facie* evidence against the accused, the case should be transferred. 1930 L. 958=1930 Cr. C. 1054=130 I. G. 501.

7. If the witnesses were not permitted to be examined by the complainant or his pleader and the Court took their examination in his own hands, the case should be transferred 1924 O. 371=82 I. C. 154=25 Cr. L. J. 1226.
8. Accused was prosecuted under S. 377, I. P. C. He applied for adjournment under S. 344 on the ground that he was served only three hours before and that he wanted time to get copies of Police statements of witnesses and that his leading Counsel was out of station. The Magistrate rejected his application. The accused then applied under S. 526 (8) but the Magistrate examined the two witnesses who did not support prosecution. He adjourned the case on the ground that "he had lot of treasury work to do," although one more witness was present. Held, that the case should be transferred. 9 L. 537=1928 L. 1=29 Cr. L. J. 815. *See* 20 Cr. L. J. 402
9. If the Magistrate makes a local inspection of the spot and collects evidence in the case, behind the back of the parties, he becomes a witness and cannot try the case. 1926 R. 180=97 I. C. 60=27 Cr. L. J. 1084.
10. Where on a verbal complaint the District Magistrate assisted a Sub Inspector for bribery and ordered enquiry under S. 202, Cr. P. C., the procedure is illegal and the case should be transferred. 58 I. C. 523.
11. Where the accused apprehends that there will be irregularities in further proceedings of the Magistrate's Court, it is necessary to transfer it 1923 L. 410.
12. Accused had been ordered to be released on bail and Magistrate erroneously refused to accept bail bonds and thus kept him in custody for three weeks. Held, that the case should be transferred. 33 P. L. R. 416 (1)
13. If the witnesses were not permitted to be examined by the Pleader and the Court took the examination of the witnesses in his own hand, the case should be transferred. 1924 O. 371=25 Cr. L. J. 1226=82 I. C. 154.
14. Where a Magistrate takes a particular view of law or of facts of the case. 1926 A. 307, 15 Cr. L. J. 367; or does not give effect to legal objection 1928 L. 317=29 Cr. L. J. 289, or has committed an error of judgment in admitting evidence. 20 Cr. L. J. 609; or refuses to admit a document 1924 P. 695; or disallows questions as irrelevant or scandalous 1925 O. 52=25 Cr. L. J. 1185, 36 A. 239, 18 Cr. L. J. 670; or gives decision against the accused on a certain point in a protracted trial. 1929 N. 172=30 Cr. L. J. 728, or has exercised *judicial discretion* in passing certain orders. 1933 S. 17, 1928 L. 757, 14 Cr. L. J. 382, 1926 O. 290; or summons a witness under S. 540, Cr. P. C. 1929 N. 172=30 Cr. L. J. 728.

51. Influence of superior officer, etc. *See*—84.

Where Magistrate was influenced by a private individual, case was transferred. 1921 P. 413.

52. Interest. *See* Disqualification of Magistrate.

1. Where the District Magistrate took keen personal interest and himself made an inquiry and instituted proceedings under S. 107, Cr. P. C., the case should be transferred to another District. 32 A. 642, 1922 O. 124, 7 A. L. J. 813.
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3. Where the Magistrate has interested himself in a case pending before him in the way of obtaining settlement by the parties, the case should be transferred from his file. 47 A. 411=1925 A. 289=86 I. C. 805=26 Cr. L. J. 869.
4. The fact that the District Magistrate is officer of the Court of Wards is no ground for transfer of a case instituted by a servant of the Court of Wards against a tenant especially when District Magistrate did not know the case. 28 C. 297. *See* 8 C. W. N. 77.
5. If the only interest in the result of a case tried by a Magistrate is that he is concerned in it in his public capacity, it does not warrant transfer of case. 1927 S. 95=93 I. C. 405=27 Cr. L. J. 1333.

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12. Accused had been ordered to be released on bail and Magistrate erroneously refused to accept bail bonds and thus kept him in custody for three weeks. Held, that the case should be transferred. 33 P. L. R. 416 (1)
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Transfer (Grounds of)—(contd.)

6. Court issuing warrant for arrest is not interested in prosecuting persons who rescue judgment-debtor from lawful arrest under the warrant. 1926 C. 605=93 I. C. 1049=43 C. L. J. 234=27 Cr. L. J. 555.
7. Where a seat on dais was given to a gentleman not necessarily having any connection with the case, while the Magistrate was hearing it, and he received visits from parties and accepted a lift in complainant's car and sat in it with the complainant's brother, the case should be transferred. 93 I. C. 962=27 Cr. L. J. 493.
8. The fact that the Magistrate is the master of the complainant does not deprive him of his jurisdiction but it is desirable to refer the complaint to another Magistrate. 9 B. 172.
9. Magistrate who was Vice-President of the Municipal Committee, was present at the meeting when resolution against the petitioner was passed. Held, he is debarred from trying the case. 1922 L. 72=69 I. C. 384=21 Cr. L. J. 704.
10. Where the complainant was closely associated with the Magistrate's brother in electioneering work and the Magistrate was helping his brother, the case should be transferred. 1924 C. 981=25 Cr. L. J. 944.
11. Accused was election agent of the rival candidate of the Magistrate, case should be transferred. 1925 L. 615=26 Cr. L. J. 440.
12. If the Magistrate was instrumental in bringing about prosecution of accused, the case should be transferred. 1922 A. 528, 1922 L. 72, 23 C. 44, 1928 L. 114=29 Cr. L. J. 371, 13 Cr. L. J. 236.
13. If the Magistrate shows himself a partisan or interested in one of the parties, case should be transferred. 3 Cr. L. J. 169, 1924 C. 981, 1925 L. 615, 1926 L. 347, 32 A. 642.

53. Intricate case.

Cases which are likely to be keenly contested and intricate in nature, are, on the whole, likely to be more efficiently disposed of by stipendiary Magistrates than by Honorary Magistrates. 1928 N. 21=28 Cr. L. J. 898, 1931 M. W. N. 407.

54. Irregularities. See—50.**55. Issue of warrant.**

1. Where in a summons case the Magistrate issued warrants without any apparent reasons, transfer was ordered. 18 C. 247, 1928 L. 75=28 Cr. L. J. 988.
2. Where Magistrate received a complaint at late hour and issued warrants, transfer was ordered. 18 Cr. L. J. 719=1917 L. 356.

56. Leniency in bail.

The fact that the Magistrate has released the accused on bail and thus showed a tendency to treat the accused with undue leniency is not a ground of transfer. 22 B. 549.

57. Local influence.

1. Where a number of officials in a District are personally concerned, whether as witnesses or otherwise in a case, it should be tried elsewhere. 1927 A. 708=28 Cr. L. J. 1011=106 I. C. 99.
2. Cases which assume an importance of their own should be tried in a calm and quiet atmosphere. 1930 L. 954, 1923 L. 264, 1925 L. 351, 1928 L. 1.

58. Local inspection. See Local inspection.

1. The inspection by a Magistrate to understand and appreciate the evidence is no ground for transfer. 89 P. L. R. 1901, 13 P. L. R. 1901 Cr.
2. If the Magistrate goes to inspect the spot accompanied by one party only, it is good ground for transfer. 165 P. L. R. 1901, 12 C. W. N. 748, 19 A. 302, 39 C. 476, 7 Cr. L. J. 510.
3. If the Magistrate makes a local inspection of the spot and collects evidence in the case behind the back of the parties, the case should be transferred. 1926 R. 180=97 I. C. 60=27 Cr. L. J. 1084, 21 Cr. L. J. 166.
4. If the Magistrate does not place on record the result of local inspection the case should be transferred. 43 I. C. 252=19 Cr. L. J. 92.

Transfer (Grounds of)—(contd.)

5. Where by reason of local inspection, Magistrate makes himself an important witness in the case, it should be transferred. 1926 R. 180=4 R. 106=27 Cr. L. J. 1084, 1927 S. 98=27 Cr. L. J. 1333, 21 C. 920, 19 M. 263, 1930 A. 737=31 Cr. L. J. 555, 3 C. W. N. 607.

59. Magistrate as witness in the case. See—58.

1. If the Magistrate is a necessary witness for the defence, the case should be transferred from his file. 19 Cr. L. J. 632=45 I. C. 680, 26 A. 536, 27 A. 33, 2 C. 405. But see 1927 O. 31, 16 Cr. L. J. 222.
2. The existence of a village feud may well be within the knowledge of a Sub-Divisional Magistrate, it is not sufficient reason to cite him as witness and the case should not be transferred. 1927 O. 31=99 I. C. 97=28 Cr. L. J. 65.
3. If the Magistrate collects evidence against the accused he is precluded from trying him. 14 I. C. 428=13 Cr. L. J. 236.
4. The fact that District Magistrate is a witness in the case is not sufficient. 1926 O. 290.

60. Magistrate asking Pleader not to defend the accused.

Where the Magistrate had asked the Pleader for the defence not to defend the accused, the case should be transferred from him. 1921 L. 331, 20 Cr. L. J. 566.

60.A. Magistrate hearing major portion of the case.

That the Magistrate has heard major portion of the case before his transfer is not sufficient ground for transfer of the case to him, where prejudice and pecuniary loss will occur to accused. 1935 R. 197=1935 Cr. C. 1062.

61. Magistrate not examining witnesses

Where a Magistrate acquitted the accused on consideration of complainant's statement alone and without examining his witness, the High Court would order retrial by another Magistrate. 20 M. 388.

62. Magistrate not knowing English

Where the Magistrate did not know English and there was a large amount of evidence oral and documentary in English in the case, a transfer was necessary in the interests of justice. 16 Cr. L. J. 73. See 12 Cr. L. J. 451

63. Magistrate receiving private communications.

Where a Magistrate received a letter from the defence witness, calculated to create a reasonable apprehension in the mind of the petitioner that he was a friend of the Magistrate, the case should be transferred. 1929 L. 702=30 Cr. L. J. 1048.

64. Magistrate refusing facilities to accused.

Where the Magistrate refused to allow the accused to examine a witness in a case connected with the same, the case should be transferred. 1926 L. 1048=27 Cr. L. J. 1048

65. Magistrate examining witness at his house or after Court hours.

1. The mere fact that Magistrate proposes to examine a witness who is an old man and has not left the precincts of his house for many years, at the latter's house is no ground for transfer. 1926 O. 290=92 I. C. 856=27 Cr. L. J. 344.
2. Where witnesses were examined after 9 P.M., case was transferred. 1933 L. 96=14 L. 201, 1929 L. 702=30 Cr. L. J. 1048 Rel on.
3. Magistrate received complaint at a late hour and issued warrant, transfer was ordered. 18 Cr. L. J. 719=1917 L. 356.

66. Magistrate's action in Executive or other capacity (ordering prosecution).

1. The mere fact that the presiding Magistrate as the District Magistrate in charge of the District has taken precautions against intimidation and illegal picketting, is no ground for transfer of a case in which the strikers are tried under Ss. 143 and 506, I. P. C. 65 I. C. 440=23 Cr. L. J. 88.
2. Where the prosecution was ordered by Cantonment Magistrate as Secretary of Cantonment Board, it is advisable that the case should be tried by some other Magistrate. 1922 A. 528=71 I. C. 256.

Transfer (Grounds of)—(contd.)

3. Certain illegal *farwanas* were issued by the accused. The District Magistrate asked him to withdraw, which he refused. Subsequently the case was started against him and accused applied for transfer on the ground that District Magistrate was prejudiced against him as he refused to withdraw the *farwanas*. Held, it was not a sufficient ground. 1922 P. 494=81 I. C. 49.
4. Magistrate putting down picketting should not try cases arising out of picketting of shops. 1931 L. 30=32 Cr. L. J. 491. See 23 Cr. L. J. 88=65 I. C. 440.
5. Magistrate giving his visiting card to accused to arrange interview with the landlord of complainant is a good ground for transfer. 1934 L. 541.
6. Magistrate in another capacity bringing about prosecution is disqualified to try. 1922 A. 528, 1922 L. 72, 1928 L. 114, 23 C. 44, 13 Cr. L. J. 236, 29 C. 392, 1926 S. 255=27 C. L. J. 802.

67. Magistrate telling Pleader that he would convict.

Where the accused was informed by his Pleader that the Magistrate had told him that he would convict him unless certain Civil suit was compromised with the complainant. Held, it is a good ground for transfer. 1928 L. 75=105 I. C. 812.

68. Magistrate putting improper questions to accused.

If the Magistrate on information by Police Peshi clerk put improper questions to the defence witness, so as to prejudice the accused, the case should be transferred. 23 I. C. 186=15 Cr. L. J. 234.

69. Magistrate himself examining witnesses.

If the witnesses were not permitted to be examined by the Pleader or the complainant and the Court took the examination in his own hand, the case should be transferred. 82 I. C. 154=25 Cr. L. J. 1226, 15 Cr. L. J. 234.

70. Observations in another trial.

1. The fact that the Magistrate made observations against the complainant in another case, which are derogatory, is no ground for transfer, when it was a matter of accounts only. 54 B. 553.
2. If the Magistrate became angry with an ignorant villager in one case, he would naturally believe that he would not get fair trial in another case. 1930 A. 495=125 I. C. 32=31 Cr. L. J. 764.

71. Mistake of Law

Bona fide mistake of law is no ground. 1936 N. 146, 8 C. W. N. 838, 1929 N. 172 and 22 B. 549 Rel. on.

72. Ordering prosecution of a witness during the trial.

1. After a prosecution witness made a statement on oath, the Magistrate ordered him to be put on his trial along with other accused, his case should be tried by some other Magistrate. 20 Cr. L. J. 385=50 I. C. 993.
2. During the trial of a case Magistrate ordered the prosecution of a witness for perjury, held, it is a good ground for transfer. 1928 M. 180=29 Cr. L. J. 40.

73. Partiality.

Mere passing illegal orders is no ground for transfer, but where the conduct of the Magistrate showed that both parties are not being treated equally, the case should be transferred. 1931 L. 59=129 I. C. 193.

74. Police Officer addressing the Court.

The mere fact that a Police Officer addressed the Magistrate during the proceeding is no ground for transfer. 1927 O. 294=105 I. C. 230.

75. Previous knowledge of the case by the Magistrate See—37-A.

1. Where a Magistrate has dealt with the dispute in an informal manner as an arbitrator, the case should be transferred. 18 C. L. J. 150.
2. If the Magistrate was present at the time of search during Police investigation, he should not try the case. 5 C. W. N. 864.

Transfer (Grounds of)—(contd.)

3. The mere fact that the Magistrate has initiated proceedings under S. 110 on his own personal knowledge, is not a good ground for transfer. 27 A. 172 *Contra* 28 C. 709, 6 C. W. N. 595.

76. Private consultation with a party.

Where a Magistrate sends for a party to his house and presses him to compromise the case, the case should be transferred. 1931 L. 32=32 Cr. L. J. 537.

77. Refusal to adjourn a case under S. 526 (8). (Law amended.)

1. A refusal to adjourn the case is by itself a sufficient ground for transfer. 1926 S. 285=27 Cr. L. J. 935=96 I. C. 391, 29 I. C. 108, 10 Cr. L. J. 570=3 S. I. R. 155.
2. When the Magistrate for adjourning the case under S. 526 (8) imposed certain conditions, his order is illegal. 1929 L. 702=119 I. C. 327=30 Cr. L. J. 1048.
3. Where application for transfer was not *bona fide*, refusal of adjournment is no ground for transfer. 1933 S. 17=33 Cr. L. J. 908.

77-A. Rejection of sureties.

Where a Magistrate rejected the sureties on a Police Report and did not hold inquiry himself, it is a good ground for transfer. 1935 A. 517.

78. Relationship

1. It is undesirable that a lawyer should practise in a Court presided over by a near relation. It is a good ground for transfer. 1925 C. 806=88 I. C. 607=29 C. W. N. 648=26 Cr. L. J. 1183. *Contra* 1925 O. 348=85 I. C. 56=26 Cr. L. J. 440.
2. Where a case is being conducted by Court Inspector, the mere fact that the complainant has engaged a Pleader who is near relation of the Magistrate to watch the case, is no ground for transfer so long as Pleader is watching the case. 1926 P. 464=95 I. C. 764=27 Cr. L. J. 844.
3. The fact that the Magistrate is a remote relation of the complainant is no ground for transfer. 4 P. W. R. 1913 Cr.
4. The fact that the Magistrate is a relation of the Sub-Inspector of Police or is a guardian of person whose manager or servant instituted the proceedings is not a valid ground for transfer. 23 C. 297.
5. The fact that a prosecution witness is a relation of the Magistrate is a sufficient ground for transfer. 13 C. W. N. 1.

79. Remarks by Magistrate.

1. If the Magistrate makes observations which go to show that he is not favourable to prosecution, the complainant has reasonable apprehension. 1925 P. 818=88 I. C. 993=26 Cr. L. J. 1249.
2. If by the remarks of Judge reasonable apprehension is created it is a good ground for transfer. 10 L. 778, 1925 L. 361

80. Sentiments of accused

1. Transfer cannot be granted on fanciful or sentimental grounds. 1923 L. 276=107 I. C. 108=29 Cr. L. J. 220.
2. Where the applicant reasonably fears that he would not have impartial justice, case should be transferred. 1932 R. 90=10 R. 180.

80-A. Sensational case.

Sensational nature of case is no ground for transfer of case. 1936 S. 237.

81. Sessions Judge ordering prosecution.

It is not desirable though not illegal that the Sessions Judge who made a complaint against the accused for perjury should hear his appeal against conviction. 8 L. 496.

82. Similar cases tried by Magistrate

The fact that the Magistrate had already tried certain other persons charged with the same offence is no ground for transfer. 1924 O. 247=74 I. C. 544=24 Cr. L. J. 800.

*Transfer (Grounds of)—(concl'd.)***83. Strong language.**

Use of strong language by Court is never calculated to satisfy the litigant public and is a good ground for transfer. 47 A. 238, 1930 A. 495=125 I. C. 32.

84. Superior officer's influence

1. The fear in accused's mind that the trying Magistrate would be influenced by the opinion of District Magistrate formed in an extra judicial inquiry as to the collection of evidence is not a good ground for transfer. 1925 O. 731=93 I. C. 1047=27 Cr. L. J. 551, 60 I. C. 657, 1932 R. 90=33 Cr. L. J. 550-
2. The fact that the Magistrate trying the case is subordinate to the officer making a complaint is not sufficient ground for transfer. 1925 N. 433=24 Cr. L. J. 1425.
3. Merely because complainant is Magistrate's superior officer, case need not be transferred. 1935 S. 195.
4. Accused summoned District Magistrate as witness but he asked the trial Court to curtail the list under S. 257, Cr. P. C. Held, that the case should be transferred. 1934 N. 59=35 Cr. L. J. 411.
5. Discussion of the case at the Club with Sessions Judge, etc., is a good ground. 1921 A. 55.
6. Superior officer expressing to the trial Magistrate his belief in the innocence of the accused justifies transfer of the case. 1925 O. 90=25 Cr. L. J. 374.
7. If the trial Magistrate was written to and influenced by District Magistrate the case should be transferred. 10 R. 180=1932 R. 90.

85. Suppression of dismissal of prior application.

An application for transfer suppressing fact of dismissal of prior application and based on unfounded allegations should not be allowed. 1933 S. 361=35 Cr. L. J. 147.

86. Susceptibilities of parties

1. The law has regard not so much for the motive, which might be supposed to bias the Judge, as to the susceptibilities of the litigant parties. 22 Cr. L. J. 726, 10 R. 180, 1933 S. 361 (362)=35 Cr. L. J. 147, (1877) 2 Q. B. D. 558.
2. It is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done. 1933 S. 361 (362)=35 Cr. L. J. 147. (1924) 1 K. B. 256.

87. Taking part in Police investigation.

1. If the Magistrate in a Police investigation held a prolonged enquiry and collected a large amount of information, he should not try the case. 21 C. 920, 20 W. R. 76.
2. Taking more than a formal part in Police investigation is a good ground for transfer. 1925 R. 219=89 I. C. 261=26 Cr. L. J. 1317.

88. Threats to accused.

Where a Magistrate made ill-advised remarks regarding the testimony of a defence witness and held out threats to the accused regarding the sentence and the effect of his application for transfer of the case should be transferred. 10 L. 778=1928 L. 975.

TRAVELLING EXPENSES. *See Expenses of witnesses.***TRAVELLING WITHOUT TICKET.** *See Railway Act, Cheating—8.*

1. Travelling without ticket is no offence. 11 C. W. N. 102.
2. Travelling in a train without pass or ticket is not an offence under the Railway Act, unless there is a dishonest intention to defraud the Railway Company. 20 A. 95.
3. Two persons travelled without tickets and represented that one was the relation of the other and they had a pass. It was discovered that pass was issued to a third person, who lost it. They were tried together under Ss. 419 and 411, or in the alternative S. 403, I P. C. Held, that several charges were rightly joined and there could be no objection to the other accused having joined under S. 239, Cr. P. C. as regards one of the charges. 1932 A. 25=33 Cr. L. J. 122.

Treasure Trove—(concl'd.)

TREASURE TROVE. See Criminal misappropriation—22.

TREATMENT. See Medical treatment.

TRESPASS. See Criminal trespass.

TRESPASS ON BURIAL PLACES. S. 297, I. P. C.

1. Civil Trespass.

Civil Trespass is a mere encroachment or an authorised entry without Criminal intent specified in S. 441. 18 A. 395, 40 C. 548, 23 P. R. 1915 Cr., 1 R. 690.

2. Demolition of graves.

If a person is given Khas possession by a Civil Court, he cannot disturb or demolish graves and thereby wound the feeling of others. If he does so, he is guilty. 36 C. W. N. 544.

3. Disturbance of funeral ceremonies.

1. Where certain persons prevented the grave diggers from digging a grave for the corpse of complainant's son as he did not join Khilafat party, they are not guilty. 1922 A. 18+ = 65 I. C. 424 = 23 Cr. L. J. 72

2. Accused came and asked the complainant not to cremate the body of his daughter and on being asked said that they would state the reason to the Police. Held, that these words only do not amount to disturbance within S. 297. 2 P. R. 1919 Cr.

3. Disturbance of the obsequial rites falls within S. 297. 6 M. 254 (257).

4. Funeral ceremony does not mean symbolical religious ceremony, such as Muharram Procession the stoppage of which is not punishable under S. 297. 1885 A. W. N. 49.

4. Essentials and Evidence.

1. Accused entered a mosque for prayers and after an altercation abused the congregation. Held, he is not guilty under S. 297 but under S. 504. 1924 R. 106 = 1 R. 690 = 81 I. C. 41 = 25 Cr. L. J. 553.

2. Magistrate inspected the alleged burial place. He unearthed two small boxes and finding some matting and piece of bamboos came to the conclusion that it was a burial place. Held, that his proceedings were entirely irregular. 1923 P. 537 = 81 I. C. 602 = 25 Cr. L. J. 954.

3. Accused entered the enclosure surrounding the tomb of a Mohammadan Faqir at night with a woman to have sexual intercourse. He is guilty under S. 297. 10 M. 126, 45 A. 529.

4. A joint owner who dug up graves and exposed bones of the persons buried, in spite of the remonstrances of their relations, is guilty under S. 297. 33 A. 773, 18 A. 395

5. It is sufficient to prove that the trespass occurred on any place of sepulchre. 2 I. C. 825 = 10 Cr. L. J. 160.

6. It is not necessary for the purpose of S. 297, that a burial ground should be in use. 40 C. 548.

7. A person who destroys or disturbs a place of sepulchre with the intention of wounding the religious feelings of any person amounts to trespass within S. 297, no matter whether land belonged to him or not. 23 P. R. 1915 Cr., 18 A. 395, 33 A. 773, 40 C. 548.

8. A place where only isolated and secret cases of burial have taken place in the course of many years, is not sepulchre. 2 I. C. 825 = 10 Cr. L. J. 160.

9. A was found in a mosque having sexual intercourse with a woman B. Held, both were guilty under S. 297. 45 A. 529 = 1924 A. 9 = 24 Cr. L. J. 711 = 73 I. C. 935.

5. Trespass.

1. Trespass in S. 297 means any violent or injurious act and is not restricted to same meaning as 'Criminal trespass' in S. 441, I. P. C. 40 C. 548, 1924 R. 106 = 1 R. 690 = 81 I. C. 41, 45 A. 529 = 73 I. C. 935.

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Unlawful Assembly—(contd.)

10. The expression common object refers to five objects mentioned in S. 141 and is not used in the same sense as in S. 34, which means the intention of all whatever it may have been. 30 Cr. L. J. 205, 76 I. C. 705.
11. When it is not proved that five persons took part in a murder, S. 149 does not apply. 85 I. C. 371.
12. If some accused are carrying deadly weapons to the knowledge of the rest, all are guilty under S. 149. 1929 M. W. N. 888, 101 I. C. 485.
13. Where the actions of the mob were united, concerted and continuous, all would be guilty for whatever criminal offences were committed in furtherance of common object. 1923 M. 369=73 I. C. 147.
14. When a number of persons set out to abduct a woman and two of them are armed with pistols, knowledge that death is likely to result can be presumed. 86 I. C. 347.
15. S. 149 creates no substantive offence. It is merely declaratory of the law and makes a person liable for the acts of another. 1926 A. 225=92 I. C. 463.
16. If persons decide upon their common object, the preparation towards that common object is prosecution or following up and if preparation is an offence, all are guilty. 1930 M. 857=127 I. C. 654=32 Cr. L. J. 30.
17. If accused who was a brother of the principal offender and sympathizer of the attacking party, was present at the occurrence and was actually kicking the principal offender saying "let him off, he will die." Held, he was not guilty under S. 149. 48 A. 375.
18. Conviction under Ss. 129, 128, Railway Act, by operation of S. 149 is illegal. 52 M. 892, 76 I. C. 644.
19. Omission of S. 147 from a charge does not create illegality. 47 M. 746.
20. If murder is committed in furtherance of common object, all are guilty even though it is not proved as to who gave the fatal blow. 95 I. C. 700, 1529 M. W. N. 889.
21. The definition of "offences" in S. 149 does not include offences under Special Act. 72 I. C. 360, 52 M. 882.
22. One member of the unlawful assembly was a Sikh wearing Kirpan who unsheathed it and gave a fatal blow to the victim. Held, that other members were not constructively liable for causing death. 1930 L. 532=122 I. C. 721.
23. Where one of the accused, who belonged to the gang of dacoits was arrested and the other dacoit fired at a pursuer, the arrested accused is not guilty of murder. 31 I. C. 345.
24. If accused are convicted under Ss. 325—149 and one man is murdered, the accused who joined in the actual attack on the deceased should be given severe punishment. 134 I. C. 1041.
25. If the accused knew that murder was likely to result, all the members of an unlawful assembly are guilty of murder. 1932 L. 367=137 I. C. 196.
26. Ordinarily S. 149 is inapplicable to an offence under S. 396 but if unlawful assembly existed before murder with dacoity is committed, S. 149 applies. 1935 O. 190=153 I. C. 978.
27. Offence committed must be immediately connected with common object of assembly. 1935 O. 52=153 I. C. 96=36 Cr. L. J. 268.
28. If the common object of the assembly is to give beating and one member thrusts spear, other members who are armed with lathi and spears are not guilty of murder. 1935 O. 52=153 I. C. 96=36 Cr. L. J. 268, 20 W. R. 5 Cr. and 6 A. 121 Ref.
29. When a person is charged with being a member of an unlawful assembly, one of the members of which caused grievous hurt in pursuance of the common object, he can be convicted of substantive offence. 1935 S. 34=154 I. C. 915=36 Cr. L. J. 598, 47 M. 746=1925 M. 1=25 Cr. L. J. 1297 Rel. on.
30. Seven accused caused the death by fracturing ribs, rupturing spleen and inflicting injuries on head. Held, they were guilty under Ss. 304—149. 1935 O. 381=154 I. C. 808=36 Cr. L. J. 573 (Case law discussed).

Unlawful Assembly—(contd.)

31. Several persons attacked a man with *lathis* and caused his death. All are guilty under S. 149 and other sections. It is immaterial as to with whose *lathi* the death was caused. 1935 A. 930, 40 A. 686, 1933 A. 528 Ref.

2. Assembly.

1. When two or more mobs start from different localities or never mingle together at any time or place, the mere fact that they have common object will not make them one assembly. 100 I. C. 817=1927 O. 151=23 Cr. L. J. 337.
2. Mere assemblage of five men does not render their meeting unlawful, unless it was in pursuance of a common unlawful object. 16, C. L. J. 440, 4 I. C. 1142.

3. Charge.

1. The charge should specify the unlawful common object of the assembly. 11 C. 106, 22 C. 276, 26 C. 633, 1921 C. 605=77 I. C. 988.
2. Omission of the common object is not fatal to conviction if evidence is sufficient to support it. 39 C. 781, 5 I. C. 771=11 C. L. J. 270.
3. The charge of unlawful assembly with the common object of harassing Hindus is not too general and unjust to accused. The accused should have reasonably distinct notice of the common object imputed to them. 1924 M. 376.
4. The failure to define accurately the common object in the charge is an irregularity curable under S. 537. 1930 M. 188, 36 C. 863, 37 C. 340, 33 C. 295.
5. When a Court draws up a charge under S. 325 read with S. 149, I. P. C., it clearly intimates to the accused that they did not cause grievous hurt to anybody themselves, but that they are guilty by implication of such offence as somebody else in prosecution of common object caused grievous hurt. 15 I. C. 646=13 Cr. L. J. 502, 1935 S. 34=154 I. C. 915=36 Cr. L. J. 598.
6. When persons are acquitted of rioting, all the offences which they are said to have committed by implication, disappear. 15 I. C. 646=13 Cr. L. J. 502, 6 C. W. N. 98.

4. Common object.

1. The object need not be present in the minds of all before they meet, for it may occur to them afterwards. 34 P. R. 1865, 1 Weir 16.
2. Members of an assembly may have a community of object only up to a certain point beyond which they may differ in their objects and each member would be liable to the extent to which he shares the community of object. 22 C. 30.
3. Assembly may be perfectly lawful in its inception but it may become suddenly unlawful without previous concert among its members. 6 C. W. N. 507, 2 Bom. L. R. 1129.
4. When the common object is to cause a particular kind of hurt, it is necessary to come to definite finding in terms of common object. 1929 P. 205=116 I. C. 523=30 Cr. L. J. 654.
5. There can be no common object on the part of two opposite factions fighting with each other. 13 P. R. 1870 Cr., 12 W. R. 75.
6. Common object cannot be varied in appeal, for the trial proceeds upon proof of the common object which is specified and not upon any common object which the facts of the case may disclose. 5 C. W. N. 31.
7. In order to establish common intention of an unlawful assembly it is not necessary to prove that its members actually met and conspired, but it can be inferred from the circumstances. 1927 L. 193=25 Cr. L. J. 274, 10 I. C. 236.
8. There is a liability of each of several accused persons for act done by all in furtherance of common intention of all. 2 P. R. 1867 Cr., 21 P. R. 1867 Cr.
9. In case of unexpected attack by one of the accused, others are responsible. 55 P. L. R. 1911.
10. Use of slightest force by any one of the members of assembly makes it unlawful. 34 P. R. 1865 Cr., 5 P. R. 1867 Cr., 4 P. R. 1869 Cr.
11. The common object of the crowd which dispersed without taking action can be

Unlawful Assembly—(contd.)

inferred from the attitude and demeanour of the crowd. 1928 P. 98=105 I. C. 234=28 Cr. L. J. 906.

5. Essentials and Evidence.

1. If five persons assemble for the purpose of gambling, it is not an unlawful assembly because gambling though illegal, is not one of the illegal objects enumerated in the section. 1 Weir 53.
2. If large number of men are armed with sticks and bill-hooks, it cannot be presumed that their object was illegal. 29 C. 244, 54 C. 476, 1925 N. 260, 24 M 124.
3. It is not unlawful to carry sticks and if it provokes an assault, the assailants are guilty and not those who use sticks in self-defence. 31 I. C. 343, 75 I. C. 176.
4. An assembly which is not unlawful in its inception does not become unlawful because it refused to disperse in defiance of a lawful order to disperse. 1922 L. 135=64 I. C. 373=23 Cr. L. J. 5.
5. Common object to compel the complainant by means of force to omit to do a certain act for the time being is insufficient. 1925 O. 425=85 I. C. 353.
6. If the common object of the assembly is an offence under S. 188 it falls under S. 141 (3). 1929 B. 433=31 Bom. L. R. 1151, 1923 P. 1.
7. Immediate purpose to carry out common object must exist. A meeting for deliberations for future individual action is not an unlawful assembly. 1925 R. 362.
8. Collecting people and resisting trespass which was long expected do not constitute an unlawful assembly. 1923 O. 167, 83 I. C. 523, 24 C. 686, 1922 O. 228.
9. A toddy shop was pulled down and there was no force used to any other person. Held, that though accused were not the actual persons responsible for the violence used, yet they are members of an unlawful assembly. 1923 M. 606=76 I. C. 235=25 Cr. L. J. 139
10. The essence of offence under S. 143 is the combination of several persons for the purpose of committing an offence and that purpose constitutes in itself an offence distinct from the criminal force which these persons agree and intend to commit. 46 M. 257=1923 M. 592=71 I. C. 242=24 Cr. L. J. 11+
11. Where accused assembled with the common object of shooting the deceased and some came with guns. Held, all are guilty under S. 144 read with S. 149. 1930 M. W. N. 377.
12. When a person is charged with being a member of unlawful assembly, one of the members of which caused grievous hurt in pursuance of the common object, there is no necessary implication that the particular member is not himself. 1935 S. 34=154 I. C. 915=36 Cr. L. J. 598. 1925 M. 1=47 M. 746=25 Cr. L. J. 1237 Rel. on. (Case law discussed).
13. Members of an unlawful assembly uttered words expressing their determination to force their way through the Police cordon, the words were admissible as part of the transaction of the unlawful assembly. 1925 R. 354=26 Cr. L. J. 1622=90 I. C. 918=3 R. 352.
14. Existence of unlawful assembly and accused was member of such assembly have to be proved. Part taken by each accused need not be proved. 1933 A. 535.
15. If a person is present in crowd, the burden of proving innocent intention is on him. 55 A. 689=1933 A. 535.

6. Exercise, enforcement or defence of rights.

1. When, accused being molested while watering their field in the exercise of their lawful rights, resorted to force, they are not liable. 1925 O. 425=85 I. C. 353=26 Cr. L. J. 513, 1923 A. 194.
2. Hindus and Mohammadans agreed not to kill cow and pig in the village. After a year Hindus suspecting that Mohammadans were going to slaughter a cow assembled with lathies. Held, that their object must be deemed to be to enforce a right with a show of force and were rightly charged with it. 1923 P. 562=109 I. C. 503 29 Cr. L. J. 567.
3. Persons entering land by means of criminal force are members of unlawful assembly. 6 P. 794=1928 P. 124=106 I. C. 691.

Unlawful Assembly—(contd.)

4. If the order of Court to cut a *bund* is vague, assembly engaged in resisting the cutting is not unlawful. 1924 C. 996=84 I. C. 343=26 Cr. L. J. 279.
5. Collecting people and resisting trespass which was long expected do not constitute an unlawful assembly. 1923 O. 167, 81 I.C. 67, 83 I.C. 523, 24 C. 686, 1922 O. 228, 15 A. L. J. 47.
6. If accused party having title to the disputed property takes possession by force from the complainant, unlawful assembly is formed. 1924 P. 143=74 I. C. 73.
7. The true import of the expression 'to enforce any right' relates to an initial act when it is done in furtherance of any right and not to an act when it is done to maintain a position already achieved in the lawful exercise of that right. 1925 O. 425=85 I. C. 353=26 Cr. L. J. 513.
8. In a charge of rioting with common object to enforce a right or a supposed right, it is necessary for the prosecution to show that the accused was not in actual possession at the time of occurrence. 1926 C. 439=85 I. C. 711=26 Cr. L. J. 567.
9. To enforce a right applies when the party claiming the right has not possession over the subject of right. A party in possession is entitled to resist and repel aggression to 'maintain a right.' 1925 L. 49=81 I. C. 113=25 Cr. L. J. 625.
10. If accused forms an assembly for defending a right to a supply of water which they are possessed of, they are not liable. 51 M. 91, 1925 L. 49, 36 C. 865, 21 C. 392, 24 C. 686, 26 P. R. 1914, 17 C. W. N. 1132, *Contra* 16 C. 206.
11. Where water draining from the complainant's mill is polluting the water supply, rendering it unfit for drinking or crops and accused taking steps to prevent the contamination act under a colour of right do not constitute unlawful assembly. 1929 M. 833=121 I. C. 159=31 Cr. L. J. 225.
12. Use of force to vindicate one's right or possession of property is justified. 3 C. 573, 24 C. 686, 32 I. C. 137, 14 B. 411, 37 I. C. 318, 40 I. C. 311, 1922 O. 228. *Contra* 35 C. 103, 35 C. 384, 36 C. 296, 16 C. 206 (219), 26 C. 574.
13. Use of force is justified in maintaining a right or possession, though not for enforcing a right or obtaining or even regaining possession. 21 C. 392, 36 C. 865, 17 C. W. N. 1132, 26 P. R. 1914, 35 I. C. 823, 15 A. L. J. 47.
14. A may be in peaceful possession of land of which the title is in B, A may resist B's forcible entry. 66 I. C. 817, 1922 P. 197.
15. A's peaceful but wrongful possession may be of a short duration, in which case B may use force to eject A. 23 I. C. 184, 17 C. W. N. 1132, 20 I. C. 623.
16. But if B acquiesced in the wrongful possession of A, he cannot use force to eject A. 18 C. W. N. 275, 22 I. C. 993.
17. Accused were playing music in celebration of their festival. A gentleman feeling annoyed by the noise seized their drum whereupon they assaulted him. They are guilty under S. 352 but not under S. 143. 30 I. C. 687.
18. A person is entitled to defend not only his personal or private right but also his public right, e.g., his right of way. 75 I. C. 176.
19. An assembly does not become unlawful merely by reason of its lawful acts provokes others to do unlawful acts or by reason of their repelling attack made by such persons upon them. 31 I. C. 343.
20. There was a dispute regarding the tenant's grazing rights on the land. Both parties had leases from the landlord and the Receiver. It was held that their *bona fide* claims of right protected them. 18 C. W. N. 1245, 26 I. C. 173.
21. Decree-holder is not guilty of rioting for using force to turn out judgment-debtor. 1922 P. 197, 66 I. C. 817.
22. Upon the determination of tenancy landlord is clothed with possession in the eye of law and he can use force to evict the tenant. 1924 P. H. C. C. 29.
23. In case of land lying fallow on the day of riot the question of possession may be decided on the further question of title. 52 I. C. 881, 23 C. W. N. 693.
24. No one has the right to vindicate his "supposed right" by use of criminal f

Unlawful Assembly—(contd.)

Such a right is in fact no right at all and is a mere pretence to a right. Disciples of Pussy-foot who pulled down the toddy shop and cut down spathes of toddy trees are guilty. 1923 M. 606, 5 M. H. C. (App.) 6, 57 I. C. 278.

25. If both parties come determined to fight, the claim of right is reduced to mere pretext for fighting. In such a case the assembly is unlawful not because the claim of right is immaterial but because it was not the real object of the right. 20 A. 459, 21 C. 392.
26. S. 141 applies to obtaining possession by force and not to the maintaining or defending possession. 1931 M. W. N. 645, 21 C. 685, 36 C. 865, 51 M. 91.
27. Unless a right of private defence is established, a claim of title or possession will not avail. There is no distinction in this respect for forming assembly to enforce a right or forcibly to maintain a right. 12 P. L. T. 238.
28. Where there is a rumour that Mohamadans are killing a cow, the Hindus do not have a right to collect and take the law into their own hands. 1935 A. 931.

7. Harboursing persons hired for— S. 157, I. P. C.

1. S. 157 provides for an occurrence that may happen and makes the harbouring or assembling of persons who are likely to be engaged in any unlawful assembly. It contemplates the imminence of an unlawful assembly. 29 C. 214.
2. It must be proved that the persons were hired or about to be hired for the purpose specified in the section. It is not sufficient to show that some of the accused's servants have been taken from a District where men bear a well-known character as *lathials* (men with clubs) and had been in his service sometime before the riot. 7 C. L. R. 289.
3. A Hotel-keeper cannot be convicted for harbouring volunteers who tried to make salt out of sea water unless he knew that they were hired or engaged by somebody. 1931 M. 440 - 131 I. C. 159.
4. Accused was charged with harbouring certain persons who were alleged to have formed an unlawful assembly in the past for commission of an offence. Held, he was not guilty under S. 157. 58 C. 140.

8. Hiring persons to join— S. 150 I. P. C.

Where the Magistrate only found that "what the accused had been doing is collecting and harbouring men for the purpose of committing a riot, should he find it in his interest to do so," it is not sufficient under Ss. 150 or S. 157, I. P. C. 29 C. 214.

9. Illegal construction of dam.

The complainant's party without the permission of the accused constructed a dam across a pyne exclusively belonging to the accused who had obtained an injunction from the Civil Court restraining the complainant's party. The accused in attempting to cut the dam were opposed by complainant's party two of whom were struck by the accused. Held, that the accused acted in the exercise of the right of private defence. 17 C. W. N. 1132

10. Illegal seizer.

1. A large crowd of Hindus collected and threatened to take away the cows collected by Mahomedans for sacrifice, they were guilty under S. 143. 18 Cr. L. J. 110, 29 Cr. L. J. 567.
2. Paddy belonging to a society of which the first accused was a member, was stored in a granary. The treasurer of the society attempted to forcibly take possession. Accused resisted him and maintained the possession of the first accused. Held, they were not guilty. 25 M. 624.

11. Joining—armed with deadly weapon. S. 144, I. P. C.

1. A crowd of about 100 persons assembled together armed with bill-hooks and sticks, but it dispersed at once on seeing the Police. Held, that it did not constitute unlawful assembly. 24 M. 127.
2. When one person instigates another to join an unlawful assembly armed with deadly weapon and afterwards joins it himself, he is guilty under S. 144 read with S. 114, even though he was not so armed. 5 C. W. N. 250.

Unlawful Assembly—(contd.)

3. An ordinary stick is not a deadly weapon, still by its length and weight may assume that character. 15 A. 19.
4. A *lathi* is not a deadly weapon unless it is used on the head or on some vital part of a person. 9 I. C. 586.

12. Judgment.

1. In a case of unlawful assembly and riot the judgment should contain a statement as to the existence of the elements constituting the unlawful assembly. 37 C. 194.
2. Where several alternative common objects of the unlawful assembly are alleged in the charge, the Judge must determine which of the common object is made out. 35 C. 718, 36 C. 158.

13. Procedure.

1. When the common object of the assembly is theft, accused cannot be convicted separately under Ss. 379 and 143. 1924 P. 764=82 I. C. 284=3 P. 1015.
2. The offence of 5 or more persons combining to effect criminal trespass is not compoundable. 46 M. 257.
3. Members of unlawful assembly are not guilty under 17 Criminal Law Amendment Act. 1932 S. 211.

14. Procession.

1. Every one has the right of conducting religious procession through public street. Knowledge of forcible opposition by an other party does not constitute the members of the procession unlawful assembly. But party going out for the express purpose of fighting constitutes an unlawful assembly. 1925 O. 656=26 Cr. L. J. 1325.
2. An assembly which is not unlawful in its inception does not become unlawful because it does not disperse in defiance of lawful order to disperse. 1922 L. 135=64 I. C. 373=23 Cr. L. J. 5=21 P. L. R. 1922.
3. A general notification was issued by S. P. under S. 30 of the Police Act prohibiting procession without license, and in spite of it a procession without license was formed and on its being ordered to disperse, did not disperse. Held, that the order of S. P. was not a law and the order of dispersal was not a lawful execution of the order under S. 30 and therefore accused are not guilty. 2 P. 134=1923 P. 1=68 I. C. 945=23 Cr. L. J. 625.
4. The command to disperse must be given to an assembly which had become unlawful and not to a lawful assembly. 64 I. C. 373, 3 L. L. J. 529
5. An assembly does not become unlawful merely because its presence is likely to provoke a breach of peace. 31 I. C. 343.
6. A notification under S. 30, Police Act, prohibiting processions without license is a legal process. 55 B. 725, 2 P. 134.
7. If a party of men assembled with the determination of compelling another party of men passing along a public street to compel them not to proceed in a direction by criminal force, it is an unlawful assembly 9 Mys. L. J. 347.
8. Where in defiance of an order under S. 42 of the Bombay District Police Act, accused took out a procession (*Prabhat Pheri*) and refused to disperse when ordered by Police Inspector and the Magistrate, the assembly is unlawful under S. 145. 55 B. 725=1931 B. 520=134 I. C. 1226=33 Cr. L. J. 64.
9. Person resisting a lawful order prohibiting procession constitutes unlawful assembly. 58 C. 1303=1931 C. 410=132 I. C. 174=32 Cr. L. J. 844.
10. Members of procession were justified in organizing in spite of notice and using force to enforce their right, when they knew that they will be opposed by force and there was likelihood of the breach of peace. 32 M. 478, 32 M. 527, 15 I. C. 806.
11. Congress processionists refusing to take different route and refusing to disperse are guilty under S. 145, I. P. C. 1933 C. 361=34 Cr. L. J. 817.

15. Public meeting

1. A public meeting was lawfully convened. Some members of it attempted by show.

2. The prosecution must establish that (1) there was an assembly of at least 5 persons; (2) That the object of the meeting was any one of the five objects mentioned in S. 141. (3) That accused shared that object with at least four others at the meeting. (4) That accused intentionally joined the meeting. (a) Having knowledge of that meeting (b) He continued therein after having had that knowledge. (5) That such unlawful assembly had been commanded to disperse. (6) That such command to disperse was in the manner prescribed by law. (7) That accused joined or continued after such an order. (8) That he did so knowing that it had been commanded to disperse. 1922 L. 135=64 I. C. 373=23 Cr. L. J. 5=3 L. L. J. 529.

16. Refusal to disperse. Ss. 145—151, I. P. C.

1. The prosecution should give formal evidence to show that accused had the common object to resist the execution of a lawful order. 2 P. 134.
2. When the object of three persons was to draw a crowd and in fact they so collected fifty sixty persons, it was held that it was unlawful assembly and they were guilty when refused to disperse when ordered to do so. 7 B. 42.
3. A procession of Hindus carrying musical instruments passed by a mosque. A Sub-Inspector ordered it to disperse, but it advanced and subsequently laid their instruments. Held, that two leaders of the procession were guilty. 47 A. 205.
4. It is not sufficient that in the opinion of Magistrate the assembly was likely to cause disturbance. 22 P. R. 1887 Cr.
5. The opinion of the Police Officer dispersing an unlawful assembly is inadmissible. 7 B. 42.
6. Disobedience of order to disperse is no ingredient of the offence under 17 Criminal Law Amendment Act. 1932 S. 211.

17. Resistance and obstruction.

1. The object of an assembly when it reached the Police Station was to obstruct by threat the Police in the discharge of its duty. Held, they were guilty under S. 143 1921 A. 233=92 I. C. 145=27 Cr. L. J. 193.
2. The fact that a Court exceeded its jurisdiction in issuing a warrant of attachment is no defence for assaulting the Court's officer who was acting in good faith. 61 I. C. 167=22 Cr. L. J. 343.
3. A process-server was assaulted by accused. It appeared that the warrant of attachment did not contain the name of judgment-debtor or of the property. Held, accused were not guilty of rioting, although the person causing grievous hurt was guilty. 29 C. 244, 25 C. W. N. 209.
4. Tenants resisted their ouster in execution of a decree obtained by the complainant against their landlord to which they were not parties. Held, they were justified 15 C. L. J. 80, 13 I. C. 1004.
5. Civil Court issued an injunction for the maintenance of bund but the District Magistrate ordered to cut it. The accused assaulted the cutting party and the Police and killed one and wounded others. Held, that the accused had right of private defence 23 C. W. N. 732.
6. A person legally empowered to make a search must strictly follow the procedure as to be the mode of conducting it otherwise persons obstructing or assaulting cannot be punished. 1 Bur. 152.
7. Collector extended the time of the expired warrant, the Amin was assaulted. Accused are guilty. 35 I. C. 744.

18. Resistance to an illegal arrest.

A party of 10, deemed, on receiving information that certain persons were waiting near a telephone booth, went there and attempted to arrest them. A fight ensued but the accused were secured and charged under S. 137. Here, the Police had no justification to make arrest and the accused were not guilty. 7 B.L. 222.

*Unlawful Assembly—(concl'd.)***19. Resistance to an illegal search.**

1. When officers had no written order investing them with the powers to make a search, the accused who resisted them were not guilty under S. 143. 7 N. W. P. 209.
2. When accused resisted the execution of an order which was made without authority by a Collector, and in so doing did not use more force than was necessary, they were not guilty. (1883) 1 Weir 64. See 29 C. 244.

20. Resistance to order prohibiting procession.

Where a Superintendent of Police issued an order under S. 30, Police Act, prohibiting procession, any five or more persons joining or remaining in it are guilty unless they were unaware of the fact that no license had been obtained. 2 P. 134, 31 Bom. L. R. 1151.

21. Ring leader.

1. Accused was ring leader of a faction causing riot. A person was killed in that riot. Held, he should be sentenced to 10 years' rigorous imprisonment. 1932 O. 247=9 O. W. N. 437.
2. Where accused was constructively liable under Ss. 302—149 and was not the ring leader, nor was directly responsible for murder, transportation for life is sufficient. 1935 O. 190=153 I. C. 978.

22. Taking water by force.

Where five persons assaulted together at a water head armed with deadly weapons to take water by force and to strike and vanquish any body who should stand in their way, they constituted an unlawful assembly. 7 L. L. J. 576=26 P. L. R. 820.

23. Unlawful assembly held on land—liability of owner. See Land-holder—2.

UNLAWFUL ASSOCIATION. See Criminal Law Amendment Act.

UNLICENSED GUN.

The prisoner went out to shoot in a jungle with a companion. They took up certain position and lay in wait for the game. He fired at to the game and missing it, the bullet hit the deceased. The accused was shooting with an unlicensed gun. Held, he was not guilty as 'it was a pure accident. 3 Bom. L. R. 678, 25 B. 680, 1925 B. 134.

UNLAWFUL COMPOUNDING OF OFFENCE See Gift to screen offender from punishment—1.

UNLOADING PISTOL. See Death by negligence—9.

UNLOCKING HOUSE.

Asking a Magistrate to do an illegal thing, e. g., unlocking the house of petitioner on false or true allegations does not fall under S. 182, 1 P. C. 19 Cr. L. J. 895.

UNNATURAL CONDUCT. See Insanity.

When the person admittedly knew that his wife was murdered at night, yet he made no report to Police nor made any attempt to find out as to who killed his wife, his conduct was unnatural and he must be taken to be the murderer. 1929 O. 190=116 I. C. 193=30 Cr. L. J. 567.

UNNATURAL OFFENCE. S. 377, I. P. C.

1. Abetment of

1. In this offence, the other person is necessarily an accomplice and an abettor and his testimony requires corroboration. 73 P. L. R. 1918=19 Cr. L. J. 946.
2. For a conviction under Ss. 114—377, it must be proved that the offence was committed and the abettor was present. If the accused is only guilty of attempt, the conviction of the abettor should be under S. 377 read with S. 116, I. P. C. 1935 S. 78=1935 Cr. C. 302.

2. Attempt.

1. Although witnesses may honestly believe to be a completed act of sodomy, yet it may be nothing more than attempt. 1884 A. W. N. 25.

Unnatural Offence—(contd.)

2. Where accused spent himself before he could thrust his organ, he was not guilty of attempt. It was a mere preparation. 1934 S. 206.

3. Bestiality.

Medical evidence is seldom required to sustain the prosecution. The hair of the animal may be found on the accused, or marks of blood or feculent matter upon his clothing; and in such cases analysis, or the microscope may enable a witness to express an opinion in proof or disproof of the charge. It would be more important to discover animal hairs on the underclothing than on coat, trousers, etc. *Taylor's Med. Jur.* 1928, P. 286. *Lyon's Med. Jur.* 1904, P. 263. *Lyon's Med. Jur.* 1935 P. 415.

4. Essentials and Evidence.

1. Conviction on uncorroborated testimony of the boy is justified. 185 P. L. R. 1915 = 28 I. C. 154, 42 P. W. R. 1914 Cr., 16 Cr. L. J. 266.
2. Accused who wore woman's clothes was prosecuted for being sodomite. His anus was found distorted and was affected with syphilis. Held, that without specific acts he cannot be convicted for sodomy. 6 A. 204, 4 A. W. N. 25
3. *Coitus per os* falls within the provisions of S. 377, I. P. C. 1925 S. 286 = 87 I. C. 97 = 26 Cr. L. J. 945.
4. A charge under S. 377 is one very easy to bring and very difficult to refute. The evidence must be very convincing. 1926 L. 375 = 94 I. C. 257 = 27 Cr. L. J. 593 = 8 L. L. J. 180.
5. In a charge of sodomy stains of semen constitute important evidence. Great weight must be attached to Chemical Examiner's Report. 10 L. 794.
6. It is unsafe to convict on the uncorroborated testimony of the person on whom sodomy is committed unless for special reasons his evidence is entitled to special weight. 73 P. L. R. 1918 = 33 P. W. R. 1918 Cr. = 47 I. C. 670.
7. It is doubtful whether the act of having connection with a woman in her mouth falls under S. 377. 1 Weir 382 (1886). *Contra* 1925 S. 286 = 26 Cr. L. J. 915.
8. Sexual intercourse per nose with a bullock is an unnatural offence under S. 377. 1934 L. 261 = 35 Cr. L. J. 1096. 1925 S. 286 Appr. 1 Weir 382 Expl. and not foll.
9. Case should be tried by a Magistrate with S. 30 powers. 1936 L. 256.
10. Blockstone properly observes that it is a "crime which ought to be strictly and impartially proved, and then as strictly and impartially punished. But it is an offence of so dark a nature, so easily charged, and the negative so difficult to be proved, that the accusation should be clearly made out, for if false, it deserves a punishment inferior to the crime itself". *Ryan's Med. Jur.*, 1836, P. 198.

5. Impotency as defence. See Impotency.

6. Medical Examination.

1. Examination of the passive agent may show stains of blood or seminal fluid or characteristic gonorrhoeal discharge on his clothes, or person in the neighbourhood of the part. If the individual is a young boy or a person unaccustomed to the offence there may be found about the anus bruising or excoriations of the mucus membrane, or, perhaps, slight laceration of the sphincter. Dr. J. W. Johnstone in *Ind. Med. Gaz.* 1868, 213 states: "Penetration seldom reaches beyond an inch, and the force expands itself on the semi-lunar folds which in the empty gut droop on either side.....In every case of clear penetrative contact rupture will be found cutting horizontally outwards at the left superior or right inferior angle.....The shape of the wound is characteristic, and it cannot be produced by any hard substance. A true sodomy wound is triangular; the base external, with the sides of the triangle retreating into the fundament. Any other portion of the mucus membrane is not ruptured by a specific act of sodomy." *Lyon's Med. Jur.*, 1904, P. 252. *Taylor's Med. Jur.*, 1928, P. 285. *Ryan's Med. Jur.* 1836, P. 322.
2. "No man" says Dr. Beck "ought to be condemned on Medical Proofs only." *Ryan's Med. Jur.*, 1836, P. 322.
3. Absence of early medical examination presents unsatisfactory nature of prosecution case. 1932 L. 345 = 13 L. 573 = 33 Cr. L. J. 220.

*Unnatural Offence—(concl'd.)***7. Sentence.**

1. Juvenile offender should be awarded whipping instead of imprisonment. 3 P. R. 1834 Cr.
2. Sentence of whipping is reserved for sodomy with aggravating circumstances. 1932 S. 143.

8. Signs of habitual—.

Male adults who *habitually* practice sodomy, often affect effeminate manners, dress like women, etc. The habitual practice of the offence as an *active* agent gives rise to certain changes in the genital organs, e.g., *elongation and constriction of the penis, and twisting of the urethra*. In an habitual *passive* agent, the skin around the anus may be found to have assumed a smooth appearance, instead of showing the usual series of folds extending "concentrically towards the anal aperture." There also may be a "funnel like" or "trumpet shaped" depression of the vites leading to the anus and the triangular sodomitic wound. But the absence of these signs does not necessarily establish the innocence of the accused. The presence of chancre about the anus or of gonorrhoeal discharge from the rectum, is strong evidence that the individual has been the passive agent in the offence. *Lyon's Med. Jur. Ed. 1904, pp. 261-262, and Ed. 1935, P. 414, Taylor's Med. Jur. 1948, pp. 283-284.*

UNSKILFUL TREATMENT. See Wound—17.

UN SOUND MIND. See Insanity.

UNTRUE PRAISE OF GOODS. See Puffing.

USING EVIDENCE IN OTHER CASE. See Evidence—42.

USING FALS- COIN. See Counterfeiting coin. 6.

USING FALSE EVIDENCE. S. 196, I. P. C. See False Evidence—35.

USING PLEDGED TURBANS. See Wrongful loss—6.

V.

VACANT PLACE OR HOUSE. See Criminal trespass—35.

VACCINATOR.

A vaccinator has no right to take lymph from persons without their consent. 3 C. W. N. 626.

VAGRANTS—SECURITY FROM—. S. 109, Cr. P. C. See Security for good behaviour from vagrants.

VAGUE ADMISSION. See Admission—10.

VAKIL'S CLERK.

1. Communication to—. See Privilege—2.

2 Whether person in authority. See Confession by inducement—10.

VAKALATNAMA. See Power of attorney, Forgery—30.

VALUABLE SECURITY. S. 30, I. P. C.

1. What is.

1. A document creating or extinguishing legal rights is a valuable security. It must be original and not a copy. 4 B. H. C. R. 8, 6 B. H. C. R. 66.
2. A counterfoil of a paying in slip purporting to be an acknowledgment of a receipt of a sum of money by the bank is a valuable security. 1925 C. 425=89 I. C. 248=29 C. W. N. 868=20 Cr. L. J. 1304.
3. The document which on the face of it creates rights in immovable property is valuable security, although it may become invalid. 48 A. 140.
4. A "Kabuliat" is a valuable security although it relates to a period which has passed away. 1925 N. 337=88 I. C. 283=26 Cr. L. J. 1115.
5. A document which has been stamped but the signature is not across the stamp is yet a valuable security. 35 A. 430.

Valuable Security—(concl'd.)

6. An acknowledgment of receipt of an insured parcel is not a valuable security within S. 30. 50 C. 849, 21 A. L. J. 855. *See* 34 I. C. 99=17 Cr. L. J. 272=1 P. L. J. 391, 10 P. R. 1913 Cr.
 7. An account paper in which a person acknowledges a legal liability is a valuable security. 46 I. C. 293=19 Cr. L. J. 709, 12 M. 148.
 8. A title page of an account book of a firm containing the names of partners and showing the capital contributed by each, if signed by the partners, may be valuable security. 38 C. 68.
 9. An unstamped deed, though not admissible in evidence is yet a valuable security. 12 M. 148, 7 M. H. C. R. App. 26.
 10. A document the registration of which was refused does not on that account cease to be a valuable security. 25 C. 207, 12 M. 48.
 11. A deed of divorce is a valuable security as it extinguishes a legal right of the parties. 11 W. R. 15, 67 I. C. 533=3 L. L. J. 283.
 12. A claim to mere office of dignity, *e.g.*, *Loskur* is not a legal right and a *Sanad* forged to support that title is not a valuable security. 10 C. 584.
 13. A decree is not a valuable security. 39 C. L. J. 122=28 C. W. N. 414=81 I. C. 810.
 14. The original transit pass under S. 40, Assam Forest Regulation is a valuable security, for it creates right to transport forest produce. 1932 C. 390=36 C. W. N. 505.
 15. If a person puts his thumb impression on a blank paper, the understanding between him and the person to whom he delivers the paper ordinarily is that it is to be converted into a valuable security. 1932 P. 335=13 P. L. T. 588, 38 A. 430.
 16. A settlement of account though not signed by any person is "valuable security." 2 M. H. C. R. 247.
 17. A promissory note executed by minor by force is a valuable security. 1933 P. 601 (1)=35 Cr. L. J. 123. 48 L. 140=1926 A. 57 Ref.
2. Forgery of—. S. 467, I. P. C. *See* Forgery—21.
3. Omission to produce—before Public Servant. S. 175, I. P. C. *See* Public Servant—35.

VENEDOR—CHEATING BY—. *See* Cheating—6.

VERANDAH. *See* Building.

Theft in a verandah may be a theft in building under S. 380, if the verandah forms part of the building, which is itself used as a human dwelling or for the custody of property. 1 P. R. 1881 Cr.

VERACITY OF WITNESS. *See* Witness—103, Evidence.

VERIFICATION. *See* False evidence—16.

Verification proceedings do not add any value to approver's evidence or to a confession and cannot be regarded as corroboration. 38 C. 559, *Contra* 52 C 595=1925 C. 872.

VERNACULAR RECORD. *See* Record—22.

VESSEL—PLYING UNSAFE. S. 282 I. P. C.

VEXATIOUS COMPLAINT. *See* Compensation—4.

VILLAGER. *See* Witness—104.

1. Court should exercise special care in drawing inference against an illiterate and ignorant villager for previous statement, confession, etc. 1936 R. 455.
2. Where a villager gave his age as 16 while he was 30, High Court did not consider the confession made by him. 1936 R. 455.

VILLAGE HEADMAN. *See* Ss. 24-26, Evidence Act. (Lambardar).

1. Whether public servant.

A Lambardar while collecting land revenue is a public servant. But when he is collecting *Haq Buha* (customary due) is not a public servant. 1935 Pesh. 189.

Village Headman—(concl'd).

2. Confession to— *See* Confession, confession to Police Officer.

3. Evidence of— *See* Witness.

VIOLENCE. *See* Criminal force, Rioting—15.

VIRGINITY.

To determine virginity following points should be considered :—(a) *The Breasts.*—In young adult girls the breasts are commonly firm and hemispherical, the nipples small and surrounded by areolæ from light pink through slightly darker shades of colour. It cannot be supposed that a single act of coitus will alter this. The breasts are of little value as a sign of virginity. (b) *The Hymen.*—The hymen is practically always present in a *Virgo intacta* in some form or other, but in rare cases it is congenitally absent. The hymen may be intact, but this does not prove non-intercourse, because females have been known to conceive with hymen uninjured. The presence of the unruptured hymen affords a presumptive but not an absolute proof that the woman is virgin. A woman may have an unruptured hymen, and yet not be a *Virgo intacta*. The hymen may be ruptured by an adequate force of any kind or by presence of blood-clots during menstruation, from ulceration or other diseases. (c) *The Vagina.*—In girls who have not had intercourse the vaginal walls are rugose and firm. (d) *Fourchette and Perineum.*—The former is the thin posterior edge of the margin of the mucus membrane, the latter the edge of the skin, limiting the vaginal orifice. In a *Virgo intacta* both of them are discernible and untouched. The fourchette is frequently ruptured by the first connection. (e) In the cases of *rape* the presence of signs of violence, tears, signs of inflammation, discharges are all of material assistance. *Taylor's Med. Jur.*, 1923, pp. 27—30. *Lyon's Med. Jur.*, 1904, pp. 239—243. *Ryan's Med. Jur.*, 1836, P. 311.

VOLUNTARY WITNESS. *See* Witness—105.

VOICE. *See* Identification—17.

VOLUNTEERING EVIDENCE.

1. A witness actuated by malicious motives, making voluntary and irrelevant statement not elicited by questions put to him is guilty of defamation. He cannot claim privilege. 1928 N. 58=28 Cr. L. J. 996=105 I. C. 320
2. The Judge should upon motion strike out answers that are not responsive to the question asked. Only that portion which is volunteered should be stricken out. Woodroffe and Amir Ali's Law of Evidence (1921). Page 897

VOTING PAPER—FORGERY OF *See* Forgery—31

W

WAGING WAR. Ss 121-121-A, 1 P. C.

1. Abetment.

Abetment of waging war is equally an offence as commitment. 34 B. 394

2. Charge.

Even if the charge does not set out the speeches alleged to be seditious under S. 121, the proceedings would not be vitiated. 77 I. C. 481=1925 M. 106=25 Cr. L. J. 401

3. Complaint of— *See* Sedition—4.

If accused's name was not mentioned in the complaint though mentioned in the sanction by Government, he must be discharged. 15 C. W. N. 95.

3-A. Concealing design for— S. 123, 1 P. C. *See* Concealing design to commit offence

4. Conspiracy for— S. 121 A, 1 P. C.

1. An indictment for conspiracy must in ordinary and concise language state the facts relied upon by prosecution. 16 C. W. N. 105=13 Cr. L. J. 609

2. The essence of the offence under S. 121-A is the agreement to do all or any of the acts mentioned in the section. Act or illegal omission may not take place in pursuance thereof. 35 M. 247.

Waging War—(contd.)

3. Where complaint was for waging war with persons known or unknown against the king and the known persons were mentioned in the charge. Held, that the charge could not be sustained. 15 C. W. N. 98=8 I. C. 1059.
 4. If several persons are charged with some conspiracy, it is legally impossible to convict some one of conspiracy and some of another. 38 C. 559.
 5. A conspiracy to wage war does not imply the existence of *serious menace* to the constitution or the stability of constituted authority in India. 38 C. 559.
 6. In order to prove conspiracy, there must be evidence of overt act. 16 C. W. N. 105.
 7. A treasonable conspiracy must be of two or more persons to subvert the Government. 38 C. 559, 35 M. 247, 16 C. W. N. 1105.
 8. Although facts fall under S. 121-A but Government may proceed under S. 120-B only. 1934 N. 71=150 I. C. 623=35 Cr. L. J. 1097 1931 R. 235=9 R. 404=32 Cr. L. J. 205 Dist. 42 C. 957, 25 B. 90, 1922 M. 62 and 1924 M. 487 Rel. on. 1925 A. 230 Not foll.
 9. When conspiracy is in action, it is immaterial whether weapons are used for aggression or resistance. 1934 C. 221=147 I. C. 32.
 10. If an institute is attacked as used by Europeans, mere fact that there was only one official there, would not take it away from the purview of waging war. 1934 C. 221=147 I. C. 32.
 11. Conspiracy to change form of Government without criminal force is no offence, but to establish complete independence outside British Empire is offence. 1933 A. 690
 12. Conspiracy to deprive King Emperor of sovereignty is sufficient. 1933 A. 690.
 13. Mere agreement to do illegal act is sufficient. 1933 A. 690.
 14. Conspiracy is to be inferred from beliefs, associations and activities of accused and from the statements they make in Court. 1933 A. 690.
- 5. Essentials and Evidence. S. 121, I. P. C.**
1. So long as a person only inflames feelings or state of mind, his act amounts to sedition, but if he excites to action, he is guilty under S. 121. 34 B. 394, 75 I. C. 299=24 Cr. L. J. 923.
 2. "Waging war" must be construed in its ordinary way. Collection of men, arms and ammunition for that purpose do not mean waging war. 37 C. 467.
 3. If the speech falls under S. 121 and S. 121-A, the accused is liable to one punishment only. 75 I. C. 299.
 4. When the accused attacked the police and military along with others, used to hold mock trials, asked people not to pay land revenue and to subvert the British Government and establish Khilafat Government. Held, he was guilty under S. 121-A. 65 I. C. 859=23 Cr. L. J. 203=1922 M. 125.
 5. Accused, publishing a book, which advised people to take up sword and to practise Gurilla warfare and drive away the Government and white ruler, is guilty under S. 121. 34 B. 394.
 6. Compulsion is no defence to a charge under S. 121. 9 R. 404.
 7. In order to constitute an offence of waging war, it is neither the number of persons engaged, nor the force employed, nor the species of weapons carried that will constitute overt act of treason, but it is the purpose and intention, the object which they have in view, with which they assemble. 9 R. 404=1931 R. 235=9 R. 404 Cr. C. 875.
 8. An organized attack on the forces of crown with a view to prevent the collection of tax by force amounts to waging war. 9 R. 404.
 9. In rebellion it is frequent that few are let into the real design, but yet all that join are guilty. 9 R. 404.
 10. Rising and assemblage of multitude to attain by force any object of general public nature is 'waging war'. 1933 R. 116=34 Cr. L. J. 929, 1931 R. 235=9 R. 404 Foll.

*Waging War—(concl'd.)***6. Sentence.**

1. In practice the sentence varies with the degree of the seriousness of the acts done by each accused. 1931 A. 504=33 Cr. L. J. 94.
2. When the plans of an accused were vigorously put into action and he was personally responsible for the death of innocent persons, sentence of death was proper. 1934 C. 221=147 I. C. 32.
3. In political offences severe sentences defeat their objects. 1933 A. 690.

WAIFS. See Kidnapping—23.

WAIVER.

1. Consent or—to irregularities. See Consent—10.
2. Of Privilege. See Privilege—15.
3. Of Right to demand *de novo* trial. See *de novo* trial—11.

WAJ TAKAR (CHANCE) WITNESS. See Witness—106.

WARDING OF BLOW BY VICTIMS. See Wound—42, —14—11.

WARE-HOUSE KEEPER. See Breach of trust—11.

WARRANT. Ss 75—90, Cr. P. C. See Arrest, Search warrant.

1. Cancellation of—

1. A Magistrate has discretion to cancel a warrant and issue summons instead, if sufficient cause is shown. 1 S. L. R. 69, 20 P. W. R. 1908 Cr.
2. When a Magistrate issued warrants of arrest and afterwards cancelled it, the District Magistrate has no authority to direct the re-issue of the warrants against the accused. 1. C. W. N. 650.

2. Conditional.

A warrant that in the event of certain named person not leaving British India forthwith to be arrested is invalid. 18 B. 636.

3. Continuance of—

1. When the law has not fixed any period, limiting the duration of a warrant, the presumption is that it remains valid until executed. 28 B. 129.
2. Warrant can be served even after its returnable date, unless it is cancelled or executed. 7 P. 478=1928 P. 466
3. A warrant on which there is an endorsement for bail does not lapse on the date mentioned for the appearance of accused. After that date only the direction to take bail lapses, but the warrant continues in force until it is cancelled or executed. 13 C. W. N. 1091.

4. Description of accused in—

1. The person named in the warrant must be described with sufficient certainty and particularity. 18 B. 636
2. A warrant which directs the committal of "James Hastings" without any description of him is invalid, since it may lead to the arrest of any person bearing the name. 9 B. H. C. R. 154.
3. A warrant giving wrong name of the father of accused is invalid. 25 C. 399.
4. A warrant which does not contain the name or sufficiently clear description of person to be arrested is wholly illegal. 16 C. W. N. 1078.

5. Description of offence in—

1. The warrant must specify the offence. A warrant of arrest on a charge of abduction is invalid, as abduction without intent is no offence. 15 W. R. 4.
2. Where the complaint under S. 124-A, I. P. C., did not contain the alleged seditious speeches, although they were contained in the sanction and a warrant was issued and the Magistrate refused bail. Held, that complaint being irregular, refusing bail is illegal. 1929 L. 284=30 Cr. L. J. 1129.

Warrant—(contd.)

6. Form of.—

When any act does not provide a form of warrant, a form to be used in ordinary course under Cr. P. Code should be used. 18 B. 636.

7. General.—

The issue of general warrant, which means warrant to apprehend all persons committing a particular offence is illegal. 9 B. II. C. R. 154.

8. Illegal or irregular.— See Assault on Public Servant—3.

9. Issue of—in the first instance. See—9.

1. In the absence of special grounds mentioned in S. 90, Cr. P. C. the Court ought to issue summons in the first instance. 5 N. L. R. 125.
2. A warrant cannot be issued to a witness unless the Magistrate is satisfied that the witness will disobey or has disobeyed the summons served on him. 14 W. R. 20, 7 W. R. 37, 3 L. B. R. 116.
3. If the Magistrate thinks that witness will not give evidence voluntarily, he can issue warrants in the first instance. 13 W. R. 1.
4. A person is not justified in absenting himself in response to a summons on the ground that he has sent a telegram to Court that High Court has stayed further proceedings in the matter. The Court is justified in issuing a warrant. 20 I. C. 142.

10. Reasons for.—

1. The recording of reasons is a necessary preliminary to issue of a warrant and omission to do so vitiates the warrant. 50 P. L. R. 1918, 5 N. L. R. 125, 38 M. 1088.
 2. Where a warrant was issued to a woman in the first instance without recording reasons under S. 90, Cr. P. C., the warrant is wholly illegal and the bond given by the surety for the woman's appearance has no legal force and cannot be forfeited. 7 P. W. R. 1918 Cr., 22 P. R. 1907, Cr.
 3. A warrant was issued against an abducted person in a case under S. 498, I. P. C., on the application of complainant that she would escape. Held, that omission to record reasons is mere irregularity. 22 Cr. L. J. 111, 18 A. L. J. 1149.
 4. If the Magistrate had material before him sufficient to justify the issue of warrant and to which he applied judicial discretion and he stated in the warrant the reasons upon which he relied, the mere omission to record separately in the order sheet the reason for issuing warrant is immaterial. 51 C. 1 overruling 38 C. 89.
 5. The Magistrates should record their reasons specifically in writing in the warrant, though not necessarily in the order-sheet, before issuing warrant. Mere signing the warrant in the form given in the schedule is insufficient. 51 C. 1 (21).
11. Resistance to.— See Assault on Public Servant, Public Servant—32, Right of private defence—21—24.

12. Seal on.—

An unsealed warrant is void. 42 C. 708, 18 B. 636, 9 B. H. C. R. 154.

13. Signature on.—

1. It is gross negligence on the part of a Magistrate not to sign his name in full, although it is mere irregularity. 19 Cr. L. J. 747=46 I. C. 523.
2. Resistance to warrant not signed by the Magistrate is no offence. 18 Cr. L. J. 526.
3. Signing not in full but by initials is a mere irregularity and does not vitiate the warrant. 8 A. 293 *Contra* 23 C. 896.
4. Signature must be by pen and ink and not by stamp. 6 M. 396.
5. The signature must be by the presiding officer or not by any other Magistrate on his behalf. 18 Cr. L. J. 526=39 I. C. 494.

14. To witness. See Attendance of witness.

Warrant—(concl.d.)

15. Who is to execute— See Arrest.

1. The warrant must name the person who is to execute the warrant. If the name is left blank the warrant is invalid. 14 Cr. L. J. 142.
2. A warrant not addressed to bailiff as required by Form 154 of the Schedule V of Cr. P. C., or to any other person is not valid. 16 P. R. 1904 Cr.

WARRANT CASE—TRIAL OF— S. 251, Cr. P. C.

1. It is not the conviction but the complaint, notice to accused and the commencement of the trial that decides as to whether a case is to be tried as a warrant case or summons case. L. R. I. A. Cr. 185.
2. Court cannot split up an offence into component parts which constitute minor offence so as to be able to try the case as summons case. 1921 A. 282.
3. If a Magistrate tries a warrant case as summons case, conviction will be set aside. 29 M. 372, 1932 N. 111, 11 Cr. L. J. 191.
4. If trial is begun as warrant case, Court cannot adopt the procedure of summons case on the ground that accused appears to have committed an offence triable as summons case. 1927 A. 270. 22 Cr. L. J. 146—683, 17 P. R. 1887, 1928 L. 294.

WASTE LAND— See Criminal Trespass—36.

WEAK INTELLECT. See Murder 75—I. Insanity.

WEAPON. See Wound.

1. Blood on— See Blood.

1. The weapon with which a wound has been inflicted is not necessarily covered with blood. The popular view is that if much blood is found about a dead body, the weapon ought always to be more or less bloody. In reference to heavy blunt instruments applied with force to the head, severe contusions and fractures may be produced without immediate effusion of blood. In reference to stabs, the knife is frequently without any stains of blood upon it, or there is only a light film, which on drying gives to the surface a yellowish colour. The explanation is that in a rapid blow or plunge the vessels are compressed, so that the bleeding takes place only after the sudden withdrawal, when the pressure is removed. Even if blood should be effused, the weapon, in being withdrawn, is sometimes clearly wiped against the edges of the wound owing to the elasticity of the skin. The blood may have been removed by washing from the blade of a knife or dagger. The handle and inner portions should therefore be closely examined. If the blood on the weapon is coagulated, this would render it probable that it had issued from the body of a living person. *Taylor's Med. Jur.*, 1928, pp. 415-416.
2. The discovery of blood-stained weapons does not by itself prove that a person at whose instance these articles were discovered, is necessarily connected with the murder of a particular person. The discovery must definitely be shown to be connected with the murder of the person alleged to have been murdered. 1935 L. 805 (806).

2 Evidence from—

1. The alleged weapon may affect the question of the guilt or innocence of the accused. Thus the character of the injury may show that it could not have been caused by the weapon produced by the prosecution. The alleged weapon should be compared with the wounds themselves and with any cuts on the clothes. It should be also examined for stains of blood and fragments of hair. If a fire arm it may show signs of recent discharge. *Lyon's Med. Jur.*, 1904, P. 127, *Taylor's Med. Jur.*, 1928, P. 417.
2. Weapons with sharp points but blunt edges, such as arrows and spears, tear through the tissues causing lacerated wounds, as also do weapons with blunt points. Pointed cylindrical instrument may produce linear wounds with irregular edges. The cheap soft-iron clasp-knives, so common in this country, tend to bend on encountering resistance; evidence of impact on bone may explain the bent state of the tip of a knife produced in Court as the one used. *Lyon's Med. Jur.*, 1935, P. 182.

3. Causing contused wounds— See Wound.

Weapon—(contd.)

4. Causing incised wounds—. *See* Wound.
5. Causing gunshot wounds. *See* Wounds.
6. Causing punctured wounds—. *See* Wound.
7. Causing different kinds of wounds—. *See* Wound.
8. Deadly weapon— *See* Deadly weapon.
9. Hair and other substance on the weapon. *See* Hair.

In some instances no blood may exist on the weapon, but few hairs or fibres may be found adhering to it, if the weapon is of bruising or cutting kind. Under severe injuries to the head, a portion of brain may escape and deposited with the blood on weapon or elsewhere. Such cerebral matter can be examined by a powerful microscope. *Taylor's Med. Jur., 1928, pp. 417-418.*

10. Nature of—. *See* Murder—80.

It should be noticed whether the weapon is sharp or blunt, straight or bent, and whether the edge is or is not notched. These circumstances may throw light on the question of suicide or murder. *Taylor's Med. Jur., 1928, P. 415.*

11. Position of—.

If a person has died from an accidental or self-inflicted wound, likely to cause death either immediately or within a few minutes, the weapon is commonly found near the body or within a short distance of it. If there has been any interference with the body, evidence from the relative position of it and the weapon will be inadmissible. It is compatible with suicide that a weapon may be found at some distance, or in a concealed situation; but it is much more frequently found either grasped in the hand or lying by the side of the deceased. If the instrument is firmly grasped in the hand of the deceased, no better circumstantial evidence of suicide can be offered. If the weapon is not found or is found concealed at a distance, this is strongly presumptive of homicide, provided the wound is of such a nature as to prove speedily fatal. *Taylor's Med. Jur., 1928, P. 414.*

12. What weapon caused the wound? *See* Wound.

When a weapon is produced there is practically no difficulty in answering the question, "could this weapon have inflicted this wound?" But the difficulties immediately begin when no weapon is forthcoming, and the witness's opinion is to be founded on an examination of the wound only. There are two fundamental properties of the skin which have great bearing on the subject, viz., *the skin is elastic*, and is in a living healthy state slightly on the stretch in all directions parallel to its surface. It therefore follows that in punctures with blunt weapons the hole must be as a rule a little smaller than the diameter of the weapon, for the skin yields by stretching without tearing round the actual breach of continuity. If the weapon is sharp at its point, but blunt elsewhere, the inequality may even be greater between the orifice and the weapon. Similarly in incised wound the tension will draw the edges apart, so that the aperture has no accurate relation to the width of cutting edge. A state with a double-edged weapon may show a complete diamond-shaped aperture, while one with a single edge and blunt back may show a half diamond shape, but unless the blunt edge is very broad it is unlikely to leave more than an elliptical split with one extremity torn. *The skin is movable on the subcutaneous tissues*; it is flexible, fairly tough, and somewhat sticky. It follows then that when an edged weapon is drawn across the skin we may get several cuts from one action, separated from one another by small bridges of uncut skin. Its stickiness and the jaggedness of the weapon explain the inversion and eversion of the edges of a stab wound, showing the direction of the last force used. *Taylor's Med. Jur., 1928, pp. 352-353.* It occasionally happens that the shape of a bruise corresponds closely with the shape of bruising violence or implement. More frequently in bruises beneath the skin (superficial) the bruise has no relation whatever either to the shape of the object producing it or the amount of violence employed. There may be deep effusion of the blood without any visible external bruise whatever. *Taylor's Med. Jur., 1928, pp. 359-360.*

13. Pointing out—. *See* Murder—72, Pointing out—1.
14. Whether one weapon can cause different kinds of wound.

A heavy weapon of the bill-hook class may, for example, produce all four varieties

Weapon—(concl'd.)

(incised, contused, punctured and internal injury). Hence the existence on the body of the same individual of wounds belonging to two or more of these four classes, does not necessarily indicate that two or more weapons were employed or that more than one person was concerned in their infliction. *Lyon's Med. Jur.*, 1935, P. 185, *Lyon's Med. Jur.*, 1901, P. 124.

WEARING GARB OF PUBLIC SERVANT. See Public Servant—51.

WEIGHTS AND MEASURES. Ss. 264—267, I. P. C.

1. Essentials and Evidence.

1. Where five seer weight is short by one Tola, no offence is committed. 3 A. W. N. 224.
2. Selling milk by unstamped measure is no offence. 1 Weir 223. (1884).
3. Where there is no complaint by purchaser and the search took place after dark and no fraudulent intent was proved, the accused is not guilty of keeping false weight. 38 P. W. R. 1908 Cr.
4. Where no standard is prescribed, no presumption of fraud can arise. 9 Cr. L. J. 415.
5. If a person professes to sell by standard weight, he is bound to take reasonable care that his weights are not defective. (1884) 1 Weir 225.
6. The gist of the offence consists in the fraud and intention to cheat. 9 Mys. L. J. 397.

2. Fraudulent intention.

1. Where the accused got a weight for weighing grain from somebody and on seizure by Police was found to be five Tolas more than the standard weight. Held, accused is not guilty unless it is proved that it was incorrect. 1929 N. 239 = 116 I C. 671 = 30 Cr. L. J. 692.
2. Where both purchaser and seller are aware of the actual measure used, there can be no question of fraudulent intent. 40 A 84.
3. The circumstance that the weight varies from the standard to give the accused considerable advantage suggests that it is used fraudulently. (1883) 1 Weir 225.
4. A difference of one Tola in five-seer weight might be allowed for wear and tear. 1883 A W. N 224.

3. Inspection of—by Police Officer. S. 153, Cr P. C.

1. S. 153 authorizes Police Officer to enter any place for the purpose of inspecting or searching for false weight and measures 20 P R 1913 Cr
2. To assume indiscriminately that some shopkeeper's weight is the correct one and proceed for comparison is not proper. 20 P. R. 1913 Cr

4. Joint trial

- A Sub-Inspector inspected a bazaar and prosecuted 68 persons on a charge of using short weights. All of them were tried jointly and a joint reply was put on the file. Held, the trial is illegal 20 P. R. 1913 Cr.

5. Possession of—

1. Where accused sold liquor measuring it with glass which was not the prescribed measure of which they falsely misrepresented the capacity, it was held that they had not committed an offence under S 265 but under S 415 36 Cr. R. 1843.
2. Mere possession of weights in excess of the authorised standard will not support a conviction. 1 B. H. C. R. 181.
3. The mere possession of a scale with a string not accurately tied at the centre of the beam, so that one scale outweighed the other, but which could be shifted at any time and might sometimes have been accurately tied was held not sufficient evidence of fraud 15 A. L. J. 897.
4. To prove that the weight or measure is false comparison should be made with standard weight or measure. Some reasonable allowance should be made for wear and tear and for rough and ready methods of bazaar shop-keepers. 20 P. R. 1913 Cr.

Weapon—(contd.)

4. Causing incised wounds—. See Wound.
5. Causing gunshot wounds. See Wounds.
6. Causing punctured wounds—. See Wound.
7. Causing different kinds of wounds—. See Wound.
8. Deadly weapon— See Deadly weapon.
9. Hair and other substance on the weapon. See Hair.

In some instances no blood may exist on the weapon, but few hairs or fibres may be found adhering to it, if the weapon is of bruising or cutting kind. Under severe injuries to the head, a portion of brain may escape and deposited with the blood on weapon or elsewhere. Such cerebral matter can be examined by a powerful microscope. *Taylor's Med. Jur.*, 1928, pp. 417-418.

10. Nature of—. See Murder—80.

It should be noticed whether the weapon is sharp or blunt, straight or bent, and whether the edge is or is not notched. These circumstances may throw light on the question of suicide or murder. *Taylor's Med. Jur.*, 1928, P. 415.

11. Position of—.

If a person has died from an accidental or self-inflicted wound, likely to cause death either immediately or within a few minutes, the weapon is commonly found near the body or within a short distance of it. If there has been any interference with the body, evidence from the relative position of it and the weapon will be inadmissible. It is compatible with suicide that a weapon may be found at some distance, or in a concealed situation; but it is much more frequently found either grasped in the hand or lying by the side of the deceased. If the instrument is firmly grasped in the hand of the deceased, no better circumstantial evidence of suicide can be offered. If the weapon is not found or is found concealed at a distance, this is strongly presumptive of homicide, provided the wound is of such a nature as to prove speedily fatal. *Taylor's Med. Jur.*, 1928, P. 414.

12. What weapon caused the wound? See Wound.

When a weapon is produced there is practically no difficulty in answering the question, "could this weapon have inflicted this wound?" But the difficulties immediately begin when no weapon is forthcoming, and the witness's opinion is to be founded on an examination of the wound only. There are two fundamental properties of the skin which have great bearing on the subject, viz., *the skin is elastic*, and is in a living healthy state slightly on the stretch in all directions parallel to its surface. It therefore follows that in punctures with blunt weapons the hole must be as a rule a little smaller than the diameter of the weapon, for the skin yields by stretching without tearing round the actual breach of continuity. If the weapon is sharp at its point, but blunt elsewhere, the inequality may even be greater between the orifice and the weapon. Similarly in incised wound the tension will draw the edges apart, so that the aperture has no accurate relation to the width of cutting edge. A state with a double-edged weapon may show a complete diamond-shaped aperture, while one with a single edge and blunt back may show a half diamond shape, but unless the blunt edge is very broad it is unlikely to leave more than an elliptical split with one extremity torn. *The skin is movable on the subcutaneous tissues*; it is flexible, fairly tough, and somewhat sticky. It follows then that when an edged weapon is drawn across the skin we may get several cuts from one action, separated from one another by small bridges of uncut skin. Its stickiness and the jaggedness of the weapon explain the inversion and eversion of the edges of a stab wound, showing the direction of the last force used. *Taylor's Med. Jur.*, 1928, pp 352-353. It occasionally happens that the shape of a bruise corresponds closely with the shape of bruising violence or implement. More frequently in bruises beneath the skin (superficial) the bruise has no relation whatever either to the shape of the object producing it or the amount of violence employed. There may be deep effusion of the blood without any visible external bruise whatever. *Taylor's Med. Jur.*, 1928, pp. 359-360.

13. Pointing out—. See Murder—72, Pointing out—1.
14. Whether one weapon can cause different kinds of wound.

A heavy weapon of the bill-hook class may, for example, produce all four varieties

Weapon—(concl'd.)

(incised, contused, punctured and internal injury). Hence the existence on the body of the same individual of wounds belonging to two or more of these four classes, does not necessarily indicate that two or more weapons were employed or that more than one person was concerned in their infliction. *Lyon's Med. Jur.*, 1935, P. 135, *Lyon's Med. Jur.*, 1904, P. 124.

WEARING GARB OF PUBLIC SERVANT. See Public Servant—51.**WEIGHTS AND MEASURES.** Ss. 264—267, I. P. C.**1. Essentials and Evidence.**

1. Where five seer weight is short by one Tola, no offence is committed. 3 A. W. N. 224.
2. Selling milk by unstamped measure is no offence. 1 Weir 223. (1884).
3. Where there is no complaint by purchaser and the search took place after dark and no fraudulent intent was proved, the accused is not guilty of keeping false weight. 38 P. W. R. 1908 Cr.
4. Where no standard is prescribed, no presumption of fraud can arise. 9 Cr. L. J. 415.
5. If a person professes to sell by standard weight, he is bound to take reasonable care that his weights are not defective. (1884) 1 Weir 225.
6. The gist of the offence consists in the fraud and intention to cheat. 9 Mys. L. J. 397.

2. Fraudulent intention.

1. Where the accused got a weight for weighing grain from somebody and on seizure by Police was found to be five Tolas more than the standard weight. Held, accused is not guilty unless it is proved that it was incorrect. 1929 N. 239=116 I. C. 671 =30 Cr. L. J. 692.
2. Where both purchaser and seller are aware of the actual measure used, there can be no question of fraudulent intent. 40 A. 84.
3. The circumstance that the weight varies from the standard to give the accused considerable advantage suggests that it is used fraudulently. (1883) 1 Weir 225.
4. A difference of one Tola in five-seer weight might be allowed for wear and tear. 1883 A. W. N. 224.

3. Inspection of—by Police Officer. S. 153, Cr. P. C.

1. S. 153 authorizes Police Officer to enter any place for the purpose of inspecting or searching for false weight and measures. 20 P. R. 1913 Cr.
2. To assume indiscriminately that some shopkeeper's weight is the correct one and proceed for comparison is not proper. 20 P. R. 1913 Cr

4. Joint trial.

A Sub-Inspector inspected a bazaar and prosecuted 68 persons on a charge of using short weights. All of them were tried jointly and a joint reply was put on the file. Held, the trial is illegal. 20 P. R. 1913 Cr.

5. Possession of—.

1. Where accused sold liquor measuring it with glass which was not the prescribed measure of which they falsely misrepresented the capacity, it was held that they had not committed an offence under S. 265 but under S. 415. 36 Cr. R. 1888.
2. Mere possession of weights in excess of the authorised standard will not support a conviction. 1 B. H. C. R. 181.
3. The mere possession of a scale with a string not accurately tied at the centre of the beam, so that one scale outweighed the other, but which could be shifted at any time and might sometimes have been accurately tied was held not sufficient evidence of fraud. 15 A. L. J. 897.
4. To prove that the weight or measure is false comparison should be made with standard weight or measure. Some reasonable allowance should be made for wear and tear and for rough and ready methods of bazaar shop-keepers. 20 P. R. 1913 Cr.

Whipping.**WHIPPING.** S. 390 to S. 396, Cr. P. C. See Whipping Act.**1. By instalment.** S. 393, Cr. P. C.

1. Accused was sentenced to whipping and the sentence was executed. An application for enhancement of sentence was made. Held, that as whipping could not be executed by instalments, sentence could not be enhanced. *Ratan Lal* 537.
2. It is illegal to pass several sentences of whipping amounting to 30 stripes each on different simultaneous occasions. 5 C. P. L. R. 23.

2. Charge.

Where a person is tried for an offence punishable with whipping, the liability to whipping must be stated in the charge. 5 M. 158.

3. Exemption from. S. 393, Cr. P. C.

1. A person who is sentenced to 7 years' rigorous imprisonment cannot be sentenced to whipping in addition. 33 P. R. 1919 Cr.
2. A sentence of whipping passed on person under a sentence of death is illegal. 1 M. 56.
3. When a sentence of imprisonment is for less than three months, an additional sentence of whipping is illegal. 2 Bom. L. R. 54.

4. Medical officer's certificate. S. 394, Cr. P. C.

A medical officer cannot give a certificate that the accused is fit to receive a portion of sentence. 31 M. 84.

5. Number of stripes.

Not more than one sentence of whipping and that not exceeding thirty stripes should be awarded at one time. 82 P. R. 1865, 1905 U. B. R. (Cr. P. C.) 47.

6. Procedure when whipping cannot be inflicted. S. 395, Cr. P. C.

1. The Court can revise a sentence of whipping by awarding solitary confinement. 14 P. R. 1899 Cr., 10 P. R. 1889 Cr., 33 P. R. 1901 Cr.
2. The Court may remit the sentence altogether, even though it is competent to inflict a term of imprisonment in lieu of whipping. 1 L. B. R. 202.
3. Where a Magistrate sentences the accused to maximum term of imprisonment and whipping, he should remit the sentence of whipping altogether if whipping cannot be carried out. 2 Weir 449, 21 A. 25, 11 P. R. 1901 Cr.
4. The Court which passed the sentence of whipping can revise it, even though sentence is confirmed by the Sessions Judge. 10 P. R. 1889 Cr.
5. Where the Magistrate who passed the sentence of whipping was transferred, the District Magistrate could commute it to one of imprisonment. 33 P. R. 1901 Cr.

7. Time for executing sentence of— S. 391, Cr. P. C.

1. Whipping cannot be carried out before expiry of period of appeal. 45 P. L. R. 1902.
2. It is illegal to hold that sentence of whipping should be carried out the very day it is passed. 1928 B. 138=109 I. C. 509=29 Cr. L. J. 573.
3. Sentence can be postponed for 15 days or until confirmation of the sentence on appeal, but it cannot be postponed till after the term of imprisonment has expired. 4 Bom. L. R. 929, 4 Bom. L. R. 436, 1881 A. W. N. 138, 34 P. R. 1880.
4. Where a magistrate ordered that prisoner be brought before him at the expiration of sentence of imprisonment and the sentence of whipping should then be carried out, the High Court cancelled the sentence of whipping as having become inoperative by lapse of time. 20 W. R. 72, 54 P. R. 1866 Cr.
5. Direction that sentence of whipping should be executed after the period of imprisonment is illegal. 1934 F. 551.

8. When proper.

1. A sentence of whipping is not appropriate in the case of a person holding respectable position in life. 9 P. W. R. 1917 Cr.

Whipping—(concl'd.)

2. Whipping cannot be awarded in default of payment of fine. 5 P. R. 1866 Cr.

9. Who can order.

A second class Magistrate cannot pass a sentence of whipping. 7 B. 363.

WHIPPING ACT (IV OF 1909).**General.**

When accused is liable to be punished under the Whipping Act, the charge must state the liability. 5 M. 158.

S. 3.

1. Under S. 3 a sentence of whipping may be passed in lieu of any punishment of which the offender may be liable under the I. P. C. ordering a man to be whipped after he has already served a part of sentence of imprisonment is illegal. 41 I. C. 149, 15 Cr. L. J. 5.
2. In lieu of punishing offender by imprisoning or fining him the Court may punish him with whipping is illegal. 1925 M. 183=82 I. C. 49=25 Cr. L. J. 1185.
3. The offence of out-raging a woman's modesty is not punishable with whipping. Therefore house breaking in order to commit that offence cannot be so punished. 1925 A. 591=89 I. C. 146=26 Cr. L. J. 1282.
4. Substitution of 32 stripes for a sentence of one year's rigorous imprisonment is not ordinarily an enhancement of sentence within the meaning of S. 423 (1) (b), Cr. P. C., but substitution of sentence of 30 stripes for a sentence of 3 months' rigorous imprisonment is an enhancement and therefore illegal. 1929 R. 177=30 Cr. L. J. 946.
5. S. 3 does not apply to non-juvenile offenders. 15 Cr. L. J. 3=22 I. C. 147.
6. Whipping can be ordered for theft in lieu of imprisonment. 12 R. 607.

S. 4.

1. Before a sentence of whipping in addition to imprisonment can be passed on a person convicted under S. 394, I. P. C., it must be proved that he himself caused hurt while committing robbery. 6 R. 48=1928 R. 112=29 Cr. L. J. 618.
2. A sentence of whipping may be imposed wherein the commission of robbery is caused. 44 A. 538=1922 A. 245=66 I. C. 418.
3. An additional punishment of whipping cannot be passed on a person who has received an adequate substantive sentence for an offence under S. 436. I.P.C. 1928 O 111=110 I. C. 218=29 Cr. L. J. 666.
4. High Court can pass additional sentence of imprisonment even when the sentence of whipping passed by the lower Court is already carried out. 1929 A. 322=119 I. C. 572=30 Cr. L. J. 1087.
5. When a person inflicts pain upon another and the offence is one which permits the penalty of whipping, it is a good thing to inflict that penalty. 44 A. 638.
6. Sentence of whipping in lieu of imprisonment is reserved for graver form of offences of sodomy. 1932 S. 143.
7. A sentence of whipping for an offence under Ss. 457—511 is illegal. 3 Bom. H. C. R. 37.
8. S. 4 does not apply to theft. 12 R. 607.

S. 5.

1. If the sentence of whipping is passed no other sentence can be passed, for, the whipping is considered to be in lieu of a single punishment or a combined arrangement. 46 A. 174=1924 A. 455=81 I. C. 260=25 Cr. L. J. 772, 16 B. 357, 1934 A. 976.
2. The word "Court" does not exclude the appellate Court. 1929 A. 322=119 I. C. 572=30 Cr. L. J. 1087.
3. S. 5 does not supersede S. 4 but is applicable alternatively with Ss. 3 and 4. 13 P. L. T. 573=1932 P. 334.

Whipping Act (IV of 1909)—(concl'd.)

4. A sentence of whipping in addition to imprisonment, on a juvenile offender is illegal. 1934 A. 976.

WIFE. See Husband and wife.

1. Bad character of—. See Murder 73—G.
2. Breach of trust by—. See Breach of trust—30.
3. Buying of—. See Betrothal.
4. Communication to—. See Privilege—1.
5. Maintenance to—. See Maintenance.
6. Possession of—. S. 27, I. P. C. See Possession of wife or servant—6.

WISDOM TEETH—. See Age.**WITHDRAWAL.**

1. By private prosecutor in warrant case. See Withdrawal of case.
2. By Public Prosecutor. See Withdrawal of case by Public Prosecutor. S. 494, Cr. P. C.
3. Compensation on—, See Compensation—8.
4. Difference between compromise and—.
1. A withdrawal must be with the permission of the Court and may be without the consent of the accused while compromise can be effected without the permission of the Court and implies the consent of the accused. 21 C. 103, 20 C. W. N. 1209
2. Permission to withdraw can be given only to the complainant while right to compound does not always belong to him. 14 M. 371.
3. A Railway guard abused and assaulted a passenger, who made a complaint but afterwards intimated to the Court that as the accused offered apology, he withdrew the case. Held, that the Court should have treated it as a compromise. 45 A. 145.
4. On withdrawal of complaint Magistrate can award compensation, but not when the case is compounded. 24 P. R. 1883 Cr., 19 P. R. 1888 Cr.
5. Of complaint in a summons case. S. 248, Cr. P. C.
1. A withdrawal of complaint is permissible only in summons case. 21 C. 103, 5 M. 378, 10 P. R. 1888, 13 B. 600, 5 M. 378, 5 R. 136.
2. Withdrawal can be permitted only if there was a proper complaint. If the Magistrate took cognizance of the case on Police report, the complainant cannot withdraw. 23 M. 626.
3. Withdrawal against some does not amount to withdrawal against all. 5 L. 239, 23 Cr. L. J. 271, 21 C. 103, 112. 9 P. R. 1896 Cr., 20 C. W. N. 1209, 66 I. C. 335.
4. There is no absolute power of withdrawal. There must be sufficient grounds for the withdrawal. 53 C. 631=1926 C. 786=96 I. C. 648=27 Cr. L. J. 984.
5. It is discretionary with the Magistrate to permit the withdrawal of complaint. 20 C. W. N. 1209, 42 A. 202.
6. Where the complaint was withdrawn because there was no sanction, a fresh complaint after obtaining sanction is competent. 22 B. 711.
7. Only the complainant can withdraw complaint. 2 B. 653, 27 M. L. J. 617.
8. Accused against whom case is withdrawn is competent witness against co-accused. 25 B. 422.
9. A complaint can be withdrawn at any time. 1933 L. 884, 36 M. 315.
10. Order allowing proceedings to be dropped is technically incorrect but was not interfered with in revision. 1933 L. 323=34 Cr. L. J. 718.
6. Of complaint in a warrant case.
1. In a warrant case, the Magistrate must proceed with the enquiry or trial in spite of withdrawal. 13 B. 600, 37 B. 369, 6 M. 316.

Withdrawal—(contd.)

2. Once the machinery of law is moved, the power of arresting its progress rests with the state. 5 R. 316=103 I. C. 105.
3. In a prosecution for criminal breach of trust, the complainant withdrew from the prosecution, the order discharging the accused is illegal. 115 I. C. 156=1929 M. 7.
4. Where a complaint under Ss. 379—323, I. P. C., was withdrawn the withdrawal cannot be said to be unlawful because it may have been withdrawn because the complaint may not have succeeded. 1929 A. 456=116 I. C. 749.
5. Magistrate cannot refer a petition for the withdrawal of the complaint to the Superintendent of Police to determine whether withdrawal should be allowed or not. 1926 C. 590=93 I. C. 1041=27 Cr. L. J. 545.
6. It is for the crown to consider whether proceedings should go on and not for the High Court to quash the proceedings on the ground that original complaint was made long ago and the accused is harassed thereby. 5 P. 452=1926 P. 302=95 I. C. 929.
7. Accused was charged under S. 394, I. P. C. The complainant petitioned the Court to withdraw the complaint and the Court discharged the accused under S. 253, Cr. P. C. Subsequently he sought to set aside the order of discharge. Held, that though technically the order was incorrect, the Crown ratified the withdrawal of complaint by not appealing against it, the High Court will not interfere. 1933 L. 323=34 Cr. L. J. 718.
7. Of compromise petition. See Compounding of offences.
8. Of remaining charges on conviction of one. S. 240, Cr. P. C.
 1. The remaining charge can be withdrawn when the accused is charged with several distinct offences and not where formal charges are drawn up against him. 24 P. R. 1889 Cr.
 2. Accused was charged with 10 offences of criminal breach of trust and was convicted of three such charges, the High Court directed that no further proceedings in respect of other offences should be taken. 9 C. L. J. 257.
 3. S. 240 applies to every grade of Court and not only to trial Court. 51 A. 977.
 4. Where accused is convicted on one or more of the charges framed against him and the complainant applies in revision to inflict sentence on the other charges but subsequently withdraws the application, it amounts to withdrawal of complaint with regard to such charge with the consent of the Court and the accused should be acquitted. 51 A. 977=1929 A. 899.
 5. Prosecution cannot, on conviction of accused in one case, withdraw charge against him in another case. 10 C. P. L. R. 1, 9 Cr. L. J. 495.
 6. Stay of trial or enquiry under this section amounts to acquittal. 4 P. 503=1925 P. 623=27 Cr. L. J. 359.
 7. If the conviction is set aside, Court may proceed with the trial of other charges. 1889 A. W. N. 8.
9. Of plea of guilty. See Plea of guilty—8.
10. Time for—

The complainant can withdraw at any time before a final order is passed but not before issue of process. An order of acquittal passed before issue of process is unmeaning and of no avail. 36 M. 315.
11. Who can withdraw.
 1. Only the complainant can withdraw. In cases of contempt of lawful authority of a public servant he is the complainant and he can only withdraw the case and not the person injured by such resistance. 2 B. 653.
 2. Where a municipal secretary instituted a complaint, the Municipal Council was not competent to withdraw. 27 M. L. J. 617.
 3. High Court can pass whatever orders are necessary when charge has been withdrawn by Crown. It does not recognize the alleged right of the complainant to have the guilty punished. 38 I. C. 441=18 Cr. L. J. 329.

*Withdrawal of Case by Public Prosecutor.***WITHDRAWAL OF CASE BY PUBLIC PROSECUTOR.** S. 494, Cr. P. C.**1. Accused—position of—after.**

1. An accused person, after withdrawal of case under S. 494 is a competent witness against his co-accused. 25 B. 422, 33 C. 1353, 47 C. 154, 56 C. 1023, 1933 C. 148.
2. A person against whom prosecution is withdrawn becomes a competent witness and he can be contradicted by his previous statement made to a Magistrate. 15 Cr. L. J. 693=26 I. C. 141=8 C. W. N. 1213, 7 A. L. J. 86, 1925 N. 426.
3. If the Court sanctions the withdrawal of prosecution but omits to record an order of discharge and accused remains in custody, he cannot be examined as witness. 33 C. 1353.
4. After the withdrawal of prosecution against accused his evidence in subsequent complaint is admissible, but in practice little weight should be given to it without corroboration. 1935 C. 473=35 Cr. L. J. 1248. 1931 C. 697=33 Cr. L. J. 19, 25 B. 422, 47 C. 154 Ref.
5. If a case is withdrawn against an accused, he cannot be tried again in the same proceedings. 1936 C. 356=163 I. C. 9.

2. Acquittal after—

1. If the case is withdrawn after the charge is framed, the accused must be acquitted and cannot be tried again. 12 M. 35, 40 M. 976, 18 Cr. L. J. 329, 23 Cr. L. J. 305.
2. In a summons case an order of discharge under S. 494 amounts to an order of acquittal. 24 Cr. L. J. 433.
3. An order of discharge passed on withdrawal of case under S. 494 is not an acquittal. 1929 L. 315=114 I. C. 50=30 P. L. R. 58=30 Cr. L. J. 233.
4. In the absence of formal withdrawal of prosecution, the fact that Public Prosecutor allowed the Vakil to conduct prosecution in a private complaint, the accused should not be acquitted. 54 M. 595=131 I. C. 176=1931 M. 770=32 Cr. L. J. 690.
5. A withdrawal at the beginning of a case comes under S. 494 (a) and amounts to discharge of accused but withdrawal after charge amounts to acquittal 1935 A. 366.

3. Consent of Court and reasons for consent for—

1. The failure to obtain Court's consent is a mere irregularity. 6 P. 208=27 Cr. L. J. 1100.
2. The Court must record reasons for giving consent to enable the High Court to judge whether the discretion was properly exercised. 48 C. 1105, 22 C. W. N. 69, 26 C. W. N. 880, 1929 N. 133=118 I. C. 63, 56 C. 1023.
3. It is not necessary to record reasons for consent. 2 P. 708, 3 P. 708, 5 M. L. T. 216, 1930 S. 156=124 I. C. 378, 1923 L. 163=72 I. C. 593, 1932 L. 250=136 I. C. 714, 1932 S. 92.
4. Where the only reason given by the Court for allowing withdrawal was that on a previous trial in connection with the riot six accused had been punished. Held, that imprisonment of 6 accused is no atonement of the sin of accused and therefore the order of withdrawal was bad. 1924 C. 382=71 I. C. 693=26 C. W. N. 880, 41 I. C. 998.
5. Before acting upon the reasons given by Public Prosecutor, the Sessions Judge must examine the commitment record for himself. 48 C. 1105.
6. Giving consent to withdrawal is a judicial act and reasons must be given for the same. 1923 N. 260=72 I. C. 361, 1924 C. 382, 26 C. L. J. 208, 1 R. 756.
7. Withdrawal of prosecution must be with the consent of the Court. S. 494 is not to be used by prosecution to get evidence of accused against co-accused. 1935 C. 473=36 Cr. L. J. 1248=157 I. C. 840 56 C. 1023=1929 C. 319=121 I. C. 678 Diss. from.
8. Court can give consent for withdrawal of case against accused for calling him as witness. But if S. 337 is available it is better to use S. 337 than S. 494. 1936 C. 356=163 I. C. 9, 1929 C. 319.

Withdrawal of Case by Public Prosecutor—(contd.)

4. Discretion of Magistrate for—.

1. The Court has wide discretion to give consent or not for withdrawing the case but it must not exercise arbitrarily but on sound legal principles. 56 C. 1023=1929 C. 319=33 C. W. N. 468.
2. The test is whether in giving consent, the Court has been influenced by circumstances which ought not to have been considered. 1931 C. 607=134 I. C. 1045=33 Cr. L. J. 3.

5. Fresh complaint on—.

1. Fresh complaint is not barred by reason of discharge of accused under S. 494, Cr. P. C. 1924 P. 797=83 I. C. 689, 1930 C. 369=127 I. C. 63, 28 C. 652, 29 C. 726, 31 M. 543, 29 A. 7, 10 P. R. 1911, 1922 P. 372, 46 A. 88.
2. An order of discharge under S. 494 does not necessarily prevent the Magistrate from taking cognizance of the case again but an order of discharge cannot be set aside and prosecution started afresh unless there are new materials available. 1922 P. 372, 66 I. C. 76=23 Cr. L. J. 236, 69 I. C. 625, 22 A. 106, 40 C. 71.
3. When the order of discharge is proper one no further enquiry should be ordered although fresh complaint is competent. 2 M. W. N. 74.
4. If case is withdrawn by Crown under S. 494, a fresh complaint by injured person is not barred. 1934 L. 169=1934 Cr. C. 347, 10 P. R. 1911 Rel. on
5. Where prosecution is withdrawn before charge and fresh complaint is lodged, the evidence of co-accused in original prosecution is admissible, but it is not entitled to weight without corroboration. 1935 C. 473=36 Cr. L. J. 1248=157 I. C. 840. 193 I. C. 697=33 Cr. L. J. 19.

6. Grounds for—.

1. The Public Prosecutor cannot withdraw a case on the ground that complainant was keeping out of way and could not be served. 2 Weir 655.
2. District Magistrate cannot direct Police to make further inquiries, when the accused are being tried by a Magistrate and as a result of these to direct the Public Prosecutor to withdraw the case. 1932 L. 611=140 I. C. 25=33 P. L. R. 793.
3. Public Prosecutor should not withdraw prosecution for the purpose of getting evidence of accused against the co-accused. 1935 C. 473=36 Cr. L. J. 1248=157 I. C. 840. 56 C. 1023=1929 C. 319 Diss. from.

7. Revision—.

1. High Court is in a position to consider whether the discretion vested in the Magistrate to give consent has been rightly exercised. 48 C. 1105.
2. Where a charge is withdrawn, High Court will not consider the question of legality of charge. 2 A. L. J. 30.
3. High Court will not interfere with the order of acquittal under S. 494 at the instance of private Prosecutor, 2 P. 703, 5 M. L. T. 216.
4. If the Sessions Judge refused permission to withdraw, High Court will not be reluctant to interfere. 1926 M. 296=29 I. C. 750.
5. If sufficient reasons are given for withdrawal the High Court will not interfere. 1924 C. 538=71 I. C. 53, 26 S. L. R. 67.
6. When the Public Prosecutor withdrew a charge and Sessions Judge discharged the accused, the High Court could not set it aside although no reasons were given by the Sessions Judge or Public Prosecutor. 11 Cr. L. J. 193.

8. Right of private Prosecutor to—.

1. A private Prosecutor cannot withdraw the case. He could only move the District Magistrate for withdrawal. 5 R. 136=103 I. C. 105=23 Cr. L. J. 649=1927 R. 174.
2. A non-compoundable case can only be withdrawn under Ss. 494-495, Cr. P. C. and not by any private Prosecutor. 64 I. C. 273=22 Cr. L. J. 753.
3. If a private Prosecutor withdraws from the prosecution, the effect provided for in S. 494 will not follow and the trial will proceed. 1911 M. W. N. 106.

Withdrawal of Case by Public Prosecution—(concld.)

9. Right of Public Prosecutor and Court Inspector to—

1. A Court Inspector withdrew the case under S. 494. Held, that order of discharge was illegal. 11 Cr. L. J. 722.
2. A Court Inspector is a Public Prosecutor and he can withdraw even if the complainant wants to proceed with the case. 57 I. C. 657.
3. A special Public Prosecutor can withdraw a case against persons subsequently impleaded. 34 I. C. 976.
4. When a complaint is filed and the complainant is given permission to conduct the prosecution, it is highly objectionable that after the charge is framed, the Public Prosecutor should withdraw the case even without consulting him. 46 A. 83=1924 A. 203=81 I. C. 618=25 Cr. L. J. 970.
5. Public Prosecutor appearing only for withdrawal, his action is not illegal though unusual. 134 I. C. 1045.
6. On withdrawal by Public Prosecutor no inquiry under S. 494 is competent. 25 S. L. R. 67.
7. A Prosecuting Inspector stated that there was no case under S. 218, I. P. C. Held, that it did not amount to withdrawal. 1935 A. 366.
8. When Police puts up a case under S. 173 before Magistrate, District Magistrate cannot direct further investigation and as a result of these inquiries direct the Public Prosecutor to withdraw the case. 1932 L. 611.

10. Time for—

Public Prosecutor has no right to withdraw the case at the appellate stage, even though the petition is inspired by the District Magistrate. 1927 C. 816=28 Cr. L. J. 833.

WITNESS. See Evidence.

1. Accomplice See Accomplice.

Police have no right not to charge persons against whom there is evidence because they require him as witness Where that course is adopted the evidence of accomplice so obtained is of little value. 1935 B. 186=37 B. L. R. 179.

2. Accused

1. Persons accused in one case cannot be witnesses in the same case. 12 P. R. 1902 Cr., 50 I. C. 821=20 C. L. J. 341, 9 P. R. 1906 Cr., 45 C. 720, 2 A. 260.
2. A complaint was made to a Magistrate against A and B and process issued against A only, B was held to be a competent witness on his behalf. 10 C. L. R. 553.
3. A person jointly indicted and jointly tried with the accused (but not separately tried) cannot be called as a witness either for or against the accused. 2 A. 200, 10 B. 190, 16 B. 661 (665).
4. It is illegal for a Magistrate to convert an accused person into a witness except when a pardon has been lawfully granted to him under S. 337, Cr. P. C. 1 B. 610.
5. A person never arrested and against whom no process is issued, is a competent witness, even if principal offender. 16 B. 661 (665).
6. An accused who is discharged or against whom prosecution is withdrawn is a competent witness against persons who were jointly tried with him. 25 B. 422, 1933 C. 148=34 Cr. L. J. 675, 1929 C. 319=56 C. 1023.
7. Until the accused who pleads guilty is convicted or acquitted, he is still an accused and is therefore not a competent witness. 4 I. C. 57=10 Cr. L. J. 484.
8. Accused can call as witnesses persons charged with him, though awaiting a separate trial for the same offence. 45 C. 720, 20 A. 426, 23 B. 213 (220), 3 R. 11.
9. It is repugnant to all principles of Criminal law to compel a person to give evidence in the very matter in which he is accused or is liable to be accused and then to use the statement on oath against him to prove his guilt. 50 B. 56.
10. A person discharged by the Police, without being brought before a Magistrate is not an accused person and he can give evidence on oath in a trial of his accomplices. 16 B. 661, 4 L. B. R. 362.

Witness—(contd.)

11. A convicted person can give evidence in other proceedings. 58 C. 1214.
12. Person separately tried is a competent witness against his accomplices 45 C. 720, 3 R. 11, 16 N. L. R. 9. See 46 C. 700.
13. When accused persons are tried separately each one, though implicated in some offence is a competent witness at the trial of the other. 45 C. 720=45 I. C. 999=19 Cr. L. J. 663.
14. There can be no implied pardon if the accused is examined as a witness for the prosecution. 1935 P. 91=36 Cr. L. J. 500=154 I. C. 387, 1917 C. 261=35 I. C. 988=17 Cr. L. J. 428 Dist.
15. It is contrary to the traditions of justice to prosecute a person after he has given his evidence for the prosecution. 1917 C. 261=35 I. C. 988=17 Cr. L. J. 428. Dist. in 1935 P. 91=36 Cr. L. J. 500.
16. If three accused are tried jointly, prosecution cannot be permitted to examine one accused as witness against co-accused by splitting up cases against them. 1936 S. 47=162 I. C. 863.
17. Where one of the two accused was discharged and examined as witness against accused, and then proceedings were started against the former. Held, such prosecution is contrary to traditions of justice. 1925 C. 104=25 Cr. L. J. 311.
3. **Agent Provecateur.** See Agent Provecateur.
4. **Allegations against—**
Crown witness must be given opportunity of denying any allegations against him, which form part of the defence. 1927 S. 104=99 I. C. 98=28 Cr. L. J. 66.
5. **Alleged Eye—** See Alleged Eye witness, Eye witness.
6. **Approver.** See Approver.
7. **Associates.**
 1. Associates and friends of accused who voluntarily come and give him good character need not be brushed aside unless discredited with regard to their honesty or good faith. 1923 A. 35=24 Cr. L. J. 257=71 I. C. 863.
 2. Evidence of association with the accused is of no value. 1932 L. 557.
8. **Attendance of.** See Attendance of witnesses.
9. **Attributing Remarks to—**
No weight is to be attached to merely attributed remarks, the imputation generally being a mere usual advice to supplement feeble evidence. 1929 L. 436=118 I. C. 544=11 L. L. J. 58=30 Cr. L. J. 941=30 P. L. R. 603.
10. **Box—** See Dais.
All witnesses, without distinction, must give their evidence from the witness box and it is not desirable that any one should give his evidence on the dais by the side of the Judge. 63 I. C. 461=22 Cr. L. J. 669.
11. **Caste people.**
 1. Defence evidence should not be rejected on the ground that witnesses were caste fellows of the accused and that they had come voluntarily without being summoned. 1925 O. 473=89 I. C. 147=26 Cr. L. J. 1283, 53 I. C. 156=20 Cr. L. J. 748, 43 A. 186, 1923 L. 436=75 I. C. 733=6 L. L. J. 486.
 2. It is not a sound ground for disbelieving a witness that he is of the same caste or community as the person in whose favour he deposes. 1926 P. 36=90 I. C. 439=26 Cr. L. J. 1559.
12. **Chance.** See—106.
 1. Witnesses who depose that they saw the abducted woman singly at different times and different places and who cannot be adequately cross-examined, should not be believed especially in S. 498, I. P. C. cases. 100 P. L. R. 1516, 5 L. 396.
 2. Witnesses are not casual in the sense that they come from a distance, if they reside near the house of complainant. 1932 A. 322 (323)

*Witness—(contd.)***13. Changing side.**

A witness who has changed sides and has made statements in favour of both the prosecution and defence is unreliable. 1925 O. 725=88 I. C. 852=26 Cr. L. J. 1236.

14. Character of— See Character, bad character.**15. Child—** S. 118, Evidence Act. See 'Child'.

1. There is no more dangerous witness than a young child. Any mistakes or discrepancies in their statements are ascribed to innocence and failure to understand and undue weight is given to what is merely a well taught lesson. Children have good memories and no conscience. They are easily taught stories and live in a world of make believe, so that they often actually believe what they are taught to relate. 1929 C. 390=122 I. C. 209=31 Cr. L. J. 373=33 C. W. N. 664, 1930 O. 406, 1933 L. 667=34 Cr. L. J. 606.
2. When the Court is of opinion that the child upon whom an offence under S. 376, I. P. C., is committed is unable to give relevant information by reason of immaturity of judgment, it should not examine the child at all. 32 Cr. L. J. 63=1930 L. 337=127 I. C. 862=31 P. L. R. 612, 38 A. 49.
3. Before a child of tender years is actually examined in a case the Judge should test his capacity to understand and to give rational answers and to understand the difference between truth and falsehood. 11 C. W. N. 51, 38 A. 49.
4. If the child can give a rational account of what he has seen or heard or done on a particular occasion, he is a competent witness. 11 A. 183, 23 A. 90, 1930 S. 129=120 I. C. 514=31 Cr. L. J. 114.
5. The mere fact that a Judge omits to put on the record preliminary questions to a child to test his capacity to give evidence, will not render the evidence inadmissible, if the Judge as a matter of fact is satisfied about the capacity to give the evidence. 1923 P. 91=66 I. C. 73=23 Cr. L. J. 233, 41 C. 406.
6. The evidence of a child of tender years without solemn affirmation is admissible in evidence, though it should be received with due care and caution. 38 M. 550, 38 A. 49, 45 I. C. 497=20 Bom. L. R. 365=19 Cr. L. J. 593, 1923 L. 332, 1923 P. 91, 61 I. C. 705.
7. If the child who was raped, is unable to give relevant information by reason of tender years, the Court should not examine her at all. 32 Cr. L. J. 63=1930 L. 337=127 I. C. 862, 38 A. 49 Foll., 41 C. 406 Not foll.
8. If a girl of six years gave reasonable and comprehensible answers, she was a competent witness. 1932 C. 723, and her evidence should be relied upon. 1921 P. 109=22 Cr. L. J. 417=61 I. C. 405.
9. It is not likely for a child of seven years to distinguish between things which he has heard and those which he has seen, and when inconsistent statements occur in his evidence, much importance should not be attached to his testimony. 1934 P. 651, 1923 P. 91 Ref.
10. Children are a most untrustworthy class of witnesses, for they often mistake dreams for reality and repeat glibly as of their own knowledge what they have heard from others, and are greatly influenced by fear of punishment, by hope of reward, and by desire of notoriety. 1933 L. 667=34 Cr. L. J. 606.

16. Competency of—

1. The only test of competency is that the witness should not be prevented from understanding the question put to him or from giving rational answers due to tender years or other causes. 1927 P. 406=102 I. C. 349=28 Cr. L. J. 541.
2. When a witness is presented as witness, it may be objected (1) that he is incompetent to testify, (2) that an oath, or affirmation cannot lawfully be administered to him. The first objection falls under S. 118, Evidence Act, while the second under S. 342, Cr. P. C. 38 P. R. 1887 Cr.
3. An informer is a competent witness. 38 P. R. 1887 Cr.

17. Compulsory production of—

Court cannot ask a party to produce a particular witness or his case will be dismissed. 1924 L. 617.

Witness—(contd.)

18. Conduct of—. See Conduct.
19. Confession to—. See Confession to Police Officer.
20. Convict as—. See—26
21. Costs of summoning—. See Costs.
22. Counsel for accused as—. See Counsel.
 1. Though a person may be both advocate and witness in the same suit, but such a course is most strongly disapproved. 40 C. 898, 29 I. C. 135.
 2. It is improper for a Counsel to appear in a case in which he may have to give evidence or in which he may be personally interested. 1925 S. 99=25 Cr. L. J. 571, 1930 L. 361, 1933 R. 34, 1927 P. 61=101 I. C. 289, 40 C. 898.
 3. Calling a Pleader for the accused as prosecution witness in the middle of a case is reprehensible. Trial is vitiated whether accused is prejudiced or not. 1925 M. 1153=91 I. C. 65=27 Cr. L. J. 33.
 4. No self-respecting Counsel would like to conduct a case for the defence after having been called as a witness for the prosecution. 1925 M. 1153=91 I. C. 65.
 5. A Pleader merely called to give evidence as to what had occurred in a previous suit in which he was engaged as a Pleader, cannot be allowed special fees. 46 B. 89.
 6. If accused's Counsel is to be produced as witness he should not be excluded from the Court room, but should be allowed to conduct and plead. 44 M. 916.
 7. A counsel may make a statement, robed, from the Bar, without being sworn on any matter within his knowledge in connection with a case. But, if he does not avail himself of this privilege, he can give evidence from the witness box unrobed and on oath. Taylor, S. 1381. 1928 M. 690, 3 C. W. N. 694. But see 27 C. 428.
23. Correcting deposition by—. See Reading over statement.
24. Corroboration of—. See Accomplice—4, Corroboration, S. 157.
25. Credibility of. See Evidence—6.
26. Criminal as—.
 1. No reliance should ordinarily be placed on the uncorroborated testimony of a criminal who has undergone sentence of imprisonment and who is under Police surveillance. 1925 L. 397=89 I. C. 311=7 L. L. J. 219=26 P. L. R. 518.
 2. No weight should be attached to the evidence of a witness who says, not only that deeds were forged, but that he himself had been a party to the making of them. 6 B. L. R. 507, Field's Law of Evidence in Br. India, Eighth Ed., P. XXIX.
27. Cross-examination of—. See Cross-examination.
28. Debtor as—.

To say that because one in the ordinary course of one's business owes money to certain person, one should not be believed, when speaking in favour of that person is too absurd. 1923 R. 30=70 I. C. 902.
29. Defamation by—. See Defamation.
30. Defence—. See Defence witnesses.
31. Delay in disclosure by—. See Delay—2—12.

When a witness keeps quiet for many days after the occurrence and comes forward after the Police had made the discovery is not reliable. 1923 L. 438=84 I. C. 321=5 L. L. J. 325=26 Cr. L. J. 257, 1922 P. 348=67 I. C. 581=23 Cr. L. J. 421.
32. Demeanour of—. See Demeanour.
33. Denomination

Credibility of witnesses must not be judged from their denomination. 51 C. 418=1924 C. 323=81 I. C. 264, 11 C. W. N. 1085
34. Departing without leave of Public servant. S. 174. See Public servant.
35. Diet money to—. See Diet money.

*Witness—(contd.)***36. Disbelieved as to one accused.** *See Evidence.*

Evidence of a witness if held to be unreliable in respect of one accused, cannot be held to be reliable in respect of the other. 99 I. C. 857=3 L. L. J. 147=28 Cr. L. J. 185, 1934 O. 286.

37. Discharged accused as—. *See—2.*

An accused who is discharged or against whom prosecution is withdrawn is a competent witness against persons who are jointly tried with him. 25 B. 422, 1 B. 610, 56 C. 1023, 1933 C. 148=34 Cr. L. J. 675.

38. Disinterested—. *See—61.*

Disinterestedness of a witness is no ground for believing him to be true. The Court has to see whether his evidence is in consonance with probabilities and consistent with other evidence and generally so fits in with the material details of the case for the prosecution as to carry conviction of truth to a prudent mind. 1930 N. 103=122 I. C. 434=31 Cr. L. J. 417.

39. Distinction between prosecution and defence.

S. 118, Evidence Act, makes no distinction between prosecution and defence witnesses about their competency, credibility, etc. 3 R. 11=1925 R. 122=85 I. C. 236=26 Cr. L. J. 492.

40. Doubts about the veracity of—.

In order to discredit a witness it is not enough to suggest doubts about his veracity. 49 C. 132.

41. Dumb. S. 119, Evidence Act.

When a witness is so deaf and dumb that it is impossible to make him understand the question put to him in cross examination, he is not a competent witness and conviction cannot be based solely on his evidence. 14 I. C. 655=13 Cr. L. J. 271=1912 M. W. N. 100.

42. Enemy.

1. If the prosecution evidence is disbelieved and conviction is based on the evidence of complainant who has serious enmity with the accused, the conviction is not sound. 1923 P. 519=72 I. C. 360=24 Cr. L. J. 360.
2. In case of enmity between the parties, their evidence requires independent corroboration. 1925 L. 42=84 I. C. 937=26 Cr. L. J. 393.

43. Examination of—. *See Examination of witnesses.***44. Examination of—by Pleader in his chamber.**

There is nothing wrong in the Pleader or Advocate examining the witnesses in chambers before they appear in Court, as it is intended to find out what they have to say and conduct the case properly. 14 I. C. 763=13 Cr. L. J. 299.

45. Exclusion of—.

1. The rule as to exclusion of witnesses from Court until they have been examined is not without exception. It does not extend to parties or their Counsels who have to conduct the case. 44 M. 916, 62 I. C. 828, 1934 A. 840.
2. S. 352, Cr. P. C., gives to the Court the power of ordering that any particular person shall not remain in Court, and the section makes no exception in the case of Police Officer. 1925 N. 296=26 Cr. L. J. 1130.
3. The universal practice in India is that when a witness is being examined, other witnesses should not be present. 1934 A. 840=152 I. C. 30.

46. Expenses of—. *See Expenses of witness.***47. Expert as—.** *See Expert.***48. Eye.** *See Eye witness.***49. Friendship with—.**

1. No inference of complicity in crime can be drawn from the fact of friendship with accused and his co-villagers. 1922 P. 88.

Witness—(contd.)

2. Witness being friends or relations of each other is insufficient for discrediting their testimony. 1934 L. 158.
50. Hostile. *See* Hostile witness.
51. Husband and wife as—. *See* Husband and wife.
52. Impeaching credit of—. S. 155, I. E. Act. *See* Impeaching credit of witness.
53. Implicated in the crime himself.
When the witnesses in a murder case implicate the accused only when they are faced with the necessity of exculpating themselves, their evidence is open to grave suspicion and no sufficient weight should be attached to such evidence. 1930 P. 338=1930 Cr. C. 710.
54. Implicating innocent persons. *See* Evidence—3.
55. Important—.
A Court should make every attempt to secure the evidence of persons whose evidence is extremely important for the case either by procuring their attendance or by Commission. 99 I. C. 599=27 P. L. R. 501=28 Cr. L. J. 167.
56. Improving upon former statement.
1. It is unsafe to rely upon a witness who materially improves upon his former statement. 212 P. L. R. 1915, 1934 N. 204.
2. In this country, complainants with good and true cases, frequently are foolish enough to try to improve it by devices so transparent that Courts have little difficulty in separating the false from true. 31 P. R. 1914 Cr.
57. Imputation against—. S. 148, Evidence Act.
1. A question put to an intended surety about his conviction thirty years old should be disallowed on the ground that it related to matter so remote in time that it ought to influence Court's decision as to the fitness of such surety. 26 A. 371.
2. Though evidence may be given of facts, as that the witness has brought or defended actions which have been dismissed or decreed against him, or that he made false charge and so forth but the evidence of particular opinion formed by a Judge in another case of the credit to be attached to the testimony of a witness who is cross-examined, in a subsequent trial, is inadmissible. 4 C. W. N. 684, 5 P. 777.
58. Incriminating question to—. *See* Incriminating questions. S. 132, Evidence Act.
59. Indecent or scandalous questions to— S. 151, Evidence Act *See* Scandalous questions.
60. Insinuations against—.
A Court ought not to permit the making of insinuations against the defence witnesses as being related to accused, when the witnesses have not been questioned with regard to it. 53 I. C. 156=70 Cr. L. J. 748.
61. Interested—.
1. It is open to Magistrate to rely on the evidence of any person, although interested 1930 C. 645, 51 M. 956, 1931 L. 529, 1929 M. W. N. 587.
2. Conviction based on the evidence of interested witnesses whose names were not mentioned in the First Information Report as eye witnesses and whose evidence is contradicted by other witnesses, is not maintainable. 92 I. C. 175=27 Cr. L. J. 223.
3. Conviction on the uncorroborated evidence of an interested witness, who was a collateral, though not a near relative of the deceased whose family had enmity with the accused, is not safe. 1922 L. 76.
4. The mere fact that witnesses are relatives and interested is no ground to disbelieve them if the point can only be established by their testimony. 32 I. C. 380.
5. Where a fight takes place in a shop, it is scarcely likely that the shopkeeper and his family members would give evidence against their own customers. Their inclination would be to say that nothing disorderly had taken place at their shop, which they hold under a license from the Government. 2 P. 309=1923 P. 413=24 Cr. L. J. 801.

Witness—(contd.)

6. Where witness's brother brought a complaint against accused's cousin one year back, the witness is not an interested one. 1925 L. 318=26 Cr. L. J. 757.
7. Zaildars and *Sufaidposhes* are interested to give evidence on the Police side. 110 I. C. 674=29 P. L. R. 539.
8. The evidence of a servant who is not respectable is not of much value. 1922 P. 88.
9. If evidence on both sides is interested, guilt of accused should be judged from surrounding circumstances. 1933 L. 1055=147 I. C. 722.
62. Intimidating. See Legal Practitioners Act. Ss. 13—17.
63. Leading questions to—. See Leading questions.
64. Liability to be prosecuted for defamation. See Defamation—44-D.
65. Low status of—.

The mere fact that the witnesses did not appear to be men of status and were cultivators is not sufficient ground to discredit their evidence, when nothing is suggested which would be sufficient to discredit them. 1924 P. C. 106=80 I. C. 641=1924 M. W. N. 445, 49 C. 132, 1935 R. 297=158 I. C. 93.

66. Magistrate as—. See Disqualification of Judges—7-6, and transfer (grounds)
67. Master as—. See Master and servant.
68. Medical person as—. See Civil Surgeon.
1. Where in an examination of medical witness, the Magistrate instead of recording the statement describing the injuries on the person injured, recorded a brief statement to the effect that the witness had examined the injured person and the injuries were given in detail in a certain exhibit, the procedure is illegal. 1928 L. 69=28 Cr. L. J. 969.
2. It cannot be laid down as a general proposition that medical evidence is of less value than that of eye witnesses. When the doctor states what he saw as to the contents of the stomach and the food regurgitated into the larynx, it requires no expert to draw conclusions from those facts. The Judge himself can draw the conclusion, as well as the doctor as to the cause of death. 1929 O. 248=31 Cr. L. J. 181.
3. Court should not accept blindly the medical evidence. 1924 B. 457, 50 C. 100.
69. Motive of—to implicate accused. See Motive—9.

Where there is apparent grudge against a party and there is motive to implicate an accused, the evidence must be examined with caution. 1929 P. 705.

70. Non-production of—. S. 114, Ill. (G). Ev. Act

1. Prosecution is under no obligation to examine witnesses who, it has reason to believe will not speak the truth. 1930 C. 134=34 C. W. N. 170=125 I. C. 746=31 Cr. L. J. 918, 8 C. 121, too widely stated. 1935 R. 506, 1933 C. 600.
2. If prosecution witnesses who were on the spot, are not produced, the inference is against the prosecution. 8 C. 121 (125), 14 C. 245, 14 A. 52 (523), 7 P. 53, 50 C. 318. See 1927 M. 475 unless there is sufficient explanation. 61 C. 711, 58 C. 1335=1932 C. 118, 4 C. W. N. 576.
3. Where the prosecution has reason to believe that the inmates of the house of the accused, if examined, would not tell the truth, not being inclined to help the prosecution, there is sufficient cause for omitting to call them. 49 C. 358=1922 C. 382
4. The non-production of material witness like the investigation officer is a serious omission which cannot but throw suspicion on the whole prosecution case. 1 P. 630=71 I. C. 219=1922 P. 582=24 Cr. L. J. 91
5. Failure of prosecution to examine a material witness justifies the inference that the witness if examined, would have deposed against the prosecution. 1923 L. 125=107 I. C. 100=29 P. L. R. 14=29 Cr. L. J. 212.
6. A prosecution witness examined in the Committing Magistrate's Court but was not examined by the Public Prosecutor in the Sessions Court on the ground that the witness was hostile. The witness was present and not availed of by the defence. Held, that the Public Prosecutor was not bound to produce any witness who was not expected to give true evidence. 1930 L. 82=31 Cr. L. J. 176, 1922 L. 1.

Witness—(contd.)

7. Non-production of some of the witnesses cannot in any way affect the credibility of the witnesses that have been produced. 1921 L. 241=73 I. C. 932=5 L. L. J. 524=24 Cr. L. J. 703, 2 P. 309=1923 P. 413=74 I. C. 705.
8. It is of course not for the Police or Public Prosecutor to champion a particular theory and to suppress the evidence of a reliable witness simply because his testimony is inconsistent with it. 2 P. 309=1923 P. 413=74 I. C. 705=24 Cr. L. J. 801.
9. All witnesses who prove their connection with the transaction, connected with the prosecution must be called excepting those that are untruthful or unnecessary. 1924 M. 239=75 I. L. 987=25 Cr. L. J. 75.
10. Where in a case under S. 143, Penal Code, there were four persons of the locality in the mob restraining and demonstrating and they were thus in a position to depose to the words uttered and conduct displayed by the mob, but these persons were withheld without offering any reason. Held, that this was sufficient to discredit prosecution version. 1928 P. 98=105 I. C. 234=23 Cr. L. J. 506.
11. The Police are entitled, if they like, to rest their case on the evidence of two or three eye-witnesses but where there are many other people who could have given evidence in the matter, they should be called. Omission to do so is a circumstance against the prosecution. 1929 M. W. N. 587.
12. In a capital case, it is the duty of the crown to place before the Court all materials irrespective of the question whether they help the accused or the prosecution. 8 P. 279=1929 P. 275=116 I. C. 770=30 Cr. L. J. 675, 8 P. 625=1929 P. 343=120 I. C. 37=30 Cr. L. J. 1136, 42 L. 422.
13. If a witness can on reasonable grounds be an accomplice, the prosecution need not produce him. 43 I. C. 241=19 Cr. L. J. 81=21 C. W. N. 1152.
14. The duty of Counsel for the crown is not to secure a conviction but to assist the Court in arriving at the truth and consequently to call all such evidence as may throw light on the case. 44 C. 477, 30 I. C. 128=19 C. W. N. 923=16 Cr. L. J. 576=21 C. L. J. 396, 42 C. 957.
15. In a criminal trial it is not incumbent upon the prosecution to produce all the persons who happened to have gathered at the spot where the offence occurred and the prosecution of two or three of the respectable and leading members of the village would suffice. 112 I. C. 215=29 Cr. L. J. 999=10 L. L. J. 229.
16. The duty of seeing that all evidence essential to the prosecution case is before the Court is thrown by Cr. P. C., upon the Magistrate himself. It is not open to a Magistrate to acquit on the ground that the prosecution had failed to produce a necessary witness 1925 O. 667=88 I. C. 1042=26 Cr. L. J. 1266.
17. Where a number of witnesses who could have given important information were not produced, the Judge should direct the jury to draw an inference adverse to the prosecution. His omission to do so amounts to misdirection. 50 C. 318, 7 P. 50=1928 P. 31=104 I. C. 459, 33 C. L. J. 180.
18. If the person who figured very largely in the evidence of approver is not produced, an inference against prosecution may be drawn. 1931 L. 408=132 I. C. 185=32 Cr. L. J. 818.
19. Withholding of evidence is a flaw in prosecution, still each case depends on its circumstances. 1932 L. 500=33 Cr. L. J. 497.
20. When some of the eye-witnesses prove the prosecution case and the rest are not produced, there is no presumption in favour of defence. 1932 C. 871=36 C. W. N. 1038.
21. Every person examined by Police need not be produced. But in murder cases witnesses supporting the plea of *alibi* must be produced. 1934 A. 908.
22. If the crown does not produce a witness in Sessions Court, although examined in Committing Magistrate's Court the Judge cannot compel crown to examine him or to tender him for cross-examination. He can examine him as Court witness or draw an inference against the prosecution for his non-production. 1935 S. 60=1935 Cr. C. 248.

Witness—(contd.)

23. Prosecution is not bound to examine persons who will not support the prosecution case. 1935 P. 95=36 Cr. L. J. 318=153 I. C. 466.
24. For the non-production of all the witnesses no adverse conclusion should be drawn, if the evidence actually given is sufficient and unimpeached. 9 Moor. L. A. 516, 1 W. R. P. C. 25.
25. There is no corresponding inference against the accused. He is merely on the defensive and owes no duty to any one but himself. He is at liberty to rely on the witnesses of the case for the prosecution or to call witnesses, or to meet the charge in any other way he chooses. 8 C. 121, 10 C. 140.
26. When prosecution does not summon a witness, Court cannot summon him as P. W. at the instance of defence. 1935 R. 506.
27. Prosecution should not avoid calling a witness merely because he is likely to give evidence in favour of accused. 1934 A. 903.

71. Not believed in previous trial.

The mere fact that a witness is disbelieved in a previous trial does not make him unreliable on the same facts in another proceeding. 1931 L. 39=130 I. C. 410=32 Cr. L. J. 522, 5 P. 777, 4 C. W. N. 64.

72. Not disclosing a crime.

A person who was cognizant of the offence and omitted to disclose it for a time is "practically accomplice" and his testimony needs corroboration. 1934 C. 678. 26 M. 1 Ref.

73. Not rescuing the injured person.

Eye-witness did not rescue the accused, the presumption is that he did not see the fight. 132 P. L. R. 1915, 100 I. C. 357.

74. Not remembering details.

The fact that the witnesses do not speak to details too minor to be remembered at a time of excitement does not affect the truth of their testimony. 1935 O. 468=36 Cr. L. J. 1151.

75. Not summoned.

Evidence of witnesses should not be discarded merely because they are caste fellows and not summoned. 1934 A. 735=152 I. C. 120, 43 A. 186=1921 A. 278.

76. Number of— S. 134, I. E. Act.**A. For the prosecution.**

1. Order under S. 110 cannot be justified if there are only two witnesses for the prosecution, if the accused are respectable persons. 37 P. W. R. 1910 Cr.=10 Cr. L. J. 603.
2. It is not illegal to convict a man on the evidence of only one witness. It must entirely depend on the circumstances of each case. 51 M. 955=1923 M. 1185=30 Cr. L. J. 317, 11 Mys. L. J. 468, 52 A. 1005, 1934 O. 244.
3. If a number of witnesses saw the occurrence, the prosecution need not produce all and the production of two or three of the respectable and leading members of the village would suffice. 112 I. C. 215=10 L. L. J. 229=29 Cr. L. J. 993, 1923 P. 46=104 I. C. 708.
4. It is not illegal to convict an accused on the statement of only one witness but the evidence must be free from all doubt. 1925 L. 295=84 I. C. 436=25 Cr. L. J. 292.
5. It is the weight of evidence and not the number of witnesses which the court has to consider in a case. 1921 O. 115=63 I. C. 407=22 Cr. L. J. 647.
6. The quantum of evidence does not depend upon the enormity of crime, yet it is safer to follow the rule that "fouler the crime, the clearer and the plainer the proof ought to be." 59 I. C. 858=22 Cr. L. J. 154, 1933 S. 166.
7. A conviction for murder based on the uncorroborated testimony of a single witness, once before discredited, cannot be sustained. 12 I. C. 96=12 Cr. L. J. 488.
8. One witness is sufficient for a conviction under S. 193, I. P. C. 53 A. 598.

9. If a single witness attest several circumstances, each of which is capable of corroborating evidence, and if no such corroborating evidence is produced, there must be great confidence in the integrity and veracity of this single witness before all these circumstances can be believed on his sole testimony. *Gilbert on Evidence*, P. 180. See *Field's Law of Evidence in Br. India 8th Ed.*, P. xxvi.
10. As a general rule, a Judge should weigh nor number witnesses. But the witnesses under certain circumstances can be of great importance. "Where direct testimony is opposed by conflicting evidence, or by ordinary experience, or by probabilities supplied by circumstances of the case, the consideration of number of witnesses becomes most material, *Ibid*, at P. xxx.
11. In false cases there is generally no lack of witnesses, and any deficiency in the weight of witnesses is made up by number *Ibid*, at P. xxx.
12. Uncorroborated statements of single witness especially when they testify to atrocious crimes, like rape, etc., or a known like accomplices, to be persons of bad character, or are interested in the result, are insufficient for conviction. *Ibid*.

For the defence.

1. Where a number of respectable persons have given evidence in favour of accused, the court should not reject their evidence simply because prosecution have produced larger number of respectable witnesses. 1925 O. 501=85 I. C. 370=26 Cr. L. J. 530, 1935 A. 850=158 I. C. 424.
2. The Magistrate has no right arbitrarily to limit the number of defence witnesses but can refuse to summon under S. 257, Cr. P. C. on the ground of vexation or delay. 1926 L. 454=93 I. C. 1039=27 Cr. L. J. 543.
3. Where a large number of respectable witnesses testify to the good character of the accused as against meagre prosecution evidence or the evidence of Police Officer, an order demanding security under S. 110, Cr. P. C., is not justifiable. 9 L. 133=2 P. R. 1898 Cr., 37 P. W. R. 1910 Cr., 85 I. C. 370.
4. The Magistrate has no power to curtail the number of witnesses except on the ground that their examination will delay or probably defeat the ends of justice. 2 P. L. T. 330=61 I. C. 718=1921 P. 308=22 Cr. L. J. 430.

7. Oath to.— See Oaths Act.

8. Officials as—

Statement of High Government Officials should be considered like the statement of other persons Court should not surrender its judgment to such officer. 1935 S. 223.

9. Omission of the name of—in F. I. R See First Information Report—14.

10. Order of production of— See Examination of witness—15.

The witnesses as far as possible, should be called, in the order of events which they are called to prove and in chronological order. 1923 C. 579.

1. Partisans as— See Interested

1. If there are two factions, evidence of either parties should not be believed unless borne out by some documentary evidence. 1927 M. 820=103 I. C. 134.
2. Where the witnesses are partisans, there is always a tendency to strain a point in favour of friend. It is doubtful if they can conceive that they are thereby doing something improper. 1929 O. 491=119 I. C. 337
3. When there is a party fight, it is conventional to include in the list of offenders, all the adult members of a family, and their connections by marriage. 1929 M. W. N. 789.
4. Where the case is between two rival factions in a village and all witnesses against the accused belong to the family of the deceased, some corroboration is necessary otherwise accused should be given the benefit of doubt. 1935 L. 130=1935 Cr. C. 159.

2. Pleader as— See—22.

3. Policeman as—

1. To discredit witness merely because he is Policeman is impossible. 3 L. 144.

Witness—(contd.)

2. A Policeman's testimony, like that of every other witness must be judged on its own merit and should be accepted or rejected according to the circumstances of each case. 1930 L. 892=31 P. L. R. 688, 1935 A. 850=158 I. C. 424.

84. Poor. *See*—72.

It cannot be affirmed as a general rule that a person is not trustworthy because he is not wealthy. 49 C 13.

85. Privilege of—. *See* Privilege.**86. Prosecution of—for perjury.** *See* False evidence.**87. Prosecution—examined as defence.** *See* Cross examination—18.**88. Prosecution of—during trial.** *See* Transfer (grounds) Directing Prosecution—14.**89. Reading over statement to—.** *See* Reading over statement—2.**90. Refreshing memory.** *See* Refreshing memory.

1. Court should compel a Sub Inspector to refresh his memory by seeing the diary, if he does not remember the facts relevant to the case. 1924 P. 829 *Contra* 8 C. 739.
2. If the Police Officer refuses to refresh his memory with reference to the diary, the accused is entitled to the benefit of the refusal. 1925 P. 131=26 Cr. L. J. 738.

91. Refusal by—to be examined medically. *See* Medical Examination, Consent 13.

In a defamation case based on allegation that a woman has had illicit pregnancy she cannot be compelled to submit to a medical examination against her consent and her refusal to do so is no evidence against her. 1930 L. 159=123 I. C. 841.

92. Relationship. *See* 61.

1. Relationship to the party calling a witness is not a sufficient reason by itself for disbelieving a witness. 1923 N 322=76 I. C. 722, 1923 L. 598, 1934 L. 158, 1933 O. 340.
2. The evidence of respectable persons with special means of knowledge owing to relationship to the parties should not be viewed with suspicion in cases where only oral evidence is ordinarily available. 25 I. C. 60, 32 I. C. 380.
3. If the evidence of friends and relations is not considered as independent and reliable, then the Court shall have to fall back either on the evidence of enemies or total strangers, who would have no business to be present at the time when offence is committed. 1931 L. 38=130 I. C. 410=32 Cr. L. J. 522.
4. Where the eye witnesses are related to the deceased and there is no reason for their deposing falsely, they should be believed. 1935 L. 94 (95)=1935 Cr. C. 92.
5. Where the eye witnesses belong to the family of the deceased, some corroboration is necessary especially where valuable property comes back to the family of the complainants. 1935 L. 130=1935 Cr. C. 189.

93. Resiling from his previous statement.

1. The evidence of witnesses who have resiled from their previous statements should not be relied upon. 1925 M 879=27 Cr. L. J. 18, 1934 O. 507.
2. Statement made by a witness at the trial should be altogether rejected if it is in hopeless conflict with his previous statement. 1925 L. 483=27 Cr. L. J. 289.
3. Evidence of a witness who retracted his statement in the cross-examination cannot be relied upon for convicting an accused, unless there are strong reasons to suppose that the second statement in the cross-examination is absolutely false. 1925 L. 44=84 I. C. 1052=26 Cr. L. J. 412=6 L. L. J. 280.
4. No reliance can be placed upon the statement of a witness who can be very easily influenced to make a statement at one time and shortly after to disown it. 1921 P. 499=2 P. L. T. 125.
5. A witness resiling from some portion of his statement and who has been allowed to

Witness—(concl'd.)

104. Villagers as—.

For some reasons best known to himself an Indian villager never says "there was general kicking and beating" but works out an analysis of fists and feet and right sides and left sides, which is easily shown to be ridiculous, but which does not prove him to be telling lies. It is merely his habit of thought and speech. 123 I. C. 43 = 31 Cr. L. J. 477 = 1930 M. W. N. 74.

105. Voluntary.—

The evidence of voluntary witnesses who come forward as friends or associates of accused to give him good character, without being summoned, should not be brushed aside, unless discredited with regard to their honesty or good faith. 1923 A. 35, 43 A. 186, 1925 O. 473.

106. Waj Takar—

1. A witness who deposes that they saw the abducted woman at different times and different places, should not be believed in S. 498 cases, as they cannot be adequately cross-examined. 100 P. L. R. 1916, 5 L. 396.
2. Waj Takar or chance witnesses are easily procurable. 1925 L. 319 = 26 Cr. L. J. 1086 = 88 I. C. 30.

107. Woman of loose character as—.

It is not safe to rely on the statement of a woman of loose character without strong corroboration. 12 P. W. L. 1911 Cr.

108. Zaildar—

1. Zaildars and Safard Poshes are not Police officials. But it is to their interest to give evidence on the Police side. 110 I. C. 674 = 29 P. L. R. 539 = 29 Cr. L. J. 738, 1924 L. 49.
2. Zaildars and Lambardars are stock witnesses of the Police and they should not be believed in Political or semi-Political cases, especially when they appeared in number of such cases. 1923 L. 333.
3. The evidence of Zaildars and Safedposhes is not to be discarded because of their position, though in some cases it may be suspected. It ought to be tested in the ordinary way. 1934 L. 870.

WITNESS BOX. See Witness—10, Dais

WOMAN OF LOOSE CHARACTER. See Witness—107.

WOUND.

1. Abrasions.

1. Abrasions are indications of friction between the surface of the body and some hard object being in most cases the ground. *Lyon's Med. Jur.*, 1935, P. 147.
2. Extensive abrasions are always suggestive of accidents. Smaller abrasions, over points where bone closely underlies the surface are usually the result of falls. Such injuries are generally found on the forehead, elbows and the knees, in falls forward; falls in other directions may be indicated by abrasions over the scapula, over the scapula or over one or other crest of the ilia. *Ibid*, P. 143.
3. Abrasions may be of ante mortem or post mortem production. *Ibid*.
4. The shape of an abrasion may on occasions give useful information. A person knocked down by a motor car may bear on his body the mark of the shape of a honey-comb like abrasions made by the radiator. *Ibid*, P. 150.
5. The abrasions caused by the finger nails are crescentic in shape. They are seen in case of throttling children and adults. The marks are seen on both sides of the neck. But if only one hand has been used there may be several crescentic abrasions on one side of the throat and there will be only one on the other. *Lyon's Med. Jur.*, 1935, P. 172.
6. Mark left by ligatures used in hanging or in strangling are in effect abrasions caused by destruction of the epidermis. Strangulation is sometimes accomplished by compressing the throat with some hard object, e.g. a ball of wood; in such cases abrasions will be formed on the front of throat. *Lyon's Med. Jur.*, 1935, P. 201.

2. Concussion or commotion.

It is a term applied to the shaking of an organ by a blow or fall, more or less remote from it, which causes derangement of its function or lesion of its structure. Thus a blow or fall on the head, feet, knees or body, causes concussion of the brain, which may be followed by slight stunning, by hæmorrhage from the ears, nose or eyes or by immediate death. Concussion of the spine may or may not affect the brain, and if violent, will be followed by paralysis of all the parts.....A violent blow on the stomach, will suddenly extinguish life, by injury of the nerves, and paralysis of the whole nervous system, and yet no mark of lesion can be observed in the organ on dissection. *Ryan's Med. Jur., 1836, P, 325.*

3. Contused wounds.

1. *Definition and cause.*—(a) Concussion is an injury, and sometimes a wound, inflicted by a hard, blunt instrument without loss of substance, or wound of the skin, but with laceration of the cellular tissue, and extravasation of blood, either diffused or congested on the skin or in the cellular tissue, if the skin be divided, it is designated a contused wound. *Ryan's Med. Jur. 1836, P. 323. Lyon's Med. Jur., 1935, P. 172.*
- (b) Contused and lacerated wounds are often the result of injury by means other than the employment of a weapon. They may result from (1) injuries by broken glass. If slight they resemble incised wound; (2) Fall on some projecting, more or less sharp object; (3) Injuries from wild animals; or (4) Machinery and Railway accidents. Severe contused and lacerated wounds are often accompanied by very little hæmorrhage due to shock or bursting or crushing of vessels. Contusions or bruises include all degree of injury produced by blows, kicks or sudden pressure from explosion's. *Lyon's Med. Jur., 1904, pp. 120—123.*
2. *Duration of injury.*—In almost all contusions there is more or less extravasation of blood into the tissue constituting ecchymosis. Ecchymosis shows itself as a dark dull reddish blue discoloration of the skin, which in about twenty four hours begins to change colour, becoming lighter, and finally disappears altogether in about five or six days. Superficial ecchymosis appears within a few minutes after injury, and is first of a bluish black colour. *Lyon's Med. Jur., 1935, P. 174.*
3. If a weapon has been used, it will probably have been a blunt or rounded one, such as a stick or club. Frequently the shape, etc., of the weapon or instrument employed can be inferred from the shape, and situation of the patch or patches or ecchymosis. *Ibid.*
4. *Weapons.*—Weapons commonly employed are lathi, lathi bound with iron (*loha bandi*) rice-pounder, shoes, ropes, or cords or split cane. *Taylor's Med. Jur., 1928, P. 356.*
5. The injuries produced by blows from blunt instruments on the scalp, owing to the free manner in which it moves or closely to adjacent bones, has a close superficial resemblance to cut-wounds. *Taylor's Med. Jur., 1928, pp. 422-23.*
6. *Force of blow*—Effusion of blood proves little in itself as to the force of blow. The amount of blood varies with the form of instrument, the part of the body struck, and even with the individual young or old. *Criminal Investigation by Dr. Hans Gross, 1934, Ed. P. 416.*

Wound—(contd.)

2. Death from a mortal injury may occur by ; (a) Coma, e. g., from pre brain or fragments of bone or effused blood. (b) Asphyxia, e. g., from the movements of respiration, or mechanical interference with this. (c) Syncope from loss of blood or from mechanical impediment to the heart or (4) shock, as in death from concussion of the brain, or from the effects of a blow over the region of the solar plexus. *Lyon's Med. Jur. 1904, P. 17*

6. Ecchymosis.

Ecchymosis or blackness is an extravasation of blood by the rupture of the capillary vessels ; and hence it follows contusion. When ecchymosis is caused by injury, it generally appears in a short time, or in a few hours, sometimes not before the lapse of days. The part appears red and bluish, then leaden colour, next violet and yellow, and is marked most in the centre. The progress and duration will be modified by age and constitution. *Ryan's Med. Jur. 1836, P. 323.*

7. Fall from height.

1. When considerable force is exerted, as in the case of a fall from a height, or under a heavy weight, etc., serious internal injuries may be caused without external marks. *Criminal Investigation by Dr. Hans Gross, Ed. 1934,*
2. Even when there is no internal rupture, death may follow from shock. A man thrown from the top of balcony or verandah, but there was no external injury. Four days after he died. *Post mortem* disclosed a rupture of the liver near the surface, 4 inches in length. A man was thrown from the bullock cart, and fell on his head without losing his hat, which saved him from external injury. His death was due to shock. *Ibid, P. 417.*
3. A blow or fall on the head, feet, knees or body, causes concussion of the brain, which may be followed by slight stunning, by hæmorrhage from the ears, nose or eye by immediate death. Concussion of the spine may or may not effect the brain, if violent, will be followed by paralysis of all the parts. A violent blow on the stomach, will suddenly extinguish life, by injury of the nerves, and paralysis of the whole nervous system, and yet no mark of lesion can be observed in the organs at dissection. *Ryan's Med. Jur., 1836, P. 325.*
4. The term *Distortion* is a serious injury followed by engorgement, which may not be dissipated for weeks or months, according to the habit and constitution of the patient. There is sometimes stiffness of joints ; sometimes relaxation of the joints, which is to be ascribed to scorfulous or ricketty disposition. *Ryan's Med. Jur. 1836, P. 326.*
5. A blow from the front will cause a fall on the back, a push from behind will throw the recipient on his face. When the fall is not due to any force, but to sudden loss of consciousness, the body will fall on its face. The question of the direction of the fall may be of great importance in some cases. *Lyon's Med. Jur., 1935, P. 133-134.*
6. Smaller abrasions, over points where bone closely underlies the surface, are usually the result of falls. *Lyon's Med. Jur., 1935, P. 147.*

8. Fracture of bones (and fall)

1. The bones of aged persons are sometimes very brittle and slight violence will produce fracture. Fracture may be ascribed to spontaneous causes. Thus bones have been fractured by moderate muscular exertion. The elbow, heel bone, and knee bone and femur in old people are particularly exposed to this accident. The arm of a healthy man has been broken by throwing a cricket ball. *Taylor's Med. Jur., 1928, pp. 463-469.*
2. Fractures if simple are not dangerous, but if compound or comminuted, especially in or near joints, they are often serious and may terminate fatally. *Ryan's Med. Jur., 1836, P. 326, Taylor's Med. Jur., 1928, P. 470.*
3. The period of consolidation of a fracture of the same kind of fracture will be 40 days in an adult, and fifty days in an infant, in thirty or forty days in a young person, or perhaps not at all.

Wound—(contd.)

4. Fractures will not be united so soon in patients affected with gout, scorfula, cancer, or venereal disease, mollities, or frigilias assium, as in healthy individuals. *Ibid.*
5. A fracture produced shortly after death, while the body is warm, and another produced shortly before death will present similar characters, except that in the former case there might be less blood effused. A fracture caused ten or twelve hours before death would be indicated by a copious effusion of blood into the surrounding parts and between the fractured edges of the bones, as well as by the laceration of the muscles, or if a longer period before death, there may be marks of inflammation. Fractures caused several hours after death are not accompanied by an effusion of blood. *Taylor's Med. Jur., 1928 Vol. I, P. 470.*
6. *Whether fracture is due to blow or fall.*—Suppose that the deceased is annoying and following prisoner. The prisoner, turns round and pushes (he says), and strikes (says the prosecution) the deceased, who falls and dies speedily from head injury. Although the evidence of a blow or push may be conflicting, it may be very material for the purpose of awarding punishment. The answer is by no means easy, but the following points may help materially to determine blow or fall—(a) The nature of spot or ground upon which the head was alleged to have fallen, soft earth, for instance, or a hard flagstone. If on soft earth, was there a sharp stone or bit of brick or other hard substance with which the head could have come in contact? (b) *How did he fall*—forwards, backwards or sideways. (c) *The number and nature of the injuries.* If a fight is admitted many of these may be due to it, but if only one blow, or none, is admitted, then one fall can only account for one injury. (d) *The position of injury.* In a simple fall it is almost impossible for the vertex to be injured, unless the victim is knocked down when standing about his own height from a wall, and in the fall thus brings the top of his head against the wall. *Taylor's Med. Jur., 1928, Vol. I, P. 441.*
7. In examining a fracture it is important to determine whether a *weapon* has or has not been used, and this may sometimes be ascertained by the state of the parts. It is common defence on all these occasions to attribute the fracture to an accidental fall. *Taylor's Med. Jur., 1928, Vol I, P 468.*
9. **Fracture of the skull.**
 1. *With pointed weapons*, or with weapons the striking surface of which is small in proportion to the momentum of its impact, such as the blunt end of a hammer (a) the shape of the depression on the outer surface frequently corresponds pretty closely to the shape of the contact area of the weapon; or (b) a local starred fracture is produced, which may or may not extend beyond the area of depression. *Taylor's Med. Jur. 1928, P. 439, Vol. I.*
 2. *Splintering of the tables.* In the case of local fractures the table of the skull which at the moment of impact is furthest from the force is splintered to a large extent than the table nearer to the force, owing to the fact that it is, *qua* the force unsupported. This ascertains the direction in which a solid object has passed through the skull. If such a starred local fracture has a limb extending from the locality, such limb will follow the rule, *viz*, the line of fracture shall be parallel to the line of direction of the crushing force, most frequently starting from the point of contact. Thus a blow on the side of the head produces a fracture running across the base and over the vertex from side to side. If the head be supported, and so prevented from moving, the fracture may start at the point of contact of the blow, or at the opposite point where the head was supported for example, in falls on the vertex the fracture may have begun either at the vertex or at the base. *Ibid, P. 439.*
 3. It is obvious that the greater the violence, as in train smashes or contact with heavy vehicles, the more difficult it is to actually trace these lines of fracture. When the force causing the fracture is broad one there may be extensive fracture and separation of the bones of the head without any division of the skin. *Ibid, P. 440.*
 4. A blow on the head may produce fracture of the inner table of the skull, and cause death by compression as a result of the fracture or of the effusion of the blood. The bones between the orbit and the brain are very thin, and, in young persons especially, very easily perforated. *Ibid, P. 440.*

Wound—(contd.)

5. A stick, a gimlet, a pair of scissors, a birch broom, a tobacco pipe, a pen holder have all been recorded as producing such fracture. *Ibid.* P. 440.
6. A person is occasionally sensible so long as the foreign substance which produced the fracture and depression remains wedged in the brain, insensibility and other fatal symptoms beginning to manifest themselves only after its removal. *Ibid.* P. 440.
7. Fracture of the skull of a foetus in utero was caused by a fall. See Casper (iii), P. 115. *Lyon's Med. Jur.* 1934, P. 317
8. In case of fracture of skull intention to cause death is presumed. 1936 R. 46= 37 Cr. L. J. 290.
10. Gunshot. See Attempt to murder—4. Murder—30.

A. Accidental—.

1. The accidental discharge of firearm may result in the wounding of the person holding the weapon or of some other individual. In the first case the wound will be on the front of the body, and will often be from below upwards, as the weapon is generally discharged while it is being examined, when the muzzle is probably pointing upwards. *Lyon's Med. Jur.*, 1935, P. 234.
2. In connection with such accidental wounds the characteristics of a close discharge will be found. If an individual other than one handling the gun is wounded, it will not be possible to distinguish the injury from a deliberately inflicted one. In cheap revolvers, gas escapes at the time of discharge. This gas, carrying with it unconsumed powder, will stain the hand holding the weapon. Blacking of the hand is proof of suicide or of accident. *Ibid.* P. 234.

B. Diagnosis of—.

1. Gunshot wounds resemble contused and lacerated wounds. If the wound is single, it may have been caused by a firearm loaded with powder and wadding only, if the weapon has been discharged near the body. Two orifices caused by the same discharge, indicate the employment of a hard projectile. When two orifices are present, the orifice of entry will usually be found to be smaller and more depressed than that of exit, which latter is usually ragged and everted. More than two orifices may be caused by one projectile, e. g., when this has entered the body after traversing a limb or has split up against a sharp ridge of bone into two pieces, each finding a separate exit, or it may be caused by an intact bullet and a splinter of bone punched off by it. *Lyon's Med. Jur.*, 1904, pp. 120-121.
2. If only a superficial bruise or abrasion be found it is impossible to say positively that a firearm caused it, but grooved appearance in the skin and holes in the clothes may give some idea. If the missile is found in the body it is conclusive evidence of the nature of wound. *Ibid.* If the missile is found not in the body, but in the room, this is a piece of very strong circumstantial evidence to be weighed with the character of wound. The aperture of entrance is round only when the bullet strikes point blank, or nearly so; if it should strike obliquely, the orifice will have more or less of an oval or valvular form. If the projectile traverses a bone the direction of fire may be ascertained from the difference in the margin of wounds of entrance and exit. Bone always tends to bevel at the point of exit. The entrance would show as a single lacerated hole about the diameter of the gun barrel, and surrounded by a zone of blackening or burning if discharged within a short distance. *Taylor's Med. Jur.*, 1923, Vol. 1, pp. 510-511.
3. With a small crushing force it naturally follows that the lower its velocity and power, the larger the wound, because the elasticity of the skin and other tissue has more time and opportunity to come into play with consequent greater tearing. It is the same with the aperture in the dress when this is formed of elastic material. *Ibid.* P. 512.
4. When an automatic pistol or revolver is fired with the muzzle touching the skin, the gases pass into the wound and lacerate the tissue by their expansion. This causes the wound of entrance to enlarge than the exit wound. *Ibid.* P. 513.
5. The chances of two different bolts making identically the same marks are too remote as to be to all intents and purposes non-existent. 1936 Pesh. 152.

Wound—(contd.)

C. Direction from which the firearm was fired.

1. A missile fired from a firearm has a tendency to continue in straight line from the point of entrance to the point of lodgment, or to the wound of exit, so that, if the internal wound be straight, this straight line proves accurately the direction in which the barrel of the weapon was pointed when fired. But sometimes it is not straight, but curved, on account of slight obstacles, such as bones, etc. The position of the wound of entrance marks the part of the body which was at the moment of discharge nearest to the muzzle of the weapon, or rather in a straight line, with the muzzle. It therefore indicates with mathematical precision whether the victim was facing the muzzle or with his back or side to it. If we can discover two fixed points where a ball has touched a building without being deflected, it will be easy to determine the direction. *Taylor's Med. Jur.*, 1928, pp. 522-523.
2. The deflection of projectiles may occur not merely when they come in contact with bones, but when they meet skin, muscles, tendons, or membranes. A ball which entered at the ankle has been known to make its exit at knee and another entering the shoulder was found below the right ear. *Ibid*, P. 524.
3. When a shot is fired at a person through pane of glass the person firing must be in the same straight line when it is produced by joining the two points, viz., of the window pane and that where the victim was standing, unless it can be shown that the assailant was on horse back. *Criminal Investigation by Dr. Hans Gross*, 1934 Ed., P. 291.
4. Bullet marks or shot holes, by their situation, may indicate the position of the assailant at the time the weapon was discharged. *Lyon's Med. Jur.*, 1935, P. 237.

D. Distance of the firearm discharged.

1. If the muzzle of the weapon were in direct contact, the skin besides being burnt, is torn, and much lacerated. The bleeding is usually slight, and when it occurs it is more commonly observed from the orifice of exit than from that of entrance. *Taylor's Med. Jur.*, 1928, Vol. I, P. 511; *Lyon's Med. Jur.* 1904, P. 120, *Lyon's Med. Jur.*, 1935, P. 241.
2. If the distance from which the gun is fired is within 12 inches, the wound will, as a rule, be single, while beyond this each shot will make a separate wound. (*See Casper, I. 266*). But it will also depend on the charge, size of shot, bore of weapon and whether choke or cylinder. *Lyon's Med. Jur.*, 1904, P. 121.
3. In the case of shot guns, the distance from which the weapon was fired may be deduced from the amount of scattering of the charge. At about a yard the whole of the charge enters in a mass, producing a round hole about the size of the bore of the weapon, with ragged edges and surrounded by a zone of blackening and burning. As a rule there is little trace of burning beyond a yard, but traces of powder marks may be found up to four yards or more. *Taylor's Med. Jur.*, 1928, Vol. I, P. 516.
4. The shot begins to disperse in an ordinary cylindrical gun at about three yards, at which distance the bulk of the shot enters in one mass and leaves a hole with a few isolated shot around it. The dispersion gradually increases, and at about five yards an open pattern about ten inches in diameter is found. *Ibid*, P. 516.
5. At ten yards the diameter of spread is about twenty inches, at twenty yards about thirty inches and so on. With fully choked barrels the dispersion is about half the above. With pistol loaded with shot the dispersion is very much greater. *Ibid*, P. 516.
6. Dispersion varies to a certain extent with different weapons, and to a great extent with the nature and quality of the powder, and the manner of filling or loading. *Ibid*, P. 516.
7. It is out of the power of a witness to say from the mere fact of a bullet lodging or traversing whether the assassin was far off or near at the time the deceased was wounded. *Ibid*, P. 517.
8. A single bullet fired from four to six yards from the person has been known to produce an extensive wound. *Ibid*, pp. 517-518.

Wound—(contd.)

9. A discharge of small shot, in contact with the skin or close to it, ge. not a round opening, but a severe lacerated wound. *Ibid*, P. 518.
10. It is unusual to get marks of burning beyond a yard or a yard an shot gun, or at more than half a yard with a revolver, *Ibid*, P. 519.
11. There are but slight signs of burning with automatic pistols, even for the charge of powder is very light, and it is completely exploded.
12. The lighter the projectile, the shorter the distance to which it can discharged near the body, it may produce penetrating fatal wound. *It*
13. If there are marks of powder or burning and the automatic pistol a more than a foot away when fired; if there are no marks it is impossible far off it was. *Ibid*, 522
14. No general rules regarding distance can be laid down. Experiments m with the weapon and with cartridges (or loading) similar to these which to have been used. *Ibid*, P. 522.
15. As distance increases, the traces of smoke, tattooing and burning disper increased area and finally disappear altogether. All may be found up to 6 inches and at ranges beyond 3 feet very little if any, trace of powe observed. Automatic pistols as a rule fire cartridges loaded with less pow those fired from revolvers and therefore produce less discolouration. *Investigation by Dr. Hans Gross, Ed. 1934, P. 424.*
16. With professionally loaded cartridges and smokeless powder a single wound up to a range of about one yard, but the burning, blackening and tatooi more intense than ever is to be found with a wound from a rifle, revolver o and the single wound has irregular, ragged edges. *Ibid*. At any range b foot, traces of individual holes made by separate shots are likely to be fo bullet usually takes a straight line between entrance and exit and from t line of fire can be deduced. Shots discharged at short range may produce a similar to that made by bullet, because the shot on quitting the barrel i packed, separating only later to form what is called the cone of dispersion. pp 425-426.
17. The distance at which the shot was fired is usually related to the questi premeditation, as it is manifest that a shot fired from a considerable distance not have been fired in the heat of sudden quarrel. *Lyon's Med. Jur., 1935, P.*
18. If the gun is fired at a right angle to the body the burn covers an area cu in shape and about 6 inches in diameter. If the burnt area be oval in shape indication is that the barrel of the gun was inclined to the surface. *Lyon's J Jur., 1935, P. 242*
19. In the case of entry of gas in the wound or of burning of the skin, it is safe to that the injury must have been caused by a shot fired within an inch or two of t body. *Ibid*, P. 244.
20. A shot of cartridge about No. 6 in size fired at a distance of 6 paces is very like to cause death. The accused is guilty under S. 307, I. P. C 10 Cr. L. J. 57= C L. J. 432.

E. Kinds of firearms and use.

1. *Guns including rifles.*—Guns may be classified from several points of view single, double, or more barrelled-muzzle or breach loaders-rifles or shotgun. Shot includes all projectiles in the form of small balls, loaded into the barrel not singly but in quantities, and not compressed but simply retained by the wad. While bullets are cast in moulds, shot is obtained by allowing molten lead to fall through a sieve, from a sufficient height into the water. To render the lead more liquid from $\frac{1}{3}$ rd to $\frac{1}{2}$ per cent of arsenic is generally added. This detail is important specially when the shot has remained sometime in the body. Shot is generally manufactured according to numbers, each number indicating a special size. They are distinguished by the number of pellets per ounce weight. The table on the next page may be accepted as a fair standard.

Table giving the number of shot in 'one ounce of Newcastle, chilled or soft shot.

Size	SSG	AAA	AA	A	BBB	BB	B	1	2	3	4	5	6	7	8	9	10	12
Pellets ounce.	11	40	48	56	64	76	88	104	122	140	172	216	270	340	450	590	850	1250

Criminal Investigation by Dr. Hans Gross, Ed. 1934, P. 273.

2. Modern *Airgun* will fire a bullet up to 22 with accuracy up to ranges of at least fifty yards and that serious damages can be done at considerable longer ranges. *Ibid*, P. 276.
3. If a *muzzle loading percussion gun* has been used we must in making search look out for accessories peculiar to this weapon, e.g., ramrod plug, wads, shot bags powder-horns, and such like which belong to a muzzle loader. *Ibid*, pp. 278-279.
4. In *Breach loading shot guns* there are three systems of percussion-pinfire, rimfire, central fire. In pinfire, a pin passes through the cartridge perpendicular to the axis, the hammer falls on the pin, which causes the cap to explode. Rimfire is unknown in common use. Central fire cartridges are now universally employed. *Ibid*, P. 279.
5. When it becomes necessary to distinguish between shots fired from a muzzle loading rifle and a breach loading rifle, we must remember the way in which muzzle loaders are charged. The powder is first poured down the barrel, the mouth of the barrel is then covered with a well-greased piece of cloth, called a "patch" on which the bullet is placed, pressed down and finally rammed home. Hence only certain projectiles can be used. A round bullet is almost certain mark of a muzzle loader. Marks are also left by the patch, but this happens on the contrary when the bullet fits very tightly. *Ibid*, pp. 280-281
7. *Pistols* In all pistol shooting the shooter looks at the object aimed at and not at the pistol. *Ibid*, P. 284.
8. *Revolver*. A service revolver, firing a .455 calibre soft lead bullet, will stop any body if it hits him anywhere. Very compact weapons of .38 calibre or less will not seriously disable unless a vital spot is hit. Although shots from a revolver or pistol can be effective at long ranges, the weapons are ordinarily used only at close quarters. There are many varieties of country made revolvers in India from which shots can be fired. *Ibid*, pp. 285-286

F. Marks on dress and size of shots.

1. It is possible to find large gun shot wounds while the dress covering them is not in the slightest degree injured. Dr. Bick says that he found a deep wound in the arm with fracture of the humerus without any corresponding hole in either the cloak or tunic. *Criminal Investigation by Dr. Hans Gross, Ed. 1934, P. 429.*
2. At very close ranges there may not be much difference in the appearance of wounds caused by shots of various sizes; the smaller the shot the more minutely irregular edges are likely to be. Small shot will usually lodge in the body, large ones are likely to pass through and to make exit wounds, if fired from close range. The shot most commonly responsible for injuries here are of size SG, BB, Nos. 4 and 6. *Lyon's Med. Jur.*, pp. 244-245

G. When was the firearm discharged

1. For a few hours there is a smell of hydrogen sulphide, and on chemical examination of fouling, a reaction for sulphides will be obtained for five or six hours. Sulphates are found only in traces for the first few days, then they gradually increase. Iron salts in the ferrous state are usually found in traces in the early stages, and gradually become converted into ferric salts. *Taylor's Med. Jur.*, 1928, Vol. I, P. 544.
2. Recently discharged firearms will be found blackened inside the barrel, from the residue left by the gun powder after ignition. This residue consists mainly of finely divided carbon and potassium sulphide, and yields to water a dark-coloured liquid, divided carbon and potassium sulphide, and yields to water a dark-coloured liquid, alkaline in reaction, and which, after filtration, strikes a black colour with a solution of a bad salt. After a time the potassium sulphide becomes oxidised into potassium sulphate. Again the weapon alleged to have been used may show signs of recent

Wound—(contd.)

fracture, or be bent, or otherwise injured as the result of its use. *Lyon's Med. Jur.*, 1904, P. 127.

H. When was it inflicted.

1. A gunshot wound undergoes no marked change for an hour or so after its infliction. *Taylor's Med. Jur.*, 1928, P. 513.
2. If the wound be something over ten or twelve hours in age, its age must be judged by the amount of swelling, sloughing, suppuration, etc., for it becomes then merely a bruised, probably septic, wound. *Ibid*, P. 513.

I. Whether dangerous to life.

1. Gunshot wounds are dangerous to life, *first* from shock; *secondly* from laceration of a large blood vessel or important viscus, such as heart, brain, liver, etc., and *thirdly*, being contused wounds, the tissues are killed and consequently slough, with danger of hæmorrhage or septicæmia, etc. *Taylor's Med. Jur.*, 1928, P. 515.
2. So long as the missile still remains in the body danger exists. *Ibid*, P. 515.
3. Instances of gunshot wounds proving fatal after a year and a day are not infrequent, and they show the inconsistency of limiting the legal responsibility of an assailant by the period at which death takes place, *Ibid*, pp. 515-516.
4. Fatal wounds may be caused by gun powder and wadding alone if fired within about four inches from the body. *Lyon's Med. Jur.*, 1904, P. 121.
5. A single pellet of shot may cause death by penetrating the aorta or the brain through the eye. *Ibid*, P. 121.
6. The question as to how long did the victim survive can be answered by (a) nature of the wound, (b) the organ wounded, (c) the state of the wound as regards suppuration, gangrene, healing, etc., and (d) the amount of blood lost. *Taylor's Med. Jur.*, 1928, P. 513.

J. Whether due to accident, suicide or homicide.

The evidence to determine this question may be detailed (a) from the situation of the wounds; (b) from the design, (c) from the proximity of the weapon on discharge; (d) from the position of weapon when found after death; (e) from the direction of the wound, (f) from the nature of the projectile, wadding, etc. *Taylor's Med. Jur.*, 1928, Vol. I, P. 528 to P. 542

K. Whether one bullet can cause more wounds.

One ball may sometimes produce several wounds on the body and then there will be only one orifice of entrance, but owing to the ball splitting within the body and dividing itself into three or four pieces, there may be several orifices of exit. This splitting of a ball has repeatedly occurred when the projectile in its course has encountered an angular surface, or a projecting ridge of bone. *Taylor's Med. Jur.*, 1928, P. 525.

L. Whether shots can be fired from pistol and revolver.

1. That many strange varieties of country-made revolver exist in India is certain. *Criminal Investigation by Dr. Hans Gross*, Ed. 1934, P. 236.
2. In a recent case a number of eye witnesses testified that the accused had shot the deceased several times with a revolver and made off. Four shots were fired and in three of these a round bullet being used and in the fourth small shot. The bullets were weighed and expert evidence was given that they could not have been fired from any known revolver. Indeed 12 bore gun would have been required to take them. On the other side a Police Officer gave evidence that he had seen a country made revolver which he thought might be of sufficient calibre to take such a bullet. The appeal was adjourned by the High Court, and such a weapon was produced. It was a muzzle loads having four short barrells welded together. All four were rotated by hand, bringing a cap under the hammer. The conviction was upheld. (By Madras High Court). At the same time a two-barrelled muzzle loading revolver of larger calibre was found in which the barrells had been bored through one rectangular piece of metal. This case exemplifies the danger of accepting dogmatic statements from experts of the layman variety. *Ibid*, P. 236.

Wound—(contd.)

3. Naturally when we find shot we suppose it has been fired from a shot gun and when we find a bullet we conclude that it has been fired from a rifle of corresponding calibre and rifling but we must not forget that the fact may be quite otherwise, and above all we must not dismiss legitimate suspicion on the sole ground that "the projectile does not fit the gun". *Criminal Investigation by Dr. Hans Gross, Ed. 1934, P. 275.*

M. Whether self-inflicted. See —37.

11. How long a person lived after the blow. See—12—D.

1. In India a great many cases turn upon the question as to how long a person could have lived or what actions could have been performed by him after having received a given wound or wounds. *Criminal Investigation by Dr. Hans Gross, 1934 P. 421.*
2. Accused thrust his knife into the head of the victim and $4\frac{1}{2}$ inches of blade had penetrated the brain. His relatives tried to pull it out, but without success. He was taken home and then across country to a hospital. At midnight after half an hour's hard work the knife was drawn out. The man perfectly recovered and gave evidence against the assailant. *Ibid, P. 421.*
3. The right pulmonary artery had been severed by a severe stab. The deceased was said to have run a distance of 200 yards before he fell dead, and it was said that this was impossible after such a wound. The Court held that no definite conclusion could be come to in such a case as to how far a man could go. *Ibid, pp. 421-422.*

12. Incised.

A. By axe.

Wounds caused by axe are characterised by their great depth. They may be long if the weapon does not strike squarely on the surface. If it does so, the length of the wound, corresponding to that of the blade will be comparatively short. If the head of the axe strikes the surface first it will sink deeper into the tissue than the toe and the corresponding end of the wound will be the deeper...The deeper end, therefore, indicates the position of the assailant. ...Axe wounds on the head or trunk are very fatal. *Lyon's Med Jur., 1935, P. 179.*

B. By knife or dagger.

1. In the case of knife the opening made at the moment of penetration will be lengthened by the act of withdrawing the weapon. They almost, always, present the form of slit having two pointed extremities, so much so that one is tempted to believe that the wound has been inflicted by a dagger, an instrument with two cutting edges. *Criminal Investigation by Dr. Hans Gross, Ed. 1934, P. 418.*
2. When a wound has each end sharp and pointed, it must not be concluded that wound has been inflicted by a dagger or other double-edged instrument; more frequently the wound has been caused by a knife with a round or square back. Frequently the wound is somewhat narrower than the instrument employed. The maximum difference between the size of the wound and that of knife may be according to Hofmann $\frac{1}{2}$ to $\frac{3}{4}$ inch. An error may arise with reference to number of blows struck by the knife; often one might think there have been several, while in reality there has been only one. This will occur when the blow has been struck on a part of the body when the skin is folded back on itself, as on the necks of old and thin persons. On stretching the skin, one sees several cuts connected together in the form of the letter Z, or even completely separated one from the other. *Ibid, P. 419.*
3. Regarding the direction of blow of knife a medical man can seldom give precise information. All the necessary circumstances must be observed. *Ibid, P. 420.*
4. Very sharp knives do not always produce clean cuts. They can produce only slashed and irregular wounds, if its blade instead of being guided in the direction of the wound, is held obliquely thereto. *Ibid, P. 422.*
5. The edges of typical incised wound are clean cut. When examined with lens, they are seen to be perfectly regular. *Lyon's Med. Jur., 1935, P. 177.*
6. A blunt knife, sword or axe causes tearing of tissues and therefore irregular edges. *Ibid.*

Wound—(contd.)

C. Dangerous to life.

1. Incised wounds may prove fatal though there is no trace of hemorrhage. *Criminal Investigation by Dr. Hans Gross, Ed. 1934, P. 420.*
2. The wound caused by bayonet is seldom perceived as the mark left on body is insignificant. The problem is more difficult when the wounded person has turned at the moment of receiving the wound. The parts are then twisted, when they regain their previous position the twisting disappears and the different layers of pierced flesh are super imposed differently from before; they have been displaced and no longer correspond. Each layer pierced is closed by an unperforated portion. *Ibid, P. 420.*
3. Some knife wounds present a horrible aspect and yet are not mortal or even dangerous. A knife was struck into the head of a person and it could not be drawn out by a blacksmith. He walked for 45 minutes and went to a doctor who pulled it out with the help of a crow-bar. He was cured in 15 days. Similarly a shoe-maker drove 5 nails of about 2 inches each in his head and was cured. *Ibid, P. 421.*

D. How long a person lived after the blow. See—11.

1. In India a great many cases turn upon the question as to how long a person could have lived or what action could have been performed by him after having received a given wound or wounds. *Criminal Investigation by Dr. Hans Gross, 1934 P. 421.*
2. Accused thrust his knife into the head of the victim and $4\frac{1}{2}$ inches of blade had penetrated the brain. His relatives tried to pull it out, but without success. He was taken home and then across country to a hospital. At midnight after half an hour's hard work the knife was drawn out. The man perfectly recovered and gave evidence against the assailant. *Ibid, P. 421.*
3. The right pulmonary artery had been severed by a severe stab. The deceased was said to have run a distance of 200 yards before he fell dead, and it was said that this was impossible after such a wound. The Court held that no definite conclusion could be come to in such a case as to how far a man could go. *Ibid, P. 421—422.*

E. Incised wound with blunt weapons.

It is not always possible to decide from the nature of the wound itself what kind of instrument was used, indeed the wound sometimes presents appearance pointing to cutting or stabbing instrument as the cause:— (a) There are cases where an instrument to all appearance perfectly blunt yet has some sharp or, pointed projection, more or less visible, such as a fence stake with a nail not very readily observed, or a small sharp splinter on a branch of wood. (b) Instruments really blunt may in certain cases inflict long wounds with clean cut edges, especially on those parts of the body (as the skull) where the skin is stretched tightly over the bone. *Hofmann* has laid down that wound caused by cutting instruments are always wedge-shaped at the base, while the base of the wound caused by a blunt instrument is crushed or bruised, but the latest surgical authorities declare that it is often difficult and sometimes quite impossible to draw any distinction. *Criminal Investigation by Dr. Hans Gross, Ed., 1934, pp. 415—416.*

F. Kind of weapon used.

In examining an apparently incised wound with the object of ascertaining the kind of weapon, if any, used in producing it, it is important to note:— (a) *Situation of the wound.* An apparently incised wound on a part where the skin closely overlies a bone, or sharp ridge of bone, may be produced without a weapon or by blunt weapon. Blows with the fist over sharp ridges of bone such as chin or orbital ridge or blows with a club on the scalp, may produce wounds closely resembling incised wounds. Wounds caused in this way are generally, but not invariably, vertical to the bone. *Lyon's Med. Jur., 1904, P. 119.* (b) *Edges of the wound.* Edges should be examined with a lens. Sharp, clean cut, uninverted edges, indicate the use of a sharp-edged weapon tearing and inversion indicate the employment of a blunt weapon, or production without a weapon. *Ibid, P. 119.* (c) *Length and depth of the wound.* Long incised wounds indicate the use of a sharp-edged weapon, and may either be caused by a single blow from one with a long, tolerably straight edge, such as a sword, or by a drawing cut from one with a short edge, such as a razor. In the case of sword, the method of production is often indicated

by the underlying bones being clean cut through; and in the case of razor by the wound tailing off at one end into a superficial scratch. *Ibid*, P. 119. (d) Generally the shape of the wound, its dimensions and its situation, will afford some information to the nature of weapon used, although it is very difficult for a medical man to distinguish blows by some instrument. *Criminal Investigation by Dr. Hans Gross, 1931, P. 417.* (e) It is easy to confound a blow from a hatchet with one from a knife, or a blow from a piece of wood with sharp angular sides with that made by a sword. *Ibid*, P. 417. (f) The wounded person should be placed in the same position in which the blow was given and whole scene must be reconstituted in the mind and its possibility verified. *Ibid*, P. 417. (g) It is of very little use to compare with any instrument wounds which are in their swollen or cicatrised condition. The process of healing which commences from the moment the wound has been inflicted, rapidly transforms the wound and it is hardly possible to recognise the primitive form. *Ibid*, P. 418. (h) The wound lengthens out when it runs along the muscle, on the contrary, when it runs across the muscle it contracts. *Ibid*, P. 418.

G Weapons.

1. *Axe or hatchet* usually produces comparatively short incised wounds, either deep or accompanied by indentation and extensive fractures of the bones beneath. Cutting instruments with a concave edge and projecting point often cause linear wounds resembling a punctured wound at one end and gradually decreasing in depth towards the other end. If the wound has been inflicted on curved surface, the puncture caused by the point, and the incised wounds caused by the edge, may be separated by an unwounded portion of the skin. Weapons which produce incised wounds are: (1) short edged light weapons such as razor and knife, (2) heavy short-edged weapons of the hatchet class such as axe, *kulhar*, *garasi*, *gandasa tarsh* and sacrificial knife (*khanda*). Weapons allied to this class are the bor spade (*phaori* or *kudali*) and the Gurkha *kukri*, *khurpa* or gross-cutter's knife also belong to the spade class, (3) Long edged weapons represented by the curved swords (*talwar*) or the straight sword (*kirich*) and curved edge weapons with a concave edge and projecting point, such as the (*dao koita*) and the sickle (*haswa*, *daranti* or *ela*). *Lyon's Med. Jur., 1904 P. 119, Lyon's Med. Jur., 1935, P. 175.*
2. Wounds inflicted by axes or axe heads with convex edges on longshafts, are often, especially if well aimed, straight and clean cuts. *Criminal Investigation by Dr. Hans Gross, 1934 P. 418.*
3. Wounds caused by broken glass (which frequently occur in tavern brawls) are arched and somewhat shell shaped, like the broken outline of the glass itself. Straight cuts due to broken glass are rarely observed. *Ibid*, P. 117.
4. Wounds inflicted by sickles and scythes never show a straight line but a broken zig zag line. This is because they are never sharpened like knives. *Ibid*, P. 117.
5. In wounds caused by cutting instruments the form of wound rarely corresponds to the true form of weapon. *Ibid*, P. 118.

H Warding off blows by victim.

1. Injuries are seen on the inner side of the forearms and on the hands. These are received during the victim's attempt to ward off the blows or to grasp the weapon. Such injuries form conclusive proof of homicide. *Lyon's Med. Jur., 1935, P. 177.*
2. A man in attempting to ward off a blow directed at his head throws up his arms above his head and the inner side of forearm is uppermost and injured. *Ibid*, P. 177.

I Indirectly fatal. See Culpable homicide—21—13—19—8—36.

Wounds which cause death indirectly, it is assumed that the deceased survives for a certain period, and that the wound is followed by inflammation, septicaemia, toxæmia, tetanus or some other mortal disease which is a consequence of the injury. Under this head may be also arranged all those cases which prove fatal by reason of surgical operations rendered imperatively necessary for the treatment of injuries. A wounded person may have been the subject of subsequent and fatal treatment, and the question will arise to which of the two causes his death was really due. It is to be observed in such cases, that the supervening disease, the poison, or the subsequent ill-treatment, should be of such a nature as to account for sudden or rapid death. *Taylor's Med Jur., 1925, Vol. I, P. 326.*

Wound—(contd.)

14. Lacerated—.

A lacerated wound is one in which the tissues have been torn apart, not cleanly cut. Such wounds result from assaults with blunt weapons, from falls, machinery and traffic accidents, attacks by animals, etc. They are frequently accompanied by bruising, and there may be much loss of tissue. Lacerated wounds caused by blunt weapons or by falls are invariably situated on regions where unyielding bone closely underlies the surface. *Lyon's Med. Jur.*, 1935, P. 183.

15. Negligent or unskillful treatment of— See Culpable homicide—35. Murder—82 Death by negligence—7.

1. No conviction for murder can take place if the medical evidence showed that the injury was not originally mortal, but became so through unskillful or negligent treatment. If death has been caused by a wound, it is immaterial that in more favourable circumstances, and with more skilful treatment, a fatal result might have been averted. *Taylor's Med. Jur.*, 1928, pp. 99-100.
2. The true distinction is that if the death is occasioned by grossly erroneous medical treatment, the original author of the violence will not be answerable; but if it arises from the want of merely of that higher degree of skill which is available only in big towns, the perpetrator of the unlawful act will be responsible, because he has wilfully exposed the deceased to a risk from which he has practically no means of escaping....If the wound had not been likely to produce death, but through unskillful treatment, death ensued, that would not be murder. Where owing to obvious mal-treatment of the original wound, an operation became necessary, and resulted fatally, the assailant would probably not be guilty of murder. *Ibid.*

16. No external marks :—Dangerous wound—Surviving—

If the blow has caused rupture of the internal organ, it is almost fatal. Yet the wounded person may live for sometime; for example, with a rupture of the liver, skull, intestine from five to eleven days, with a fracture of the base of the skull, three to twelve days; with a rupture of the intestine, ten hours. When considerable force is exerted, as in the case of a fall from a height, crushing under a heavy weight, etc., serious internal injuries may be caused without slightest external mark. Even when there is no internal rupture, death may follow from shock. *Criminal Investigation* by Dr. Hans Gross, 1934 Ed., P. 416.

17. Of the neck and throat. See Strangulation.

1. *Abrasions.*—Marks left by ligature used in hanging or in strangling are in effect abrasions caused by the destruction of epidermis. Small abrasions are seen in case of throttling; the finger nails sinking into the skin have typical crescent-shaped marks. Strangulation is sometimes accomplished by compressing the throat with some hard substance, e. g., billet of wood; in such cases abrasions will be formed on the front of the throat. *Lyon's Med. Jur.*, 1935, P. 204.
2. *Bruises.*—The pressure of any hard object on the throat will cause bruising. The murderer always uses more force than is necessary for the accomplishment of his purpose, thereby leaving traces of his work. *Ibid.*, P. 204.
3. *Incised wounds.*—Incised wounds made with the edge of weapon of the knife or razor type are very common. But those caused with heavy striking weapons are on the back of neck. They are very fatal injuries owing to the close proximity of the spinal cord to the surface. *Ibid.*, P. 204.
4. *Stab wounds.*—Stab wounds on throat or neck are not uncommon. Their chief danger is hæmorrhage, following on injury to the blood vessels, and death is due to it. Wounds of the large vessels are not necessarily rapidly fatal. *Ibid.*, P. 205.
5. *Lacerations.*—Laceration of the structures of the neck is not uncommon in hanging with a drop, and may be extreme, all tissues of the neck being ruptured. *Ibid.*, P. 205.

18. Of the scalp and brain.

1. Wounds of the scalp are always serious, no matter how they are produced, for they are inevitably septic when inflicted. If the division of tissues has penetrated below the dense layer of the skin of the scalp, it is practically impossible to be at all sure of being able to cleanse them. *Taylor's Med. Jur.*, 1928, P. 422. *Lyon's Med. Jur.*, 1935, P. 190.

2. If suppuration ensues, these wounds are liable to give rise to fatal complications owing to the ease with which the septic microbes can reach the brain... There is a further reason for considering scalp wounds dangerous in that it is difficult to be sure whether the skull or brain has not at the same time been damaged. *Ibid*, p. 422.
3. Injuries produced by blows from blunt instruments frequently bear a close superficial resemblance to cut wounds. It is advisable, in all scalp wounds, to shave the scalp closely and examine the edges and terminations of the wound with special care and to closely examine the deeper parts of the injuries to see if the tissues are cut or torn, and to observe the presence of foreign bodies, such as fragments of glass, rock, earth, etc. *Ibid*, p. 423.

9. Of the head, vs. alcoholic intoxication.

1. There is nothing in the state of the brain in a dead body which will enable a practitioner to say whether shock or intoxication had existed and had been the cause of the symptoms which ended fatally. *Taylor's Med. Jur.*, 1928, p. 425.
2. The discovery of alcoholic liquid in the stomach or the presence of alcohol in the blood or urine might lead to presumption that the deceased had been drunk, and marks of violence on the skull or in the brain might prove that he had been injured but it does not prove whether alcohol or injury was the primary and sole cause of death. The following are the tests:—(a) The history of the case should be obtained. (b) The smell of the breath should be noted. Drink does not prevent but renders easy injury to the head and again it is almost invariable to find that brandy is poured into the mouth of a man found insensible. (c) The pupils should be noted. If they are dilated, alcohol may be more suspected, if contracted opium poisoning may be the more suspected; if unequal, they rouse a strong suspicion of serious head injury, and if inactive to light the case is serious. (d) Note the temperature. If raised, this suggests head injury and possibly of hæmorrhage into the brain; if lowered, this in itself has not signified danger. (e) Local paralysis as opposed to general helplessness suggests local lesion, and therefore strongly suggests serious injury and not intoxication. (f) The urine should be examined. (g) Note the general condition of the skin flushed and sweating, probably drunk; cold and blue, collapse of a dangerous description; cold and sweating suggests opium poisoning. *Taylor's Med. Jur.*, 1928, 8th Ed., pp. 425 & 426.

0. Of the face.

Wounds of the face are usually followed by great deformity; and when they penetrate the cavities in which the organs of the senses are situated, they often prove fatal either by involving the brain and its membranes or by giving rise to inflammation of this organ. *Taylor's Med. Jur.*, 1928, p. 412.

1. Of the nose.

Wounds of the nose are, generally speaking, of a simple nature, rarely giving rise to serious symptoms. If the injury is a contusion and, at the same time, extensive a loss of the sense of smell will probably result. A penetrating wound of the nose, produced by passing a sharp pointed instrument up the nostrils, may destroy life by perforating the cribriform plate of the ethmoid bone and injure the brain. Such a wound might be produced without leaving any external marks of injury. *Taylor's Med. Jur.*, 1928 p. 442.

2. Of the chest.

Incised wounds of the chest-walls which do not penetrate the cavity are rarely followed by dangerous consequences. The bleeding is not considerable, and is generally arrested without much difficulty. Fracture of the ribs are dangerous for several reasons:—The bones may be splintered and driven inwards, thereby wounding the lung hæmorrhage. Simple fracture of the chest bone without displacement of the bone is rarely attended with danger, unless the concussion has at the same time produced mischief internally. When the bone is depressed as well as fractured the viscera behind may be mortally injured. Wounds penetrating into the cavity of the chest are generally dangerous, even one slight inconsequence of the innumerable accidents with which they are liable to be complicated. *Taylor's Med. Jur.*, 1928, p. 446.

3. Of the lungs.

The immediate cause of danger from wounds of the organs is the consequent hæmorrhage,

Wound—(contd.)

which is profuse in proportion to the size of the wound and the size of the vessels wounded. Should the weapon divide any of the trunks or the main branches of the pulmonary vessels the individual may speedily die. The degree of hæmorrhage cannot be determined by the quantity of blood which escapes from the wound. A wound of the lung is generally known, among other symptoms, by the frothiness and florid colour of the blood which issues from the orifice....There may be no external marks of violence or symptoms indicative of danger for some hours. ...A young man while riding fell from his horse on his left arm. He complained of no pain for five hours but in 12 hours he bled profusely from the mouth and died in a few days. There were no external marks of the injury to the chest but the right lung was found ruptured throughout its length. A boy aged 14 fell from the height of 20 feet and died within 3 hours. There was no external marks of injury but collar bone was fractured and right lung was ruptured to depth of 4 inches into its substance, from this rupture a large quantity of blood has escaped causing death. *Taylor's Med. Jur., 1928, P. 447.*

Of the heart.

Wounds of the heart are among most fatal of penetrating wounds of the chest. It was frequently considered that all wounds of the heart were necessarily and instantly mortal, a view which must now be considerably modified. The presence of weapon in the wound, by mechanically obstructing the effusion of blood, retards the fatal result. *Taylor's Med. Jur., 1928, P. 448.*

If the right cavities of the heart are more frequently wounded than the left, of these the right ventricle is most commonly the seat of injury. The heart is liable to be ruptured either from disease or accident. In the latter case the organ generally gives way towards the base, and through one of its cavities from the right side. In ruptures from the natural causes it is the left side of the heart, and particularly the left ventricle in which rupture is most frequently found. Symptoms are sudden pain, collapses, cramps, cold extremities, and rapid death. *Ibid, P. 449.*

Rupture of the heart from blows or falls is not always accompanied by marks of external violence, or any fracture or other injury to the exterior of the chest. The natural causes of rupture of the heart are violent mental emotions, such as anger, fright, terror; sudden or excessive muscular efforts or violent physical exertions in constrained positions. The heart like any other muscle, may give way from its own powerful contractions. It is of importance to note that rupture of the heart may prove suddenly and rapidly fatal to life, although the lesion may not involve the cavities. When the heart is in a diseased condition, as in fatty degeneration, slight causes of excitement or exertion are sufficient to produce rupture and sudden death. Walking may thus give rise to fatal consequence. *P. 450.*

When air enters the blood through a wound in a vein death is produced by the heart the resultant mixture causing asphyxia.

Death may take place from shock. A person stabbed to the heart or shot through the heart may still be capable of considerable muscular effort, such for instance as running a hundred yards or more. A person might be quite capable, not perhaps of giving any detailed account of the occurrence, but of calling out that he had been stabbed by a particular individual. *Lyon's Med. Jur., 1935, pp. 206-207.*

The heart may be lacerated by the jagged ends of fractured ribs or by a broken sternum. It may be shattered by severe compression of the chest or by a gunshot discharged at close range. *Ibid, P. 208.*

Spontaneous rupture of the heart is of rare occurrence. *Ibid.*

Of the abdomen.

Concerning the walls of the abdomen.

Incised and punctured wounds which affect the walls of the abdomen without penetrating the cavity, offer no special dangers over and above their proximity to the peritoneum and the dangers of extension of inflammation thereto.

Penetrating wounds are not always fatal. A very large number of gunshot wounds have apparently done no damage to the viscera.

A soldier by accident so fell up on his bayonet that although the weapon traversed

Wound—(contd.)

the whole cavity of the abdomen (entering at the back and coming out in front below the navel), the man recovered in about six weeks. *Taylor's Med. Jur.*, 1928, P. 454.

4. The contusions on the cavity of the abdomen are attended generally with far more serious effects than those on the chest due to covering of the abdomen having less power to resist external shock. Death may be the immediate result of a blow in the upper and central portions and no particular morbid changes may be apparent on inspection. Death may be ascribed to fatal shock. P. 455.
5. Blows on the abdomen, when they do not destroy life by shock, may cause death by inducing peritonitis, which may extend to other membranes. *Ibid*, P. 456.
6. Blows on the abdomen are not always accompanied by visible bruise or injury to the skin, and indeed, it must be remarked that when such a bruising is found without injury to the skin it may possibly have been produced by violent muscular action, as in trying to escape a blow and not by blow itself. *Ibid*, P. 457.

B. Rupture of the Liver.

1. Ruptures of the liver may occur from falls or blows or by sudden action of the abdomen muscles *Taylor's Med. Jur.*, 1928, P. 457. An accident of this kind happened to a person who was endeavouring to avoid a fall from his horse. *Ibid*. A fall on the feet from an elevated spot may also produce laceration of the liver. Ruptures of the liver, if fatal, generally cause death within 48 hours. In a case in which the liver was found adhering to the floating ribs, a fatal rupture was caused as a result of violent muscular action. *Ibid*, pp. 457-458.
2. Considerable power of locomotion may remain after receipt of injury. *Lyon's Med. Jur.*, 1935, P. 210.

C. Abrasions.

Abrasions on the abdominal wall are the result of traffic. *Lyon's Med. Jur.*, 1935, P. 208.

D. Bruises.

Bruises on the abdominal wall are uncommon. The severest injury may be sustained by one or more of these organs without the abdominal wall showing any trace of bruising. *Ibid*, P. 208.

E. A stab wound of the abdomen may be considerably deeper when measured at the *post-mortem* table than when it was at the moment of infliction. The hand clasping the knife pushes the belly wall inward to a distance of two or more inches. *Ibid*, P. 209.

F. A blow over the abdomen may kill almost immediately or after a short interval, without causing any visible injury. In these cases death is due to syncope from reflex paralysis of the heart. *Ibid*, P. 209.

26 Of bladder.

Rupture of the bladder is frequently the result of blows on the lower part of the abdomen. The usual period at which the death occurs from this accident is from three to seven days. The case of death is usually peritonitis but a person may die suddenly from this injury as a result of shock. When ruptures are produced by blows they are rarely accompanied by marks of ecchymosis, or of injury to the skin. A rupture is almost always the result of violence. (a) When the bladder is ruptured from spontaneous rupture may occur. (b) When the bladder is ulcerated, there is an obstruction in the urethra from stricture. (c) From some undressable cause. Owing to the short and simple nature of the female urethra, the rupture of the female bladder by violence in the ordinary way is very rare. *Taylor's Med. Jur.*, 1928, pp. 463-465.

27. Of the stomach.

Wounds and ruptures of the stomach may cause death by shock. Rupture commonly gives rise to severe pain, sufficient in itself to bring about speedy death. A stomach may be ruptured from spontaneous causes, as in ulceration from disease. Penetrating wounds of the stomach generally prove rapidly mortal. *Taylor's Med. Jur.*, 1928, P. 463.

Wound—(contd.)

28. Of the genital organs—(male organ—vulva)—.

1. Wounds of the genital organs, whether in the male or female, may prove fatal to life by excessive hæmorrhage. The practice of circumcision on infants is sometimes followed by fatal results. Owing to the proximity of the pubic bones, blunt violence may produce an apparently incised wound. *Ibid*, P. 466. When deeply incised wounds are inflicted upon the genital organs of either sex, the fact of their existence in such a situation is strongly presumptive of wilful and deliberate malice on the part of an assailant, or deliberate suicide. Kicks or blows on the vulva, if they destroy life at all cause death by copious effusion of blood. Violence to this part after death would not produce such an effusion as would account for death. *Taylor's Med. Jur.*, 1928, pp. 466-467.
2. Severe contusion on the male organ may cause death. Severe compression of the testicles may prove fatal from shock. *Lyon's Med. Jur.*, 1935, P. 217.
3. Incised or contused wounds on the female genitals may prove fatal by loss of blood. *Ibid*, P. 217.
4. A kick on the vulva—like a blow on the head—may cause an apparently incised wound and prove fatal from hæmorrhage. *Ibid*, P. 217.
5. Wounds of the female genitals are sometimes the result of an accidental fall on some projecting sharp or pointed object. In India cases of injury by thrusting a stick into the vagina are not uncommon. *Ibid*, P. 218.

29. Of the brain. See—18.

30. Position of assailant. See—4.

31. Punctured.

1. A punctured wound is one in which the depth is greater in proportion to the length. *Taylor's Med. Jur.*, 1928, Vol. I, P. 318.
2. Punctured wounds may be caused accidentally by projecting nails, fragments of crockery, etc. If the edges of the puncture are free from laceration or contusion, the indication is that a sharp-pointed weapon has been employed. The obliquity or directness of the thrust, and also the state of tension or relaxation of the skin, may affect the shape of the puncture, and hence two punctures from the same weapon may differ in shape. Very often, owing to the elasticity of the skin, punctured wound is of less diameter than the weapon which has been used. The existence of several punctured wounds of course very strongly indicates the employment of a weapon and if all are similar in size and shape the probabilities are in favour of their being due to repeated thrusts with the same weapon. Weapons commonly used are daggers, spears, arrows, sickle, pickaxe, hoe, fork, etc. *Lyon's Med. Jur.*, 1904, pp. 123-124, *Lyon's Med. Jur.*, 1935, pp. 180-181.
3. If it be asserted that a punctured wound was produced by a fall on some sharp body such as glass, pot, sharp stone, etc., it is almost impossible for the wound to be of great depth without a part at least of the material being found broken off in the wound. *Taylor's Med. Jur.*, 1928, Vol. I, P. 355.

32. Rupture of intestine.

Rupture of intestine is usually fatal, the cause of death being peritonitis. Rupture may occur solely from disease or from violence. Rupture even of a healthy portion of intestine may occur from a comparatively slight amount of violence. *Ibid*. Accidental cases are due to traffic accidents, kicks from horses, falls, etc. In cases of assault a blunt weapon or a blow with the fist or a kick may have been employed. *Lyon's Med. Jur.*, 1935, P. 215.

33. Rupture of liver. See 27—B.

34. Ruptures of the spleen. See Spleen—4.

35. Scars.

A. Time required for the formation of scars.

It varies according to the nature, size, cleanliness, etc., of the wound (a) In clean incised wounds, the edges are firmly united in about five or six days, and a definite reddish scar is formed in something like a fortnight. (b) In wounds which are suppurred (septic) the time is from a week to two or three months, according to the size

Wound—(contd.)

of the wound and treatment applied. (c) In small wounds on fingers etc., a scab forms in about thirty-six to forty-eight hours, and if on removal of this some granulation tissue be found or attempts at scarring, it may safely be said that the wound was inflicted at least four or five days previously. (d) In larger ragged wounds involving many structures no appreciable amount of granulation tissue will be formed under a week, and no real scar for at least two or three weeks. (e) The age and health of the wounded person have material influence even on these averages. *Taylor's Med. Jur.*, 1928, P. 131. *Lyon's Med. Jur.*, 1935, pp. 101-103.

B. Age of scar.

A scar consists of fibrous tissues and blood capillaries, and the contraction of former tends to obliterate many of the latter. When first formed a cicatrix looks red or bluish and angry, and is tender. As its age increases it becomes smaller, whiter, thicker, more shining and less sensitive. In about two months or so a scar acquires those permanent characters by which its individuality will be known during the life of its bearer. Some scars get red, shiny and angry looking after 35 years, when local irritation is applied. When once a scar has become firm and white there are no data of a medical nature which will enable us to say when the wound producing it was inflicted, whether two, ten or twenty years before. *Ibid.*

C. Relationships of shape and size of the scar and the wound.

There is a broad general likeness between a wound and its scar. A straight simple incised wound will have a straight linear cicatrix as a rule. If the incision was of some length so that the skin gaped, or if the wound suppurated, the cicatrix will probably be wider and thicker in the middle than at the ends. Wounds of irregular shape and contused wounds commonly leave irregular scars. If there has been definite loss of substance in a wound from sloughing, the scar will be in some measure proportionately thick. Burns and scalds are generally large and very irregular, often showing keloid patches or lines. Surgical operations. These are commonly indicated by their regular form and situation, the marks of stitches which held them in position can also be usually made out. Tubercular and syphilitic scars are generally much depressed, irregular and thick in parts. Ulcer is for medico-legal purposes, an unhealed wound, though the word is used in surgery rather to express the result of disease than those of an aseptic wound. Vaccination and small-pox scars have an irregular honey combed appearance with white streaks, and are slightly depressed below the level of the surrounding skin. Punctured wounds—stabs, bullets, etc., generally leave puckered cicatrices, from which it is generally impossible to give evidence as to the nature of weapon inflicting them. It may be asserted that they are usually smaller than the weapon. Scars in children—The large scars on chests or limbs grow in size with the growth of child, so that approximately the same proportion of circumference is still involved when the child becomes an adult. *Taylor's Med. Jur.*, 1928, pp. 135-136; *Lyon's Med. Jur.*, 1935, P. 103.

D. Removal or alteration of scar by time.

No scar can be removed by cutting or excision without leaving another behind. It is quite possible that a criminal or designing person may get rid of an inconvenient scar by substituting another one for it. Scars of wounds involving a definite loss of tissue are permanent and indelible and last through life, with but little change, but scars of small wounds become indistinct. If no marks of cutting can be perceived within a few months of the period at which a severe wound is alleged to have been inflicted, it is reasonable to infer that there has been some mistake, or that the circumstances have been greatly exaggerated. *Taylor's Med. Jur.*, 1928 pp. 136-137.

36. Scratches.

Scratches are very important, especially when they arise from resistance of the victim to an attack. Nails of scratcher must be examined to see if there is any relation between the nails and the scratches observed. The dirt under the nails often affords strong evidence and should be examined by a specialist. *Criminal Investigation by Dr. Hans Gross, 1934, Ed., P. 422.*

Wound—(contd.)

28. Of the genital organs—(male organ—vulva)—.

1. Wounds of the genital organs, whether in the male or female, may prove fatal to life by excessive hæmorrhage. The practice of circumcision on infants is sometimes followed by fatal results. Owing to the proximity of the pubic bones, blunt violence may produce an apparently incised wound. *Ibid*, P. 466. When deeply incised wounds are inflicted upon the genital organs of either sex, the fact of their existence in such a situation is strongly presumptive of wilful and deliberate malice on the part of an assailant, or deliberate suicide. Kicks or blows on the vulva, if they destroy life at all cause death by copious effusion of blood. Violence to this part after death would not produce such an effusion as would account for death. *Taylor's Med. Jur.*, 1928, pp. 466-467.
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37. Self inflicted—.

A. Bruises or contusions.

As regards bruises inflicted by another with a view to substantiating a false story, it may be impossible to distinguish these from genuine injuries... These contusions are the result of the use of stick, and their usual position is on the back. They are practically always single, and are such as would not require the use of much force for their production. Their direction may be quite irreconcilable with the complainant's version of their infliction. *Lyon's Med. Jur., 1935, P. 239.*

B. Gunshot.

1. The most convenient site for a self-inflicted gunshot wound is the temple of the same side as the hand used in shooting. Less commonly the heart region is selected. If the weapon is a long one, such as gun or rifle, the muzzle may be placed in the mouth or under the chin. Wounds situated elsewhere, if accident can be excluded, are homicidal... In cases of accidental discharge of the firearm, the wound will be for the front of the body, and will often be from below upwards... Blackening of the hand with unconsumed powder is a proof of suicide or of accident. *Lyon's Med. Jur., 1935, P. 234.*
2. Self-inflicted gunshot wounds will be found to involve non-vital parts, except in cases of attempted suicide. They will be near wounds. The skin will be more or less lacerated and bruised. There will be much ecchymosis and the hand holding the weapon, as well as the dress and the wounded skin may be blackened or burnt by the exploded gun powder. *Taylor's Med. Jur., 1928 P. 544.*

C. Incised.

1. In the case of incised wounds if these are slight or if severe they tail off at one end into a superficial scratch, and are in the accessible position on the left side in the case of light handed man, the presumption is in favour of self infliction. In suicidal cases, in about four-fifths of the cases the head is chosen for injury. *Lyon's Med. Jur., 1904 pp. 155-157, Lyon's Med. Jur., 1935, P. 238.*
2. Where several incised wounds are accompanied by cuts on the hands of the injured individual, and in female subjects, in cases of wounds of the genitals or castration or mutilating wounds of the nose, ears, or breast, the presumption is in favour of infliction by another person. *Ibid.*
3. Self-inflicted incised wounds, as a rule (a) end on the same side as the hand employed, and (b) begin from below if on the lower part, or from above if on the upper part of the body. *Ibid.*
4. Self-inflicted incised wounds of the throat, as a rule possess the first of these characteristics, but may or may not possess the second, i.e., they may be transverse, or run from above down or from below up. *Ibid.*
5. Self-inflicted several incised wounds all slight are sometimes self-inflicted, with the object of averting suspicion. *Ibid.*
6. Want of correspondence in situation between cuts on the clothes and wounds on the body is often found when the wounds have been self-inflicted for the purpose of supporting a false charge or averting suspicion. *Lyon's Med. Jur., 1901 P. 160.*
7. When the weapon used is found tightly grasped in the hand of the dead body, it indicates self infliction. A weapon, however, found loosely lying in the hand of dead body, may have been placed there, with the view of fabricating evidence in favour of suicide. *Ibid.*
8. Imputed wounds except in cases of attempted suicide are (a) of superficial character, (b) are in front of the person and may be on the right or left side according to whether person is right or left handed, (c) they are generally numerous and sometimes they have had a complete parallelism, unlike those caused by adversary. (d) the hands are seldom wounded, (e) the injuries are not usually situated over those parts of the body in which wounds are by common repute considered mortal, (f) the cuts on the dress are not reconcilable with the articles of dress having been worn when they were produced, (g) there is in general an entire want of correspondence between the situation of the wounds on the person and cuts or other marks on the dress. *Taylor's Med. Jur., 1928 P. 471, Vol. I.*

Wound—(contd.)

9. No hard and fast rules can be laid down for the detection of self-inflicted wounds. Each case must be decided by the facts which accompany it. However the following facts must be ascertained. (a) The relative positions of the assailant and the assailed person at the time of the alleged attack. (b) The situation, direction and depth of the wound or wounds. (c) The situation or direction of marks of blood or wounds on the person or dress of either, or of both the assailant and assailed. (d) The marks of blood and the quantity effused at the spot where the struggle is alleged to have taken place. *Taylor's Med. Jur., 1928, Vol. I, P. 475.*
 10. Imputed wounds are generally cuts or stabs. They are seldom of the contused kind. Some cases in which females labouring under hysterical attacks, have inflicted upon themselves, severe contusions and have charged innocent persons with attempt to murder are on record. *Taylor's Med. Jur., 1928, P. 476, Vol. I.*
 11. The question whether a wound is self-inflicted may be answered by, (1) the nature or appearance of the wound, (2) the position of the wound, (3) the direction of the wound, (4) the number of wounds or injuries, (5) the position and surroundings of the injured individual. *Lyon's Med. Jur., 1935, P. 227.*
 12. Blood stains on the back of the hand, thumb and first finger, point to self destruction. A cut in the clothing corresponding in position to that on the body is almost proof of murder. *Ibid., P. 232.*
 13. A fabricator will be careful to avoid doing himself any serious harm; he will not wound those regions of the body that he considers are dangerous. *Ibid., P. 238.*
 14. Wounds on the face or genital organs are never the work of the fabricator. *Ibid., P. 238.*
 15. In case of suspected fabrication of wound, clothing must be examined. The individual will always bare a part before wounding it, in order to see what he is about. He may then forget to make cuts in the clothing. *Ibid., P. 238.*
- D. *Inflicted with consent.*

In India severe, even fatal, injuries are sometimes inflicted on an individual with his consent, for the purpose of supporting a false charge against some other person. *Lyon's Med. Jur., 1935, P. 220, P. 138. Lyon's Med. Jur. 1904, P. 153.*

E. *Punctured.*

Punctured wounds except of very slight depth are not self-inflicted. *Lyon's Med. Jur., 1935, P. 238.*

38. Shock—Death from.

Shock is sometimes direct cause of death, under the infliction of external violence, and in this case life is destroyed without the injury being sufficient to account for a result so speedily fatal...A person may have received many injuries, as by blows, in medical language be turned into death either on the spot or of shock, like, fainting from very fright or from some unpleasant sight or smell. *Taylor's Med. Jur., 1928, Vol. I, pp 330—332.*

39 Whether caused before or after death ?

1. If a wound has been observed before death, signs of inflammation. (a) ... signs will be ... signs of inflammation.
2. Contusions inflicted during life, if severe, are generally, but not variably, followed by ecchymosis. If the individual has lived for sometime, say more than twenty-four hours after receiving the injury, changes in colour will probably be found at the circumference of ecchymosed patch, from purple to black, violet green to yellow. Thus the purplish black becomes by third day violet, by the fifth day green and by eighth to tenth day yellow and the injured part will probably be found swollen...An injury inflicted after death, while the blood is still fluid, may be followed by effusion of blood. Blood effused from a wound made more than ten minutes after death rarely coagulates...Much hæmorrhage also indicates ante mortem infliction. *Lyon's Med. Jur., 1904, pp. 128-129.*

Wound—(contd.)

3. When a wound is inflamed, in a state of suppuration or cicatrization, it must have been produced before death. If it is inflicted, in the last moments of life, its edges are more or less retracted and tumid, it is covered with a clot of blood. When a wound is made some hours after death its lips are retracted as if inflicted during life, but they are pale, not tumefied, without any trace of blood. *Ryan's Med. Jur.*, 1836, P. 340.
4. *Ante-mortem* injuries are distinguished from *post-mortem* injuries by the presence of signs indicative of vital reaction. These are :—(a) *Bruising*. Contusions may appear even if an individual has lived only a short time after receipt of the injury ; and bruising from blows inflicted during life may not become apparent until after death has taken place. If the individual lived more than twenty-four hours after the injury, changes in colour will be found at the circumference of the ecchymosed patch. (b) *Effusion of blood*. In a dead body the blood remains fluid for some time after death, rarely beginning to coagulate until four hours, and sometimes not until twelve hours, after death. Hence an injury inflicted after death, while the blood is still fluid, may be followed by effusion of blood. Blood effused from a wound made after death rarely coagulates. Marks of arterial spouting indicate infliction while the heart is beating. Much hæmorrhage also indicates *ante-mortem* infliction. *Post-mortem* infliction is indicated if the effused blood is found fluid. (c) *Reaction and eversion* of the edges of wound follow the infliction of an incised wound made during life or shortly after death. Hence in *incised wounds*, indication of infliction during life or shortly after death, are: (1) retraction and eversion of the edges of the wound ; (2) hæmorrhage into the wound and into the cellular tissue around it, and (3) presence of coagula. (d) One of the most reliable signs of *ante-mortem* infliction, is the *staining of the wound* by blood that has been forced into tissue interspaces by the active bleeding of life. This blood clots in position, and the stains produced by it cannot be removed even by washing the wound, while any blood stains due to *post-mortem* bleeding are easily removed with a damp rag, leaving the tissues unstained. *Lyon's Med. Jur.*, 1935, pp., 186-187-188.

40. Whether dangerous to life ?

1. The danger primarily depends on (a) the amount of hæmorrhage, (b) the organ wounded whether liver, brain, heart, lungs, etc. (c) shock ; and *secondarily on the chance of* (d) secondary hæmorrhage following sepsis (e) specific infection, e. g., tetanus, gas gangrene ; or *more remotely* (f) the effects of scarring....As a general principle, the Court is likely to consider as dangerous to life in a legal sense only those wounds in which the danger is imminent and not remote. *Taylor's Med. Jur.*, 1928, P. 323, Vol. I, *Lyon's Med. Jur.*, 1901, P. 175.
2. The majority of medical jurists agree, that penetrating wounds of great cavities, or in other words of the brain, heart, lungs, and digestive organs are always doubtful and often dangerous to life. *Ryan's Med. Jur.*, 1936, P. 327.
3. Some injuries causing death may be called conditionally mortal injuries, i. e., such as cause death owing to either (a) Disease or infirmity under which the injured individual labours, e. g., an enlarged spleen ; or (b) the superposition of disease, e. g., tetanus, septicaemia, erysi pælas or (c) want of resort to proper remedies or treatment as when death occurs owing to loss of blood from a wounded artery of moderate size, others may be called mortal injuries or injuries intrinsically sufficient to cause death, irrespective of the existence of any conditions such as those mentioned above. *Lyon's Med. Jur.*, 1904, pp. 175-176.

41. Whether one weapon can cause different kinds of wounds. See—14—E.

- A heavy weapon of the bill hook class may, for example produce all four varieties (*incised, contused, punctured and internal injury*). Hence the existence on the body of the same individual of wounds belonging to two or more of these four classes, does not necessarily indicate that two or more weapons were employed, or that more than one person was concerned in their infliction. *Lyon's Med. Jur.*, 1935, P. 185. *Lyon's Med. Jur.*, 1901, P. 124.

42. Warding off blows by victim. See 14—H.

Written Statement.

WRITTEN STATEMENT. See Examination of accused—31.

WRONGFUL CONFINEMENT. S. 342 to S. 348, I. P. C.

1. Abetment.

It would be no defence against the charge under Ss. 342—114 for the accused to say that he was not present at the actual arrest, if in fact he was instrumental in getting the arrest made, and if after it was made he instigated the bailiff to wrongfully confine a debtor in spite of protection order in his favour. 76 I. C. 234=1924 M. 31=25 Cr. L. J. 138.

2. Arrest.

1. Where the arrest is legal, the Police Officer is not guilty under S. 342. 10 B. 506.
2. The accused, a Police Officer, came down to Bombay to arrest a person and after due inquiries arrested a person in good faith, which turned out to be a wrong man. Held, he was protected under S. 76 and was not guilty under S. 342. 25 Bom. L. R. 138=1924 B. 333=81 I. C. 317=25 Cr. L. J. 797.
3. Submission by the complainant to arrest does not detract from the accused's act or diminish its legal effect. 1929 C. 730=33 C. W. N. 751, 2 M. H. C. 395.
4. A Sub-Inspector conducting an investigation is within law when he sends for a person to the Police Station, who can in his opinion give information about a crime. The constable and *chawkidar* who brought the complainant to Police Station and asked him to sit down till Sub-Inspector saw him committed no offence. 7 O. W. N. 957=1930 O. 505.
5. The applicant was convicted under S. 244 and the Sessions Judge in appeal found that he was not in lawful custody and acquitted him. Held, that constable was guilty under S. 342. 1923 A. 34=85 I. C. 44=26 Cr. L. J. 423.
6. Under an order of the Commissioner of Police which was published in the Calcutta Police Gazette the Deputy Commissioner made an order for the confinement of a Head Constable. It was afterwards discovered that order published in the Gazette was not granted leave under S. 5, Calcutta Police Act. The Head Constable prosecuted the Deputy Commissioner under S. 342. Held, that the accused was not guilty. 47 C. 818.
7. Two Head Constables arrested a person who was drunk and created a disturbance in a street. They took him to Police Station and confined him there, although one of them knew his name and address. Held, they were not guilty under S. 342. 45 M. 605. See 44 M. 913, 40 M. 728.
8. Where a person went to a Police Station to lodge a complaint and the Police Officer, in consequence of some thing restrained him till he got an order from his superior Officer and then discharged him on his own recognizance. Held, he was not guilty under S. 342. (1875) 24 W. R. 51.
9. Where the accused refused to obey an order in writing improperly issued by a Police Officer and the Police Constable thereupon took her into custody. He was guilty under S. 342. (1886) 1 Weir 342.
10. A Police Officer arresting a person on a charge of criminal breach of trust committed out of British India is guilty under S. 342. 19 B. 72. See 12 B. 377.
11. Where a Superintendent of Police illegally wrote a letter to a person directing him to present himself before a Magistrate, when he could not be arrested without a warrant and the constables prevented him from speaking to any one, an offence under S. 342 was committed. 2 M. H. C. 395.
12. A person was discharged by a Magistrate and was re-arrested on the same charge, an offence under S. 342 was committed. (1673) 19 W. R. 27 Cr.
13. A village Magistrate maliciously ordering a certain person who had secured the detention of pigs found trespassing, to be arrested, is guilty under S. 342. 5 M. H. C. App. 24.
14. If a Police Officer directs another person to make an arrest, he is responsible in the same way as if he had made the arrest. (1867) 7 W. R. 3 Cr.
15. Accused, a Police Constable, detained some persons as suspects for several days

Wrongful Confinement—(contd.)

They were not fettered and their meals were brought to them from home. Held, he was guilty under S. 342. 4 Bom. L. R. 79.

3. Arrest by Abkari Inspector.

An Abkari Inspector detained a man all night to prevent his being tampered with, he was guilty under S. 342, I. P. C. 13 B. 376.

4. Arrest by Bailiff of judgment-debtor.

1. Where the accused got the complainant who was his debtor arrested and taken to jail by bailiff during the subsistence of protection order in his favour, he was guilty under Ss. 342—114, I. P. C. 1924 M. 31=76 I. C. 234=25 Cr. L. J. 133.

2. A decree holder is guilty if he causes the arrest of judgment-debtor while returning from Court under circumstances mentioned under S. 135, I. P. C., and the officer who arrests or makes over the warrant for arrest to his subordinate for compliance is also guilty. The fact that judgment-debtor on his way stopped for some private work does not deprive him of the privilege afforded by law. 121 P. L. R. 1916=17 Cr. L. J. 525=36 I. C. 493.

3. Arrest on Sunday is legal. 4 M. H. C. R. App. 62.

4. A peon arrested the judgment-debtor in the discharge of his duties under a valid warrant. The judgment-debtor protested that he was exempt from arrest under S. 195 (2), C. P. C., but the peon took him to Munsif who after finishing a suit released him. Held, he was not guilty under S. 342 nor was the decree-holder guilty of abetment. 1935 C. 551=36 Cr. L. J. 1252=157 I. C. 1004. 30 M. 129 and 1930 R. 131 Rel. on.

5. Arrest by private person.

Where a person acting under a *bona fide* belief that another person had abducted a minor girl arrested him and kept him in his own custody instead of taking him to Police Station, he was held guilty under S. 342. 8 P. L. T. 204.

6. Essentials and Evidence.

1. A person living in a town where medical assistance was available, kept in heavy chains his brother who was subject to fits of insanity, he was guilty under S. 342 when he was found to be sane by the District Judge. 45 A. 495.

2. Detention through moral force without accompaniment of physical force is sufficient to constitute an offence under S. 342. (1881) 1 Weir 341.

3. Malice is no ingredient of an offence under S. 342. 13 B. 376.

4. There can be no wrongful confinement when a desire to proceed has never existed or if it was consented to by the person affected. 36 P. R. 1894 Cr.

5. But mere submission to arrest does not detract from the accused's act or diminish its legal effect. 30 C. W. N. 751.

6. It is no wrongful confinement if an escape is open to a person, if he wishes to avail of it. 4 C. W. N. 105.

7. The retaining of a person against his will in a particular place or compelling him to go in a particular direction by an exterior will overpowering or suppressing his voluntary action amounts to an offence. 2 M. H. C. 396.

8. A Jail doctor confining a prisoner in a cell for the purpose of giving enema against his will is guilty under S. 342. 30 C. 95.

9. *Mens Rea* does not enter into the offence under S. 342. 33 C. W. N. 751=1927 C. 730.

10. When a person takes a woman in broad day light and confines her wrongfully he commits an offence under S. 342 and not under S. 365. 109 I. C. 677, 1925 L. 614.

11. Wrongful confinement by Police Officer falls under S. 342. 123 I. C. 208=32 Cr. L. J. 110=1930 C. 711.

12. When there is nothing to show that whereabouts of the person confined were concealed by accused from other relations or from the person interested in the

person confined, the accused was guilty under S. 342 and not S. 363, I. P. C. 1925 L. 614=92 I. C. 213.

13. Accused No. 1 brought his mistress from Kolhapore and kept her with accused No. 2 a brothel keeper in Bombay. The woman was made to live as a prostitute in the house the entrance to which was guarded and a watch was kept over her movements. Occasionally she was allowed to go out under surveillance. Held, both accused were guilty under S. 342. 42 B. 181.

7. For more than 10 days. S. 344, I. P. C.

Fine alone is not a legal sentence for a prisoner convicted under this section. 1 B. H. C. 39 Cr.

8. In secret. S. 346, I. P. C.

A woman came to Court to lodge a complaint against her relations. Accused accosted her and drove her away to various places in a carriage but on stir being created brought her back to Court. Held, he was not guilty under S. 346, I. P. C. 9 C. 221.

9. Procedure.

1. Accused seized, dragged and pushed a person in a place to punish him. Held, that they could not be convicted both under Ss. 352 and 342, I. P. C. + C. L. J. 90.
2. When the principal offender is acquitted under S. 368, I. P. C., the other accused who were charged under Ss. 368—109 cannot be convicted under S. 342. 1929 C. 767.
3. Where wrongful confinement was the common object of an unlawful assembly, separate sentences under Ss. 147—342 were illegal. 1 Cr. L. J. 365.

10. To extort confession. S. 348, I. P. C.

1. The appellants charged the prosecutor for theft and he was handed over to Police. It was held that the Police and not the appellants were responsible for any oppression or extortion practised by the Police on the prosecutor while in confinement. (1864) 1 W. R. 26 Cr.
2. Where the detention by the Police is serious, protracted and unauthorized and the complainant is prevented from proceeding beyond a certain limit, it is wrongful confinement. 1930 M. W. N. 723

11. To extort property. S. 347, I. P. C.

1. Where it was alleged that the Police Officer illegally detained a person with the object of extorting money but the Court found that no money passed. Held, that the elements of offence under S. 347 were wanting. 7 O. W. N. 957.
2. A Head Constable agreed to drop proceedings against K, who had been arrested on a certain charge on condition that K paid him a sum of money. The Head Constable sent away K in charge of *chawkidars* who confined him in various places and mal-treated him. Held, that Head Constable was not guilty of abetting the offence under S. 347, I. P. C., in the absence of proof that he gave definite orders to that end. 31 C. 710.
3. If accused intentionally puts a person in fear of injury and thereby induces him to place his thumb impression on a blank paper, such a paper is valuable security and conviction under S. 347 is legal. 1932 P. 335.
4. Separate sentences under Ss. 147—347 are legal, although the aggregate sentence cannot exceed that for the graver offence. 1932 P. 335.
5. If a person is detained by Police on insufficient grounds and money is extorted by Sub-Inspector in order to release him, the person paying the money is not an accomplice. 27 C. 95.

WRONGFUL LOSS OR GAIN. S. 23, I. P. C. See Dishonestly.

1. Forcible entry.

A landlord who is entitled to take possession in a case where his tenant is wrongfully holding over, can only take possession peaceably. If his possession is opposed, however wrongfully, he has no right to break the doors and to turn the inmates out but must go to Civil Court. 1926 B. 91=94 I. C. 709=27 Cr. L. J. 661.

*Wrongful Loss or Gain—(concl'd.)***2. General.**

1. When the owner is kept out of property temporarily, there is wrongful loss. 25 C. 416.
2. Plaintiff in a suit snatched up a document lying beside the arbitrator and ran away and refused to produce it. Held, there was no wrongful loss or wrongful gain. 3 M. 261.
3. Accused purchased rice from a famine Relief Officer to sell it at a 'specified rate' but sold it at higher price. Held, there was no wrongful gain or loss. (1874) 22 W. R. 82 Cr.
4. Wrongful gain or loss covers temporary gain or loss. 68 I. C. 157.
5. Accused who was charged with theft of a box by his master, stated that he removed and concealed it in the cow shed to give a lesson to the master. Held, there was no wrongful gain and no theft was committed. 25 C. 416.
6. Mere permitting cattle to stray does not establish any intention of causing wrongful loss to the public or any person. (1868) Unrep. Cr. C. 11.
7. Where a pledgee used a turban pledged to him, the deterioration of turban is no wrongful loss. 3 M. II. C. App. 9 (1868).
8. A person capturing or killing a bull set at large by a Hindu in accordance with religious usage cannot be said to cause "wrongful loss" of any property to any one. 8 A. 51, 9 A. 348, 17 C. 852.

3. Illegal seizure of cattle.

1. Forcible and illegal seizure of cattle of a widow in satisfaction of debt due to the accused by her deceased husband was a wrongful loss. (1866) 5 W. R. 68 Cr.
2. Illegal seizure and impounding of cattle, even though maliciously does not cause wrongful loss. (1875) 24 W. R. 7 Cr.

4. Property.

Fees payable to college for attending lectures are property within the meaning of S. 23. 15 A. 210 (216).

5. Removing lateral support.

It is not unlawful and therefore not an offence to remove the lateral support and cause damage unless the right to support has been acquired by prescription for 20 years. 68 I. C. 831.

6. Using pledged turban.

Where a pledgee used pledged turban, the deterioration of turban is no wrongful loss. 3 M. H. C. (App.) 6 (1868).

WRONG NAME. See False personation in Court.**1. At an election.** S. 171-D. See Election.**2. To Police.** S. 182. See False information—15.

1. The conduct of accused such as giving wrong name is only a ground of suspicion but is insufficient to support conviction. 46 I. C. 709.
2. A driver of a motor car when asked for his name by Superintendent of Police, when driving without license, gave a wrong name and another was summoned. He was guilty under S. 182, I. P. C. 7 P. 715=1929 P. 4=30 Cr. L. J. 177=133 I. C. 587.
3. Where a person gives wrong name to Police and then corrects it, he cannot be liable under S. 109, Cr. P. C. 21 A. L. J. 847=1924 A. 202=81 I. C. 598.
4. A person who gives false name and incites people to commit crime or demands money for the means of committing crime is liable under S. 109, Cr. P. C. 15 Cr. L. J. 255.
5. A person giving false name is liable under S. 109, Cr. P. C. 22 Cr. L. J. 749.

WRONGFUL RESTRAINT. Ss. 339—341, I. P. C.**1. Bona fide claim.**

1. If an act is done in good faith under a belief that it is justifiable, a conviction under S. 341 is bad. 24 C. 885, 47 C. 818 J. 6

Wrongful Restraint—(contd.)

2. A person who locks up a house under a *bona fide* claim is not guilty. 20 Bom. L. R. 106, (1889) Unrep. Cr. C. 451.
3. Obstructing a passage in good faith is no offence. 30 C. W. N. 192, 22 P. R. 1910 Cr.

2. *essentials and Evidence.*

1. Where the complainant was taken to Police Station as suspect and passed on from one Police beat to another, offence under S. 341 was committed. (1882) 1 Weir 339.
2. Accused preventing the building of a party wall is not guilty. (1881) 1 Weir 339.
3. Accused turning the cart upside down and thereby making the things fall on the ground is not guilty under S. 341. 12 C. 55.
4. Where accused prevented complainant from proceeding in a direction with carts and exacted a sum on false plea was held guilty. (1868) 10 W. R. 35.
5. A landlord prevented a tenant who was holding over from entering the room which the tenant had rented from him was guilty under S. 341. 43 B. 531, 91 I. C. 811.
6. Before convicting a person of wrongfully restraining the other from making use of a particular place or thing, the Court should determine if the other person has a right to use it. 127 I. C. 554=1930 C. 760=31 Cr. L. J. 1225.
7. Accused wrongfully restrained his tenant from using his urinal. Held, that conviction could not stand unless it was proved that complainant had right to use it. 34 C. W. N. 582=1930 C. 760.
8. Any private individual can restrain a person who is drunk and disorderly and from whom breach of peace is apprehended. 44 M. 913.
9. If a horse on which a person is riding is prevented from proceeding in a direction, offence under S. 341 is complete. It is no defence that the rider might have got off the horse and walked home. 1927 M. 536=100 I. C. 544=28 Cr. L. J. 340.
10. If a person prevents a person from leaving a place when he desires to do so, he is guilty under S. 341. 21 M. L. J. 439, 106 I. C. 111.
11. Physical presence of the person obstructed at the moment of obstruction is not necessary. 1927 B. 369=106 I. C. 111=28 Cr. L. J. 1023, 34 M. 547.
12. Accused put up a tin projection over the complainant's wall so as to hang over his paved courtyard at a height of six feet ten inches above the ground and the projection did not prevent any one moving below it. Held, no offence was committed. 106 I. C. 111=1927 B. 369=28 Cr. L. J. 1023.
13. The accused who were co-owners of well, obstructed another co-owner from using the *mot* to which he had yoked his bullock on the slope of a well on the ground that he had not paid the share of expenses on the well. Held, they were guilty of wrongful restraint. 91 I. C. 811=1926 B. 118=27 Cr. L. J. 139.
14. It is not an offence to erect a wall against one's premises to prevent other persons from passing over it. 25 P. R. 1886.
15. The obstruction must be physical. A verbal prohibition or remonstrance is not obstruction. (1882) 1 Weir 339.
16. Mere direction or demonstration will not constitute wrongful restraint. 5 Cr. L. J. 212.
17. The complainant, his wife and daughter occupied a house and in their absence accused put a lock on the outer door and prevented them from entering the house, it was held that accused was guilty of wrongful restraint. 34 M. 547, 106 I. C. 111.
18. Accused took away the licenses from the boatmen with the result that they were not permitted by the authorities to ply their boats beyond a certain stage in the channel, it was held that it was no wrongful restraint. 11 Cr. L. J. 192.
19. Mere ploughing up of a mamal path is not an obstruction. 30 I. C. 749.
20. Where one of two co-owners leased a shop without the consent of the other, who put up a lock. Held, that he was not guilty under S. 341. 20 Bom. L. R. 106=44 I. C. 463.

Wrongful Restraint—(concl'd.)

21. A conviction under S. 341 is bad if there is no physical restraint of complainant's person. 19 Cr. L. J. 445=44 I. C. 973.
 22. Voluntary obstruction of any person entering upon the land under a *bona fide* colour of title is no offence under S. 341. 34 P. L. R. 1914.
 23. Restraint must be directed to a person and not to a thing. 16 Cr. L. J. 176, 19 I. C. 177, 12 C. 55, 1935 C. 252=39 C. W. N. 143.
- 3. Landlord.**
1. A landlord prevented a tenant who was holding over from entering a house he had rented from him. Held, he was guilty under S. 341. 43 B 531, 98 I. C. 811.
 2. Accused wrongfully restrained his tenant from using his urinal. Held, that conviction could not stand unless it was proved that the tenant had right to use it. 34 C. W. N. 582=1930 C. 763=127 I. C. 554=31 Cr. L. J. 1226.
- 4. Procedure.**
1. The offence of wrongful restraint is compoundable by the person restrained and it is not necessary that composition should be arrived at after the complaint is filed in Court. 49 A. 484=1927 A. 375=101 I. C. 671=28 Cr. L. J. 495, 41 M. 685.
 2. A Magistrate cannot order the removal of obstruction on conviction. 31 C. 691.
- 5. Public Street.**
1. One section of community cannot interdict another section from lawful use of public street. 50 M. 673, 30 M. 185, 1925 P. C. 36, 1926 M 830.
 2. A Brahmin stopped a convert to Arya Smaj in a street and took him to task for passing along that street. He was guilty. 52 M. L. J. 602
 3. It is necessary that customary right of villagers in respect of a path should be established. The oral testimony of two or three persons that path had been used by villagers for more than 20 years is not sufficient. 33 C. W. N. 915=1930 C. 236=125 I. C. 600=31 Cr. L. J. 859.
 4. Accused caused a pariah to stand in a public street in the vicinity of a temple with the object of preventing the complainant from conducting a religious procession for fear of pollution, he was not guilty. 7 M. L. T. 366.
 5. Accused placed an obstruction on a road over which complainant had right of passage of men and cattle but leaving a portion which was passable. Held, he was not guilty. (1899) 1 Weir 340.
 6. The voluntary obstruction of a vehicle to compel payment of certain dues is not wrongful restraint. 1935 C. 252=39 C. W. N. 143, 12 C. 55, 15 I. C. 177=14 Cr. L. J. 177.
- 6. Removing ladder from a wall.**

Accused removed a ladder and thereby detained a person on the roof of a house, held, he was guilty of wrongful restraint. (1884) 1 Weir 340.

Y

YOUTHFUL OFFENDER. See First Offender, Juvenile Offender.

A boy of 15 should not be kept in ordinary jail. 1934 A. 132.

Z

ZAILDAR

1. Confession to—. See Confession by inducement—10.
2. Evidence of—. See Witness—108.

ZEMINDAR. See Landlord, Tenant.

1. Confession to—. See Confession by inducement—10.
2. Evidence of—. See Witness—65.

INDEX A.

Criminal Procedure Code.

Section.		Section.	
4	Complaint.	197	Prosecution of Judge, etc.
4(h)	Complaint—11.	200	Examination of complaint.
6	Court of Sessions	201	Complaint—31.
10	District Magistrate—3.	202	Preliminary enquiry.
15-16	Bench of Magistrates.	203	Complaint—13.
17	Additional Sessions Judge delegation.	204	Complaint—19.
17(1)	District Magistrate delegation.	204 (3)	Complaint—13 (D).
33	Fine—7.	205	Exemption from personal attendance.
42-43	Aid to Police Officer or Magistrate.	205-220	Commitment.
45	Land Holder—1.	208	Cross examination.
45-50	Arrest.	209	Discharge.
61	Detention—2.	225-236	Charge.
75	Warrant.	231	Examination of witness.
87-89	Abducting	233	Distinct offence.
90	Attendance of witness warrant	234	Charge—20.
95-98	Search warrant.	235-239	Joint trial.
99 A—99. G	Forfeiture of newspapers.	240	Withdrawal—8.
100	Search warrant for persons wrongfully confined.	243	Plea of guilty—5.
103-105	Search	244	Examination of witness.
105	Security for keeping peace on conviction	247	Absence of complaint.
107	Breach of peace	248	Withdrawal—5.
108	Security for good behaviour from persons promoting sedition	249	Stopping proceedings.
109	Security for good behaviour from vagrants	250	Compensation.
110-125	Security for good behaviour from habitual offender	252	Examination of witness
127-132	Dispersing unlawful assembly.	253	Discharge—4.
133-143	Public nuisance.	253 (2)	Discharge—2.
144	Temporary order in cases of apprehended danger.	254-255	Charge—15-18.
145-149	Dispute relating to immovable property.	255	Plea of guilty—6.
147	Easement	256-257	Cross-examination.
154	First information report.	259	Absence of complaint
155-157	Investigation	260-275	Summary trial.
160	Attendance of witnesses	271	Plea of guilty—4.
161	Examination of witnesses.	274-332	Jury.
162	Statement to Police.	284-285	Assessor.
164	Confession.	286	Examination of witness.
165	Search.	288	Deposition.
167	Remand.	309	Assessor—5.
172	Diary.	333	{ Advocate-General.
173	Police Report.	337-339	{ <i>Nolle prosequi.</i>
174(5)—176	Inquest.	337	Approver. Certificate—5. Pardon.
177-185	Jurisdiction.	340	Accomplice.
188	Certificate—4.	341	Counsel—12.
190-199	Cognizance of offence.	342	Deaf and dumb.
194	Advocate-General.	344	Examination of accused.
195	False charge—8.	345	Adjournment.
196-A	Conspiracy.	347	Compounding offences.
		349	Commitment—9.
		350	Sentence—54.
		352	<i>De novo</i> trial.
		355-357	Court to be open.
		360	Record.
		361	Reading over statement.
			Interpretation of evidence to accused.

Index A—(concl'd.)

Section.		Section.	
362	Record—13.	494	Withdrawal—4. Case by pu
363	Demeanour.		prosecutor.
364	Certificate—5. Confession.	495	Prosecution—4.
366-367	Judgment.	496—501	Bail.
369	Review.	503—508	Commission.
376	Sentence.	509	Deposition.
386	Fine—12.	510	Chemical Examiner.
391—395	Whipping—6.	511	Enhanced sentence.
397	Sentence.	512	Absence of accused.
401-402	Sentence.	514	Bail bond.
403	Previous acquittal or conviction	516-A—520	Disposal of property.
	barring trial.	522	Dispossession from property.
406—423	Appeal.	526—528	Transfer.
409	Additional Sessions Judge.	529—537	Irregularities.
417	Acquittal—2.	531	Jurisdiction—14.
424	Additional evidence.	532	Commitment—15.
429	Difference of opinion between	535	Charge.
	High Court Judges.	539-B	Local inspection.
431	Abetment—1.	540	Court witness.
432	Reference.	540-A	Absence of accused—4.
434	Review.	541	Detention.
436	Further inquiry.	543	Interpreter.
437	Commitment—6.	544	Expenses of witnesses.
438	Reference.	545	Compensation for injury fr
439	Revision.		offence.
440	Revision.	547	Fine—.
458—473	Insane person.	548	Copy—3.
476	Directing prosecution.	552	Restoration of abducted femal
478	Commitment—8.	556	Disqualification of Magistrate.
480—487	Contempt of Court.	561-A	Expunging remarks. Inher
488-489	Maintenance.		power.
491-491-A	Habeas Corpus.	562	First offender.
492	Public prosecutor.		

INDEX B.

Evidence Act.

Section.		Section.	
3	Facts.	45	Expert.
5	Relevancy of facts.	45—51	Opinion.
6	Facts forming part of same	54	Bad character. Good character
	transaction.	56-57	Judicial notice.
8	Absconding conduct.	74-75	Public documents.
10	Conspiracy.	83	Telegram—5.
11	Facts inconsistent or impossible	102—106	Burden of proof.
	with facts in issue.	114	Presumption.
14-15	Similar Acts.	114 (b)	Accomplice.
21	Admission.	118	Witness.
24	Confession by inducement.	120	Husband and wife—1.
25-26	Confession to Police Officer.	122	Husband and wife—3.
27	Discovery.	122—129	Privilege.
28	Confession by inducement—6.	132	Incriminating questions.
30	Confession by co-accused.	133	Accomplice.
32	Living declaration.	134	Witness—Number of.
32 (1)	Age—5. 32 (8) Exclamation by	136	Admissibility—5.
	spectators.	137-138	Examination of witnesses
33	Cross-examination—35.	140—143	Leading questions.
35	Age—11.	145	Cross-examination.

Index B—(concl'd.)

Section.		Section.	
151	Scandalous questions.	166	Questions by Jury or Assessor.
154	Hostile witness.	167	Improper admission or Re-
159—161	Refreshing memory.		pealing of Evidence.
165	Questions by Court.		

INDEX C.

Indian Penal Code.

Section.		Section.	
3	Jurisdiction—23.	161	Bribe.
5	Local and Special Law.	165	Public servant.
19	Judge—3.	167	Public servant.
21	Public servant.	168	Public servant.
22	Movable property.	169	Public servant.
23	Wrongful loss.	170	Public servant—39.
24	Dishonestly.	171	Public servant—52.
27	Possession of wife, clerk and husband.	171-A-F.	Election.
29	Document.	172	Absconding to avoid service.
30	Valuable security.	174	Disobedience to order or summons.
32-33	Illegal omission.	175	Document—9.
34	Acts done in furtherance of common intention.	176	Omission to give information.
40	Offence.	177	Public servant.
42	Local and Special Law.	178	Public servant—39.
43	Omission to give information.	179	Public servant—42.
43	Illegal.	180	Public servant—43.
44	Jury.	182	False information.
52	Good faith.	183	Public servant.
64—66	Fine.	185	Public servant.
71	Distinct offence.	186	Public servant—33.
73-74	Solitary confinement.	187	Public servant.
75	Enhanced punishment.	188	Disobedience to order duly promulgated.
77	Judge—1.	189	Threat of injury to public servant.
80	Accident.	190	Public servant.
82-83	Child	191—196	False evidence.
84	Insanity.	192	Fabricating false evidence.
85-86	Drunkenness.	201	Disappearance of evidence.
87—92	Consent.	204	Document—7.
94	Compulsion.	205	False personation in Court.
95	Slight harm.	206-207	Fraudulent concealment of claim of property.
96—105	Right of private defence.	209	False claim in Court.
107—116	Abetment.	210	Fraudulently obtaining decree.
116	Public servant.	211	False charge.
118	Witness—15.	212	Harbouring offender.
120-A, B	Conspiracy.	213-214	Gift to screen offender.
121-121-A	Waging war.	215	Gift to recover stolen property.
124-A	Sedition	216	Harbouring offender.
134	Witness.	218	Public servant—21.
143—145—	} Unlawful assembly.	219	Public servant—19.
149—150—		220	Public servant—29.
151—157		221, 222,	Omission to apprehend accused.
147-148	Rioting.	223	Escape—4.
153	Rioting.	224	Resistance to one's arrest.
153-A	Security for good behaviour from persons promoting sedition.	225-B	Escape—.
154—156	Land Holder.		
159-160	Affray.		

Index C.—(concl'd.)

Section.

225	Escape—6.
228	Contempt of Court.
231—240	Counterfeiting coin.
254—267	Weight and Measures.
272-273	Adulteration.
279	Rash and negligent driving.
292-293	Obscene books and printing.
258—294	Public nuisance.
280	Public nuisance—36.
294-A	Lottery.
295	Disturbing religious assembly defiling place of worship.
297	Trespass on burial places.
298	Religion
301—302 } 303 }	Murder.
304	Culpable homicide.
304-A	Death by negligence.
306	Suicide.
307-A	Attempt to murder.
308	Attempt to commit culpable homicide.
309	Suicide—2.
312—316	Abortion.
317	Abandonment of child.
323	Hurt.
324	Hurt by dangerous weapon.
325	Grievous hurt.
326	Grievous hurt by dangerous weapon.
330	Extorting confession.
332	Public servant.
333	Public servant.
334	Hurt.
336—338	Rash and negligence.
334—341	Wrongful restraint.
342—348	Wrongful confinement.
349-350	Criminal force.
352	Assault.
353	Assault on public servant.
354	Assault on woman.
355	Assault—10.
356	Assault on prosecution.
361—363	Kidnapping.
362—364 } 366—369 }	Abduction.
366-A	Procurator of minor girl.
365	Concealing abducted woman.

Section.

370	Slave.
372-373	Prosecution.
376	Rape.
377	Unnatural offence.
379—382	Theft.
380	Theft in Building.
384—389	Extortion.
390—394 } 398 }	Robbery.
395—397 } 398 }	Dacoity.
399	Dacoity—13.
396	Dacoity with murder.
400	Gang of dacoit.
401	Gang of thieves.
402	Assembling for committing dacoity.
403-404	Criminal misappropriation.
404—409	Breach of trust.
411	Receiving stolen property.
417—420	Cheating.
419	Cheating by personation.
425—440	Mischief.
441—447	Criminal trespass.
448, 451 }	House trespass.
452, 456 }	House breaking.
457-458 }	Forgery.
463—469 }	Forged document using as genuine.
471	Document—4.
477	Falsification of account.
477-A	Trade Mark (using false).
482	Trade Mark.
485-486	Counterfeiting currency notes.
489-A to D	Bigamy.
494	Bigamy—9.
495	Bigamy—15.
496	Adultery.
497	Enticing away married woman.
498	Defamation.
499-500	Insult to provoke breach of peace.
504	Rumour
505	Criminal intimidation.
506—508	Insulting modesty of a woman.
509	Misconduct—2.
510	Attempt.
511	

